

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 842/2003

Date of Decision : SEPTEMBER 25, 2009

RAJESH TYAGI & ORS. Appellants

Through : None.

versus

JAIBIR SINGH & ORS. Respondents

Through : Mr. Manoj Ranjan Sinha, Adv.
for R – 3. Ms. Mukta Gupta,
Standing counsel for Delhi Police.
Mr. V.P. Chaudhary, Sr. Adv. and
Mr. Anoop Bhambhani, amicus
curiae.
Mr. K.L. Nandwani, Adv. for United
India Insurance Co. Ltd.
Mr. Atul Nanda, Ms. Rameeza
Hakeem and Mr. Sumeer Sodhi,
Advs. for Bajaj Allianz General
Insurance Co. Ltd.
Mr. Pradeep Gaur, Adv. for
National Insurance Co. Ltd.
Mr. Kanwal Chaudhary, Adv. for
New India Assurance Co. Ltd.
Ms. Manjusha Wadhwa, Adv. for
Oriental Insurance Co. Ltd.
Mr. Sameer Nandwani, Adv. with
Ranjan Sinha, Manager (Legal) for

Reliance General Insurance Co.
Ltd.

Ms. Suman Bagga, Advo for ICICI
Lombard General Insurance Co.
Ltd. and Cholamandalam General
Insurance Co. Ltd.

Ms. Shantha Devi Raman, Adv. for
IFFCO Tokyo General Insurance
Co. Ltd. Ms. Anjali Bansal, Adv. for
Tata AIG General Insurance Co.
Ltd.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

1. Vide orders dated 10th August, 2009 and 4th September, 2009, the Insurance companies were directed to file the report with respect to the compliance of the order dated 8th June, 2009. The compliance report has not been filed and some more time is sought by the counsel for the Insurance companies. Let the compliance report be filed within two weeks with advance copy to learned amicus curiae as well as learned Standing counsel for Delhi Police.

2. Mr. Atul Nanda, learned counsel for Bajaj Allianz General Insurance Company submits that under Section 168 of the Motor Vehicles Act, the

Insurance company has no liability to pay the award amount till the award amount is determined by the Claims Tribunal under Section 168 of the Motor Vehicles Act.

3. Mr. Kanwal Chaudhary, the nominated counsel for New India Assurance Company Limited submits that New India Assurance Company Limited is prepared to comply with the directions dated 8th June, 2009 provided the claimant enters appearance before the Claims Tribunal either in a private claim petition or in pursuance to the Accident Information Report which is treated as a claim petition.

4. The directions dated 8th June, 2009 were passed keeping in view that the Delhi Police is now regularly filing the Accident Information Report with the claims Tribunal within 30 days of the accident and along with the said report, the police is also producing all the relevant documents required by the Insurance company including the driving licence, registration certificate, Insurance policy, fitness, permit, etc. The copy of the Accident Information Report along with the aforesaid documents is also being simultaneously served on the Insurance

company. The Delhi Police is also producing the owner, driver, eye-witness and claimants before the Claims Tribunal. As per the third party claim manual, the Insurance companies are duty bound to investigate the claim upon receipt of intimation and in cases where all the documents are in order and all the facts required for computation of compensation have been verified, the Insurance companies can settle the claim. It is not disputed by any Insurance company that all claims except the motor accident claims are processed and settled without the intervention of the Court. In a simple case of a damage to a car, upon receipt of the intimation, the Insurance company immediately appoints a surveyor who inspects the vehicle, takes photographs and settles the claim with the workshop almost within 24 hours and the owner does not even have to pay to the workshop for repairs. Even in damage to a factory by fire, immediately a surveyor is appointed and the claim is settled without the intervention of the Court. The damage to human life either by injury or by death is more serious than the damage to a car or to a factory. It is painful to note that in the case of death of a victim in road accident, the

Insurance companies do not settle the claims even where they have received and verified all the relevant documents for settlement of claims such as age, income and number of legal representatives and no defence is available under Section 149 of the Motor Vehicles Act.

5. Be that as it may, the issues raised by the learned counsel for the Insurance companies require examination and the same shall be examined after the report is filed by the Insurance companies. The report be also called from the Motor Accident Claims Tribunals through the Registrar (Appellate) as to the compliance of the order dated 8th June, 2009 by the Insurance companies before the next date of hearing.

6. Notice be issued to Secretary, Ministry of Road Transport and Highways through Standing Counsel Mr. Atul Nanda to assist this Court on the above issues.

7. It has been reported in the Pioneer on 22nd September, 2009 that the Ministry of Road Transport & Highways has appointed an Expert Committee to review the provisions of the Motor Vehicles Act, 1988 and to make appropriate amendments to the Motor Vehicles Act, 1988 after

examining the law in other countries.

8. The Government may also examine law relating to Motor Accident Claims in South Africa which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability.

A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission.

9. The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to

promote road safety.

10. The South African model system shall also save the cost of manpower used by Insurance companies to issue policies. The report of Road Accident Fund Commission in South Africa is available on the website, <http://transport.gov.za/library/docs/raf/index.htm>.

11. Copy of this order as well as the orders dated 21st April, 2009, 18th May, 2009, 28th May, 2009, 8th June, 2009 and 20th July, 2009 be sent to the Secretary, Ministry of Road Transport & Highways.

12. The Delhi Police has filed the compliance report for the month of June and July, 2009 which has been examined by the Registrar (Vigilance) who has submitted his report dated 1st September, 2009. Let the compliance report for the month of August, 2009 be filed by 15th October, 2009. The same shall be examined by the Registrar (Vigilance) who shall submit his report by 31st October, 2009.

13. The case be listed for 5th November, 2009 at 12:30pm.

14. Copy of this order be given 'Dasti' to learned amicus curiae and learned Standing counsel for Delhi Police as well as the counsel for the

Insurance Companies under the signature of Court Master.

J.R. MIDHA,

SEPTEMBER 25, 2009