HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7690 of 2016
Date of decision:12.1.2017

Kashmiri Lal

...Petitioner

Versus

National Insurance Co. Ltd. through its Regional Manager and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sandeep Kotla, Advocate for the petitioner.
Mr.S.S.Sidhu, Advocate for the respondents.

<u>RAMESHWAR SINGH MALIK, J.</u> (Oral)

Feeling aggrieved against the long pendency of the execution application for disbursement of enhanced amount, in compliance of the order dated 19.3.2014 passed by this Court in FAO No.1059 of 2005 (Master Kashmiri Lal and another Vs. Madan Lal and others), petitioner-claimant has approached this Court by way of instant revision petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, for directing the learned executing court to take early and appropriate steps for disbursement of the compensation.

When the matter came up for hearing on 16.11.2016, following order was passed by this Court:-

> *"The precise grievance of the petitioner is that despite order dated 10.4.2015 (Annexure P-3) passed by the Executing Court, the insurance company has failed to deposit the amount in compliance with the award passed way back in September 2004 and compensation being enhanced by this Court vide order dated 19.3.2014 in FAO No.1059 of 2005.*
>
> *Mr.S.S.Sidhu, Advocate on the panel of national*

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insurance company, present in the Court, is directed to seeks necessary instructions.

Adjourned to 28/11/2016."

Again on 28.11.2016, following order was passed by this Court:-

"Mr.S.S.Sidhu, Advocate, prays for some more time to apprise the Court about the positive stand of the insurance company."

In compliance of the above-said orders passed by this Court, reply by way of affidavit was filed on behalf of the respondents, attaching therewith copy of judgment dated 8.9.2004 passed by the learned Motor Accident Claims Tribunal, Fatehabad, deciding 5 claim petitions together including Case No.8-MACT of 2003 (Master Kashmiri Lal minor son of Late Shri Mahinder Singh and others Vs.Madan Lal and others.

During the course of hearing on 11.1.2017, it transpired that the officers of the respondent-insurance company have acted in most arbitrary manner, while deducting 1/3rd amount from Rs.4,000/- per month, which was assessed as contribution of the deceased Late Smt.Bhateri Devi-house wife, by this Court vide its order dated 19.3.2014 (Annexure P-1), deciding FAO No.1059 of 2005 (Master Kashmiri Lal and another Vs. Madan Lal and others). The action of the officers of the respondent-insurance company, while deducting 1/3rd amount from Rs.4,000/- per month, from the contribution amount of deceased Smt.Bhateri Devi was since found running contrary to the law laid down by the Hon'ble Supreme Court in (Arun Kumar Aggarwal and another Vs. National Insurance Company and others, 2010 (3) RCR (Civil) 827 and judgment of this Court in Paranjit singh and another Vs. Dilbagh Singh alias Bagga and others, 2013 (4) PLR 328, the

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Divisional Manager as well as Regional Manager of the respondent-insurance company were directed to come present before this Court, to explain as to under what authority of law, the above-said 1/3rd deduction was made.

Accordingly, following order was passed on 11.1.2017, adjourning the case for today, i.e. 12.1.2017:-

> *"Divisional Manager as well as Regional Manager of the respondent-Insurance Company are directed to come present before this Court to explain as to under what authority of law, 1/3rd deduction was made from the amount, forcing the present petitioner to approach this Court by way of instant revision petition."*

In compliance of the above-said order, Divisional Manager as well as Regional Manager of the respondent-insurance company came present before this Court. Another affidavit dated 12.1.2017 along with letter dated 26.4.2014 of Shri Ravinder Arora, Advocate, filed in the Court today is taken on record and copy thereof has been supplied to the learned counsel for the petitioner.

Heard learned counsel for the parties.

Learned counsel for the petitioner vehemently contended that the arbitrary action of the respondents, while deducting 1/3rd amount from the monthly contribution of deceased, has resulted in serious miscarriage of justice, imposing the instant unwarranted litigation on the petitioner, who is coming from the poor strata of the society. He further submits that since there was no scope of any doubt and the officers of respondent-insurance company had no authority to impose 1/3rd deduction on the monthly contribution of Rs.4,000/- per month, the stand taken by them in their above-said two affidavits is not only misconceived but contrary to the law

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laid down by the Hon'ble Supreme Court as well as by this Court in the cases referred to hereinabove. He further submits that since the officers of the respondent-insurance company have forced the petitioner to approach this Court, the present revision petition deserves to be allowed with exemplary costs.

