
(2012) 08 DEL CK 0420
In the Delhi High Court
Case No : MAC. APP. No. 643 of 2012

Iffco Tokio General Insurance Co. Ltd.	APPELLANT
Vs	
Kamlesh and Others	RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35

Citation : (2012) 08 DEL CK 0420

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; S.K. Rai, Advocate for the Respondents No. 1, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—A very short question arises for consideration in this Appeal. Respondent Kamlesh suffered injuries in a motor vehicle accident which occurred on 23.08.2009. The Appellant Insurance Company and the First Respondent preferred to enter into an amicable settlement. The Appellant Insurance Company through its counsel made an offer of a sum of Rs. 50,000/- towards full and final settlement of the claim by the First Respondent. The said offer was accepted by the Respondent Kamlesh, her father, as also the counsel for the First Respondent.

2. While passing an order for payment of Rs. 50,000/- in terms of the settlement, the Claims Tribunal directed payment of Rs. 5,000/- as counsel's fee. This order of the Claims Tribunal awarding counsel's fee over and above the settlement was clearly illegal. In "ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi & Ors." (MAC.APP.645/2012) decided on 30th July, 2012, this Court held as under:

32. To sum up, it is directed :-

(i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms

of Section 35 read with Order XXA of the Code.

(ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.

(iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.

(iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.

(v) The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.

3. Thus, the impugned order to that extent of awarding counsel's fee is set aside.

4. The Appeal is allowed in above terms.

5. Statutory amount of Rs. 25,000/-, if deposited, shall be refunded to the Appellant Insurance Company.

6. Pending Applications stand disposed of. A copy of the order be sent to the Claims Tribunal for information.