(2013) 01 DEL CK 0043

In the Delhi High Court

Case No : Mac. App. No. 792 of 2006

Oriental Insurance Co. Ltd. APPELLANT

Vs

Ranjit Pandey and Others RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0043

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Karan Chaudhary, proxy counsel for Mr. R.N. Sharma, for the Appellant; Idresh Ahmed, for R-1, for the Respondent

Judgement

J.R. Midha, J.—The Claims Tribunal passed an award for Rs. 13,77,000/- in favour of respondent no. 1 which is under challenge in this appeal. Vide order dated 18th September, 2006, this Court issued notice of the appeal to the respondents and in the meantime, directed 50% of the award amount to be released to respondent no. 1 in terms of the award. During the course of hearing on 9th November, 2012, learned counsel for the appellant submitted that the entire award amount along with interest was deposited by the appellant with the Claims Tribunal prior to filing of this appeal on 7th September, 2006 and the receipt of deposit of the award amount was filed by the appellant along with appeal (page 55 of the appeal paper book). As per the award dated 6th July, 2006, Rs. 13,00,000/- was directed to be kept in FDR for a period of six years and the claimant/ respondent no. 1 was permitted to withdraw the monthly interest on the said amount.

2. Vide order dated 9th November, 2012, the compliance report was requisitioned from the Claims Tribunal as to the amount kept in the fixed deposit. The Claims Tribunal was also directed to confirm whether interest on the FDR has been released to the claimant in terms of the award.

3. The Claims Tribunal has submitted a report dated 20th November, 2012 that

50% of the award amount i.e. Rs. 6,50,000/- was kept in fixed deposit for a period of six years. It is further mentioned that the cheques for preparation of the FDR were handed over to the claimant for making the fixed deposit. The Claims Tribunal attached the report of the Nazir dated 20th November, 2012 in which it is mentioned that four cheques for Rs. 76,157/-, Rs. 6,50,000/-, Rs. 38,500/- and Rs. 3,941/- were released to the claimant/respondent no. 1 on 17th October, 2006. It is further stated therein that the instructions to the bank to keep Rs. 6,50,000/- in fixed deposit were mentioned in the back side of the cheque of Rs. 6,50,000/-.

4. Claimant/respondent no. 1 has filed an affidavit dated 29th November, 2012 in which he has stated having received only one cheque bearing No. 385608 of Rs. 7,68,598/- from the Claims Tribunal out of which Rs. 6,50,000/- was kept in FDR. The claimant/ respondent no. 1 has placed the copy of the passbook as well as the photocopy of the FDR on record.

5. The appellant has filed an affidavit dated 14th December, 2012 in which it is stated that the appellant deposited Rs. 15,29,315/- by means of four cheques with the Claims Tribunal on 8th September, 2006 and Rs. 7,881/- by means of one cheque on 18th September, 2006. The particulars of these cheques are given in paras 2 and 5 of the affidavit. The total amount deposited was Rs. 15,37,196/-. The Claims Tribunal returned the aforesaid five cheques to the appellant and directed the appellant to deposit fresh cheques whereupon the appellant deposited fresh cheques with the Claims Tribunal on 12th October, 2006.

6. On 19th October, 2012, the appellant received a letter from the Claims Tribunal along with a lapsed cheque bearing No. 385611 dated 13th October, 2006 for Rs. 7,68,598/- calling upon the appellant to revalidate/issue a fresh cheque in view of the staled cheques. On 5th December, 2012, the appellant deposited a fresh cheque bearing No. 217881 dated 5th December, 2012 for Rs. 7,68,598/-. The appellant has attached the copies of the relevant documents mentioned above.

7. The Claims Tribunal has submitted an incorrect report before this Court by concealing that cheque No. 385611 dated 13th October, 2006 for Rs. 7,68,598/- had lapsed and that a notice dated 4th October, 2012 had been issued to the appellant for revalidation of the said cheques. It also reveals that the Claims Tribunal had not complied with the directions passed by this Court in Sobat Singh v. Ramesh Chand Gupta, (2010) 6 Del 11 and 2 (2010) ACC 818, as the lapsed cheque bearing No. 385611 dated 13th October, 2006 for Rs. 7,68,598/- was lying with the Claims Tribunal on 23rd February, 2010 when this Court in Sobat Singh''s (supra) case directed all the Claims Tribunals to get the lapsed cheques revalidated from the Insurance Companies within 30 days and forthwith issue notice of deposit to the claimants.