Per contra, controverting the above-said contentions raised on behalf of the petitioner, learned counsel for the respondent-insurance company, while referring to the legal advice tendered by Shri Ravinder Arora, Advocate, vide his above-said letter dated 26.4.2014, submits that 1/3rd deduction was imposed in terms of the legal advice tendered. However, when confronted as to whether Sh.Ravinder Arora, Advocate has legally advised the officers of the respondent-company to apply 1/3rd deduction, learned counsel for respondent-insurance Company sought to explain, while referring to para 1 of the letter dated 26.4.2014, wherein it was recorded that this Court assessed the income as Rs.4,000/- per month. This contention raised by the learned counsel for respondent-insurance company has been found wholly misconceived being too technical and contrary to the order dated 19.3.2014 passed by this Court at Annexure P-1.

The relevant part of the above-said order dated 19.3.2014 passed by this Court reads as under:-

> *"Learned counsel for the appellants has argued that dependency of Rs. 10,000/- p.a. is highly inadequate and he has relied upon Arun Kumar Aggarwal and another Vs. National insurance Company and others, 2010 (3) RCR (Civil) 827 wherein the Hon'ble Supreme Court took the contribution of the house wife as ` 4,000/- per month.*
>
> *Learned counsel for the respondent No.3-insurance company has argued that in* ***Lata Wadhwa and others Vs.***

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__State of Bihar and others__ reported as 2001 (4) RCR (Civil) 673 the Hon'ble Supreme Court has fixed the contribution as Rs. 3,000/- per month.

*I find that In __**Lata Wadhwa and others (Supra)**__ the accident took place in the year 1989 and the in the present case accident took place in the year 2002. Consequently, the figure computed by the Hon'ble Supreme Court in __**Arun Kumar Aggarwal and another (supra)**__ would be more applicable and the contribution of the deceased is fixed at Rs.4000/- p.m.*

*Learned counsel for the appellants has further argued that under conventional heads only an amount of Rs. 4250/- has been granted for funeral expenses and has relied upon the decision of the Hon'ble Supreme Court in **Vimal Kanwar and others vs. Kishore Dan and others, (2013-3) PLR 776.***

Keeping in view the entire conspectus of facts, I grant Rs.1,00,000/- to the minor son for loss of love and affection and further I grant Rs.15,000/- more towards funeral expenses. The enhanced amount shall be paid along with the same rate of interest as awarded by the Tribunal, the management would be as per the direction of the Tribunal.

With the modfication in the award, the appeal is allowed to the above extent."

Once the certified copy of the above-said order dated 19.3.2014 was very much available with the officers of the respondent-insurance company, they were duty bound to deposit the amount before the learned Tribunal-executing court, strictly in accordance with the above-said order dated 19.3.2014 passed by this Court. However, he proceeded on a totally negative and perverse approach, while imposing 1/3rd cut which was not at all warranted. When the officers of the respondent-insurance company as well as their learned counsel were asked to explain as to under what authority of law, 1/3rd deduction was imposed, they had no answer and

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rightly so, it being a matter of record.

It is so said because even if Shri Ravinder Arora, Advocate, while tendering his legal advise vide above-said letter dated 26.4.2014 has used the word 'income' instead of 'contribution' only because of inadvertence or at the most erroneously, the officers of the respondent insurance company cannot be absolved from their responsibility. They were duty bound to look into the matter carefully, while calculating the total amount, in strict compliance of the above-said orders passed by this Court, so as to ensure that no unwarranted harassment is caused to the litigant-claimant. However, authorities of the respondent-insurance company have miserably failed to perform their duty diligently, thereby imposing this unwarranted litigation on a poor litigant.

The Regional Manager of the respondent-National Insurance Company in para 9 of her affidavit dated 12.1.2017 has stated as under:-

> *"That on the perusal of the file as well as the judgment of the Hon'ble High Court dated 19.03.2014, it is observed that the amount so far deposited in the Tribunal, which is based on the legal advice of Mr.Ravinder Arora, Advocae, is short. We will direct the present Divisional Incharge Mr.Suresh Kumar Goel, Deputy Manager, Divisional Office Sirsa, to deposit the remaining amount along with interest within a period of one week."*

In view of what has been discussed hereinaabove and accepting unconditional apology tendered by the above-said Divisional Manager as well as Regional Manager of the respondent-insurance company, this Court is of the considered view that the officers of the respondent-insurance company are expected to be more careful in future. Further, the Regional Manager of the respondent-insurance company is directed to issue

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appropriate instructions to all the officers of the respondent-insurance company, whosoever comes within the regional jurisdiction, to ensure strict compliance of the court orders and they must not proceed on a negative approach, only with a view to create hurdles in implementation of the court orders, thereby causing avoidable harassment to the litigants. If any officer of the respondent-insurance company is found, proceeding on a negative and casual approach, as in the present case, it would be viewed seriously. In fact, the respondent-insurance company also earns a bad name, while proceeding on such unwarranted and casual approach, besides generating avoidable litigation.

It is also perinent to note here that when numerous and serious complaints were being received from the public, Insurance Regulatory and Development Authority('IRDA' for short) vide its circular dated 20.9.2011, issued the following guidelines:-

> *"The Authority has been receiving several complaints that claims are being rejected on the ground of delayed submission of intimation and documents.*
>
> *The current contractual obligation imposing the condition that the claims shall be intimated to the insurer with the prescribed documents within a specified number of days is necessary for insurers for effecting various post claim activities like investigation, loss assessment, provisioning, claim settlement etc. However, this condition should not prevent settlement of genuine claims, particularly when there is delay in intimation or in submission of documents due to*

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unavoidable circumstances.

The insurers' decision to reject a claim shall be based on sound logic and valid grounds. It may be noted that such limitation clause does not work in isolation and is not absolute. One needs to see the merits and good spirit of the clause, without compromising on bad claims. Rejection of claims on purely technical grounds in a mechanical fashion will result in policyholders losing confidence in the insurance industry, giving rise to excessive litigation.

Therefore, it is advised that all insurers need to develop a sound mechanism of their own to handle such claims with utmost care and caution. It is also advised that the insurers must not repudiate such claims unless and until the reasons of delay are specifically ascertained, recorded and the insurers should satisfy themselves that the delayed claims would have otherwise been rejected even if reported in time.

The insurers are advised to incorporate additional wordings in the policy documents, suitably enunciating insurers' stand to condone delay on merit for delayed claims where the delay is proved to be for reasons beyond the control of the insured."

It seems that above-said directions of IRDA are also not being followed strictly.

The Regional Manager, after issuing appropriate instructions to

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all the officers, who are under her control, in compliance of the above-said observations made by this Court, shall file her affidavit along with action taken report before this Court at an early date and in any case within a period of six weeks from the date of receipt of a certified copy of this order. She shall also ensure that the IRDA guidelines are strictly followed.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant revision petition deserves to be allowed with costs, which are quantified at Rs.30,000/- to be paid by the respondent-insurance company to the petitioner, while depositing the remaining amout along with interest till date, before the learned court below, within a period of one week.

The learned Motor Accident Claims Tribunal, Fatehabad-Executing Court is also directed to ensure early disposal of the application for disbursement of enhanced amount, in strict compliance of the above-said order dated 19.3.2014 passed by this Court as well as the order dated 10.4.2015 (Annexure P-3) passed by the learned Motor Accident Claims Tribunal, Fatehabad. If need be, the learned Motor Accidents Claim Tribunal, Fatehabad-Executing Court would take coercive steps against the respondent-insurance company so as to ensure strict and early compliance of the above-said orders dated 19.3.2014 (Annexure P-1)passed by this Court as well as the order dated 10.4.2015 (Annexure P-3) passed by the learned Motor Accidents Claim Tribunal, Fatehabad-Executing Court.

For the limited purpose of ensuring issuance of appropriate instructions by the Regional Manager and filing her affidavit accordingly

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within the above-said stipulated period, let this case be fixed on 9.3.2017 for further orders, if required.

Resultantly, with the above-said observations made and directions issued, the instant civil revision petition stands allowed with costs as indicated above.

12.1.2017 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No

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