

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP. 693/2007

Date of decision : FEBRUARY 25, 2009

SUNIL KUMAR & ANR. Appellants
Through : Mr. Prag Chawla, Adv.

versus

VIJAY PATHAK & ORS. Respondents
Through : Mr. Gurmit Singh Hans and
Mr. Gurvinder Singh Talwar,
Advs for R-1 & 2.
Ms. Manjusha Wadhwa, Adv.
for R-3.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

1. The appellant has challenged the interim award passed by the Learned Tribunal whereby the Learned Tribunal passed the interim award of Rs.50,000/- against the appellants.
2. Appellant No.1 is the driver, appellant No.2 is the owner and

respondent No.3 is the insurer of Tata 407 bearing registration No.DL-1LG-3008 which met with an accident with scooter No.UP-1644 resulting in the death of Rani Pathak on 22nd August, 2006.

3. The deceased was survived by her husband and minor son who filed the claim petition under Section 166 and 140 of the Motor Vehicles Act before the Learned Tribunal. In the petition, Oriental Insurance Company Limited was impleaded as respondent No.3. It was mentioned in para B of the petition that the offending vehicle was owned by appellant No.2 and insured with respondent No.3 - Oriental Insurance Company. Copy of the registration certificate was filed along with the petition as Annexure P-6 and the copy of the insurance cover note was filed along with the petition as Annexure P-7.

4. Respondent No.3 filed the written statement before the Learned Tribunal on 21st February, 2007 in which they raised the

preliminary objection that the policy was issued to appellant No.2 in respect of Tata 407 on the basis of the engine number and chassis number and appellant has not informed the registration number of the vehicle and, therefore, appellant was put to the strict proof that the offending vehicle bears the same engine number and the chassis number.

5. The Learned Tribunal passed the interim award against the appellants only and exonerated respondent No.3 on the ground that it had not been established that the offending vehicle was duly insured with respondent No.3. The learned Tribunal held that evidence was required to establish that the offending vehicle was insured with respondent No.3.

6. The appellants have challenged the impugned order on the ground that the offending vehicle was duly insured by respondent No.3 and, therefore, the interim award should be passed against the

respondent No.3. It is submitted that the vehicle was new at the time of issuance of policy and, therefore, only engine and chassis number were mentioned in the policy but in the renewal policy, the registration number of the vehicle has been mentioned. The renewal policy was filed along with the appeal and, therefore, there is no doubt that offending vehicle was duly insured with respondent No.3.

7. I have perused the trial court record. The registration cover of the offending vehicle was filed by the claimants along with the claim petition before the Learned Tribunal as Annexure P-6 and it was also specifically referred in para B of the petition and, therefore, there was no doubt whatsoever about the registration of the offending vehicle.

8. Before filing of the written statement before the Learned Tribunal, the insurance company was duty bound to verify the copy

of the registration cover, copy whereof was duly supplied to respondent No.3 but no efforts were made by respondent No.3 to verify the same and vague written statement was filed before the Learned Tribunal raising doubt on the valid insurance of the offending vehicle which led the Learned Tribunal to pass the impugned order.

9. The Karnataka High Court in the case of Ramakrishan Reddy vs. Manager, H.M.T. Ltd 2003 ACJ 105 held that the insurer should verify the insurance and other particulars and assist the Court in computing the compensation to the claimants who are not litigants by choice but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self. It was further held that if the insurer were to file 'play it safe' written statements without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and claimants are put to misery

and unjustly kept away from the direly needed compensation. It

was held as under: -

" 19.1 The claimants are not litigants by choice, but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self, and because the owner and insurer of the vehicle involved, fail to pay the compensation. The insurer should bear in mind that the claimants are also handicapped in obtaining particulars of the insurance policy held by owner or driving licence held by the driver of the vehicle, and they solely depend upon the police for these particulars. The insurer should, therefore, verify whether there was any insurance policy or not, whether the insured was covered by insurance policy in regard to the claim or not, and whether the driver had a licence or not before filing its statement of objections and narrow down the area of controversy. If the insurers were to file 'play it safe' written statements, without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and the claimants are put to misery and unjustly kept away from the direly needed compensation. It is time that insurers get rid of 'deny everything and await the award syndrome' and become responsible and responsive opponents in motor accident claims. We make it clear that the above observations are intended only for those officers of insurance companies who refuse

to recognize their statutory obligations to third parties, under the insurance policies issued to the insured.”