8. Sobat Singh v. Ramesh Chand Gupta, ILR (2010) 6 Del 11 and 2 (2010) ACC

818 - In Sobat Singh (supra), it was brought to the notice of this Court that the Claims Tribunals do not maintain proper record of the receipt of the award amount. It was further pointed out that neither the Insurance Companies give any notice of deposit to the claimants nor the Claims Tribunals give any notice of deposit to the claimants. It was further pointed out that there is no compliance of Order XXI Rule 1(2) of the CPC either by the Claims Tribunals or by the Insurance Companies. It was further pointed out that hundreds of lapsed cheques are lying with the Nazirs and the Insurance Companies are enjoying the amount of the lapsed cheques which does not reach the victims. This Court also noted the directions passed by this Court in The New India Assurance Co. Ltd. Vs. Kashmiri Lal and Others, which were being flouted by the Claims Tribunals. This Court therefore directed all the Claims Tribunals to send a report of compliance under Order XXI Rule 1(2) & 1(4) of the Code of Civil Procedure. This Court also directed the Claims Tribunals to report as to how many cheques have lapsed. This court also sought report with respect to the compliance of the directions of this Court in New India Assurance Co. Ltd. v. Kashmiri Lal (supra). This Court directed the Registrar (Vigilance) to examine the records of the Nazirs and submit a report to this Court. The directions of this Court in the above matter are reproduced hereunder:-

13. All the Claim Tribunals are directed to send a report of compliance of Order XXI Rule 1(2) and (4) of the CPC within a period of two weeks. The report be filed initially in respect of last one year. The report should contain the following particulars in tabular form:-

(i) Case title and number.

(ii) Date of award.

(iii) Award amount.

(iv) Date of deposit of cheque of the award amount.

(v) Date of notice by the Insurance company to the claimant.

(vi) Date of notice by the Claims Tribunal to the claimant.

(vii) Date of release of the cheque towards the award amount to the claimant.

(viii) Period for which the claimant is entitled to interest under Order XXI Rule 1(4), CPC.

(ix) Amount of interest to which the claimant is entitled under Order XXI Rule 1(4), CPC.

(x) Amount of the interest actually awarded to the claimant under Order XXI Rule 1(4), CPC.

14. The Report should also indicate as to how many cheques are presently deposited with the Claims Tribunals for being released to the claimants, how many cheques have expired and whether any cheques have been lost.

15. A separate report should indicate the format in which the Nazirs are maintaining the record; to consider whether it enables convenient access to the relevant information. Further, if there be room for improvement, the Claims Tribunals may indicate a possible revised format.

16. The Claims Tribunals are also directed to submit a report whether the Insurance companies have furnished the details of the bank account and the bank in all pending cases in terms of the judgment dated 9th December, 2005 of this Court in the case of New India Assurance Co. Ltd. (supra). The number of cases in which such details have been furnished and the number of cases in which such details have not been furnished be mentioned in the report. The list of cases in which the recovery of the award amount and the cost of Rs. 5,000/- has been effected by attachment of Bank account during last one year in terms of the directions of this Court be also furnished.

17. The Report of all the Claims Tribunals be submitted before the Registrar (Vigilance) of this Court within two weeks. The Registrar (Vigilance) shall also examine the records maintained by the Nazirs of all the Claims Tribunals. The Claims Tribunals shall direct their Nazirs to produce the records maintained by them before the Registrar (Vigilance), who shall submit a report to this Court as to whether the records are being properly maintained. The Registrar (Vigilance) may also suggest measures for due implementation of the aforesaid provisions of law and the directions of this Court.

9. The Claims Tribunals submitted their report in terms of the above order which showed fragrant violation of Order XXI Rule 1 of the CPC inasmuch as neither the Insurance Companies were giving any notice of deposit to the claimants nor the Claims Tribunals were sending any notice to the claimants as a result of which the claimants do not get any intimation of the deposit. The records maintained by the Nazirs were not properly maintained as a result of which the cheques towards the award amount were not released to the claimants and the same lapsed cheques remain lying with the Nazirs. With respect to one Claims Tribunal, 2,020 cheques had lapsed and no action was taken by the Claims Tribunal in respect of such lapsed cheques. Considering the pathetic situation in this regard, this Court passed fresh directions on 23rd February, 2010 directing the Claims Tribunals to maintain proper records. This Court again directed the Claims Tribunals to forthwith issue notice of deposit to the claimants as well as their counsels. With respect to the lapsed cheques, the Claims Tribunals were directed to forthwith issue notice to Insurance Companies to deposit fresh cheques within 30 days. This Court also directed the Claims Tribunals to submit the action taken report with the Registrar (Appellate) of this Court. The relevant portion of the order dated 23rd February, 2010 is reproduced hereunder:-

