(2016) 01 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : FAO Nos. 6206 and 6258 of 2013 (O&M)

Gurdeep Kaur APPELLANT

Vs

Gurcharan Singh & Ors. RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 158(6)

Citation : (2016) 1 LawHerald 394 : (2016) 1 PLR 534

Hon'ble Judges : Mr. K. Kannan, J.

Bench : Single Bench

Advocate : Ms. Monika Jalota, Advocate, Ms. Reeta Kohli, Senior Advocate, with Ms. Gurneet Babbar, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Mr. K. Kannan, J. - Compliance reports of the directions given by order dated 19.12.2015 filed in court on behalf of Member Secretary, Haryana State Legal Services Authority, Panchkula, and also by the Member Secretary, Punjab Legal Services Authority, Chandigarh, are taken on record.

2. The affidavit of Sibash Kabiraj, IPS, Deputy Inspector General of Police, Traffic and Highways, (H) at Karnal, on behalf of Director General of Police, Haryana, Panchkula and also the affidavit of Mr. Sandeep Sharma, PPS, Deputy Superintendent of Police, Traffic, Punjab, Chandigarh, are taken on record.

3. The list of names and contact details of Nodal Officer supplied by Mr. Sandeep Suri, Advocate, for General Insurance Council is also taken on record.

4. The counsel for the General Insurance Council Mr. Sandeep Suri has given the names and contact details of Nodal Officers appointed by various Insurance Companies for coordinating the pursuit of claim before various Tribunals arising out of accidents involving the death, injuries and damages to properties. The counsel points out that while the police has been periodically furnishing the accident information reports (AIRs) as mentioned in Form 54, various documents

which are required to be accompanied, namely, FIR, MLR or wound certificate, hospital records, sketch, postmortem certificate etc. are not dispatched along with the AIRs. It is further pointed out that there is a dilemma several times for Insurance Companies to elicit information about where the case has been filed or where the documents are required to be dispatched without clear information about the place of institution of the case.

5. Ms. Reeta Kohli, the officer appointed by this court as a Coordinator, states that the Insurance Companies must give adequate publicity to the manner of pursuing the cases before various Tribunals and also give disseminating information to the public about the system put in place for the benefit of the public. It is stated that the Government of Punjab has already framed relevant rules on 07.11.2013 that sets out the documents that have to be collected and dispatched to the Motor Accident Claims Tribunal and the manner of how the application for claiming for compensation could be pursued. It is agreed by everyone that the rules have not been fully put to practise and the documents collected by the police after the registration of complaint have not been forwarded to the Tribunals along with Form 54.

6. The counsel representing the State of Haryana states that all the records which are relevant for assessing the claims are also being forwarded and has filed an affidavit of Mr. Sibash Kabiraj, IPS, Deputy Inspector General of Police, setting out information about 2509 cases where they have shared information with the respective Insurance Companies to enable the Insurance Companies to render appropriate assistance. The State of Punjab has also given an affidavit of the Deputy Superintendent of Police giving details of the number of AIRs sent to MACT as well as to the Insurance Companies. It is explained by the State that relatively lower number of applications sent to the Insurance Companies is on account of the fact that all vehicles are not insured and wherever insurance particulars are given, dispatches have been made to the Insurance Companies.

7. All the records have been reasonably complete and I am of the view that the work of registration of complaints and for settlement of claims and prosecution of cases in the manner contemplated under Section 158(6) of the Motor Vehicles Act are truly poised for a take off. However, the difficulties in the manner of fuller implementation would require to be addressed and to secure full-fledged compliance, the following directions are given.

To the police:

8. After the complaint is registered by the police in relation to an accident involving death, injury or damage to a property, the police officer at the level of S.H.O. will collect all necessary documents that shall accompany Form 54 or any other form provided in that regard and dispatch them firstly to the Nodal Officer of Insurance Company and secondly to the Principal Motor Accident Claims Tribunal in whose jurisdiction the accident has taken place or where the prospective claimant(s) permanently reside (s), where the case is likely to be

filed. The documents that are required to be accompanied with AIR shall be: (i) copy of FIR, wound certificate/MLR/post-mortem certificate; (ii) details of driving licence of the driver who was involved in the accident; (iii) details of the insurance particulars collected from the owner/driver, apart from any other document that may be contained in the rules. Simultaneously with the work of collection of documents and for dispatch, the police officer may also give appropriate legal assistance, if required about the manner of lodging a claim at the level of Motor Accident Claims Tribunal in coordination with the District Legal Services Authority.

To Insurance Companies

9. Apex body at Punjab, Haryana and Union Territory of Chandigarh and the General Insurance Council shall publish in their official website the Nodal Officers appointed by the respective Insurance Companies operating under their superintendence with all the relevant contact details (a copy of which has been furnished to this court). On receipt of the details from the police, the Nodal Officer in charge shall elicit requisite information as it is necessary to confirm the details of insurance and the driving licence, if necessary. Special Officer shall be assigned the duty for confirming the details with the insured and the driver and in cases of death, the person assigned the work shall gather details of the legal representatives and also elicit information of whether any claim has been lodged. If it has not been lodged at the instance of any of the claimants, they may volunteer assistance and also make proposal for the settlement on the basis of the records obtained. The officer shall also endeavour to gather the family income details that would be necessary for effecting the settlement. In case of injuries, if the victim is hospitalized, the insurer shall take over the expenses and arrange for operations, akin to cashless health insurance offered by the companies for health insurance customers.

10. In the manner of defending actions for claim to compensation, the Insurance Company will take responsible defences consistent with the information gathered and will not use the normal template of denying every averment of what is contained in the claim petition. The insurer shall endeavour to settle every case without contest.

To the Legal Services Authority

11. The Legal Services Authority shall do the following: They shall engage with the President of the Legal Services Authority in every district and secure all the necessary information of the names of the claimants and provide appropriate assistance wherever they are needed. The task is a delicate one, for, they shall not be seen to be engaged in canvassing for work or obstructing the choice of any claimant of a lawyer to whom any claimant wants to entrust the case with. If the claimant(s) so desire(s), the claimant shall be directed to the panel lawyer assigned to the task and ensure that every information is provided for due prosecution of the case. They shall also engage in communicating with the

insurer and set a date periodically giving list of cases which shall be taken up for settlement. This task will be done under the directions of the President of Legal Services Authority so that the respective Tribunals utilizes the services of the Legal Services Authority through its para legal staff for securing all the relevant records from the police station wherever they are deficient and also collect information from the Insurance Companies about the details of insurance as well as the driving licence particulars. If in any case there is doubt regarding the genuineness of a driving licence, there shall be immediately a para legal staff assigned the work of securing information from the Regional Transport Authority (RTA). The work shall be entrusted with due authority for collecting information from RTA. The Legal Services Authority shall also publish appropriate pamphlets and cause sufficient information to be provided at the ADR centres, the procedure that is laid down for processing claim petitions and for securing settlements of cases instituted and pending before various Tribunals. Periodical Lok Adalats shall be held as soon as there are enough cases at hand where the Insurance Companies and the parties have secured necessary assistance for arriving at settlements.

12. I post the case for 02.03.2016 to oversee whether the directions given through this order are put in practise and to ensure that if there are any practise which would require to be cultivated or any blotches which will have to be removed, they will be undertaken to make way for a seamless process of registering and prosecution of cases from the stage of the time of accident to securing awards.

13. The Registry shall circulate this order to the Presidents of the respective State Legal Services Authority to enable them, if deemed necessary, to give administrative directions for effective implementation of the direction in this order.