10. On 6th February, 2009, this Court summoned the Divisional Manager of Oriental Insurance Company Limited, on whose instructions the written statement was filed, in pursuance to which he appeared on 18th February, 2009 along with the claim file which revealed that respondent No.3 had also appointed an investigator who verified the copy of the registration certificate of the offending vehicle and submitted a report on 9th August, 2007 in which it was confirmed that the registration certificate was genuine and the offending vehicle was duly insured by the policy in question.

11. Respondent No.3 is guilty of taking an incorrect stand before the learned Tribunal as well as before this Court and, therefore, I was initially inclined to impose very heavy cost on respondent No.3. However, on the suggestion of this Court, respondent No.3 agreed

to settle the entire claim of the claimants and, therefore, I am not imposing any cost on respondent No.3 as the delay in payment of interim award would be compensated by early settlement of the entire claim of the claimants. The Court, therefore, requested Mr. V.P. Choudhary, Senior Advocate to mediate in this matter between the claimants and the insurance company to compute the fair and just amount of compensation payable to the claimants. Mr. Choudhary had few sessions with both the parties and he also examined the documents of the claimants in support of their claim.

12. Mr. Choudhary has suggested that Rs.6,50,000/- along with interest @7.5% from the date of filing of the claim petition before the learned Tribunal up to the date of payment would be just compensation payable to the claimants.

13. The claimants, namely, Mr. Vijay Pathak and Master Himanshu Pathak are present in Court and they are agreeable to the said

compensation.

14. Mr. R.K. Nagpal, Divisional Manager, along with Mr. M.S. Rawat, Administrative Officer, Oriental Insurance Co. Ltd. are present in Court and the compensation suggested by Mr. Choudhary is also acceptable to Oriental Insurance Co. Ltd. It is submitted by the Insurance Company that they have not yet verified the driving licence of the driver of the offending vehicle and they need about 10 days to verify the same, but they are prepared to pay the claim amount to the claimants in full and final settlement of all the claims of the claimants and if the driving licence is not found to be in order upon verification, the Insurance Company would claim recovery rights against the owner.

15. I am satisfied that the aforesaid settlement between the parties is lawful and bonafide.

16. In view of the aforesaid settlement, the impugned order

dated 11th July, 2007 is set aside and award of Rs.6,50,000/- along with interest @7.5% from the date of filing of the petition, i.e., 14th September, 2006 till the date of payment is passed in favour of respondents No.1 and 2 and against respondent No.3. Respondent No.3 shall deposit the said amount with the learned Tribunal within 30 days.

17. The share of the claimants shall be 50% each in the award amount, i.e., Mr. Vijay Pathak shall have 50% share and Master Himanshu Pathak shall have 50% share. The share of Master Himanshu Pathak shall be kept in a fixed deposit in a nationalized bank till he attains majority. However, interest on the said FDR shall be payable to his father, Mr. Vijay Pathak on monthly/quarterly basis, as the case may be. With respect to the 50% share of Mr. Vijay Pathak, half of the amount be kept in a fixed deposit for a period of 5 years on which he would be entitled to interest and

remaining half share of the 50% be paid to him. The insurance company is directed to make the payment accordingly.

18. The insurance company shall deposit the cheques with the learned Tribunal who shall release the same after endorsement in terms of the directions made hereinabove. The entire claim of the claimants before the learned Tribunal shall stand satisfied upon the payment in terms of the aforesaid settlement.

19. With respect to the issue of driving licence, the Insurance company shall carry out the necessary verification within 15 days. The report of the Insurance company be brought in Court on the next date of hearing for examination of the issue relating to the driving licence.

20. This Court records the appreciation for Mr. V.P. Choudhary, Senior Advocate who has spared his valuable time to resolve this case on the suggestion of the Court.

21. Renotify on 16th March, 2009 at 2:30 pm for report of the insurance company on the issue of driving licence.

22. Copy of this order be given 'Dasti' to counsel for the parties under signatures of Court Master.

J.R. MIDHA, J

FEBRUARY 25, 2009