17. From the interim reports of the Claims Tribunals, it is clear that there has been gross miscarriage of justice and grave injustice has been caused to the claimants as no notice of deposit has been given to the claimants either by the Insurance Companies or by the Claims Tribunals. The record of the Nazirs have

not been maintained according to the date of the award. The Nazirs enter the cheque deposited in such a manner that the deposit cannot be easily traced out. If a person has to check whether the payment has been deposited in respect of award passed on 10th January, 2009, he has to check all the entries from 10th January, 2009 upto date. As a result, a large number of cheques deposited with the Claims Tribunals have lapsed. In respect of one of the Claims Tribunal, 2020 cheques deposited with it have expired. No action has been taken by the Claims Tribunals in respect of lapsed cheques. The Claims Tribunals have also not followed the directions of this Court in the case of The New India Assurance Co. Ltd. Vs. Kashmiri Lal and Others, . It appears that the Claims Tribunals, Insurance companies and claimants were all ignorant of the correct legal position, but ignorance of law is no defence. The victims of the road accidents suffer first, because of the road accident, then, due to delay in the inquiry and thirdly, even after passing the award, no notice of deposit is given by the Insurance company or by the Claims Tribunal. The noncompliance of law by the Insurance companies has caused irreparable damage, harassment, delay and injustice to the claimants. There is not even an iota of remorse by any Insurance company. Though the Insurance companies have now agreed to comply with Order XXI Rule 1 of the CPC in future but they insist to pay interest only till date of deposit and not till notice of deposit, meaning thereby, that even while admitting applicability of Order XXI rule 1 of the Code of Civil Procedure, the Insurance companies are still not willing to gracefully comply with the law. Be that as it may, in view of undertaking of the Insurance companies to comply with Order XXI Rule 1 of the CPC read with Rules 31 and 32 of the Delhi Motor Accident Claims Tribunal Rules, 2008, the following interim directions are issued to the Claims Tribunals for streamlining the system:-

(i) Before or at the time of passing of the award, the Claims Tribunals shall examine the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

(ii) At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/ or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

(iii) If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be retained in the Court record.

(iv) The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

(v) If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of The New India Assurance Co. Ltd. Vs. Kashmiri Lal and Others, .

(vi) The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-

a) Date of award

b) Case number

c) Title of the case

d) Award amount

e) Date of deposit of the award amount

f) Date of notice of deposit by the depositor.

g) Date of notice of deposit by the Tribunal.

h) Amount of interest upto date of notice of deposit.

i) Whether award amount and complete interest deposited.

j) Balance outstanding interest.

k) Remarks (Action taken to recover the balance interest)

(vii) In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in New India Assurance Company Ltd. Vs. Kashmiri Lal (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.

(viii) In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels.

(ix) In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days.

18. The final order/directions shall be passed on the next date of hearing after examining the final Status Reports of the Claims Tribunals and the Insurance companies in terms of the order dated 27th January, 2010 and after hearing all the parties. The Claims Tribunals and all the Insurance Companies shall submit their response to the aforesaid interim directions and further suggestions, which shall be considered on the next date of hearing. In the meantime, the Claims Tribunals shall implement Rules 31 and 32 of Delhi Motor Accident Claims Tribunal Rules, 2008 read with Order XXI Rule 1 of the Code of Civil Procedure, the directions passed by this Court in New India Assurance Company Ltd. Vs. Kashmiri Lal (supra) and the aforesaid interim directions. The action taken report in this regard be filed by all the Claims Tribunals through the Registrar (Appellate) before the next date of hearing.

10. In view of the violation of the orders passed by this Court in Sobat Singh (supra), this Court is inclined to pass fresh directions for compliance of the orders passed by this Court. However, it has been brought to the notice of this Court that the case of the Sobat Singh v. Ramesh Chand Gupta, MAC No. 422/2009 is pending before the Suresh Kait, J. and is listed for hearing on 23rd January, 2013 and that Court has to pass final directions after considering the compliance report of the Claims Tribunals. It would, therefore, be appropriate that the copy of this order be sent to the said Court so that the Court can take the non-compliance into consideration at the time of passing the final directions in that matter. Let the copy of this order be placed on the record of MAC APP. No. 422/2009 titled Sobat Singh v. Ramesh Chand Gupta.

11. List on 8th February, 2013. The complete record of the Claims Tribunal relating to the deposit and release of the award amount be requisitioned through a Special Messenger before the next date of hearing. Copy of this order be also given dasti to counsel for the parties under signature of Court Master.

