

Safiq Ahmad Vs. ICICI Lombard General Insurance Co. Ltd. & Ors.

Special Leave Petition (Civil) No. 1110 of 2017
2021-01-01 | M.R. SHAH · SANJIV KHANNA
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Full judgment text

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[Special Leave Petition (Civil) No. 1110 of 2017]

1. The issue is with respect to filing of fake claim petitions for getting compensation under the Motor Vehicles Act as well as under the Workmen Compensation Act.

2. Pursuant to our earlier order dated 05.10.2021, the Special Investigating Team (SIT) has filed a Status Report with respect to complaints filed/enquiry completed, the names of the accused, where the criminal complaints are filed and in which criminal cases the charge sheets have been filed. A separate sheet containing the names of advocates against whom the prima facie cases of cognizable offences have been found, is also filed in a separate sealed cover. It is stated in the Status Report that total 1376 cases of suspicious claims from various Districts in the State of U.P. have been received so far by the SIT. That the year-wise detail of 1376 cases received in various years thereof is as under:

Sr.No.

Year

Cases received each year

- | | | |
|----|------|-----|
| 1. | 2015 | 252 |
| 2. | 2016 | 735 |
| 3. | 2017 | 128 |
| 4. | 2018 | 95 |
| 5. | 2019 | 65 |
| 6. | 2020 | 71 |
| 7. | 2021 | |

Total Cases

1376

3. It is reported that out of total 1376 cases of suspicious claims received by the SIT, after completing enquiry of 247 cases of suspicious claims till date, total 198 accused persons have been prima facie found guilty of cognizable offence and accordingly total 92 criminal cases have been registered in various districts. It is stated in the Status Report that against some of the accused persons, more than 1 criminal cases have been registered. It is stated that enquiry of remaining cases of suspicious claims is underway.

3.1 It is further stated that out of total criminal cases registered so far, investigation of 36 criminal cases have been completed and charge sheets against accused persons have been filed in 32 criminal cases and final reports in 4 criminal cases have been forwarded to the concerned Criminal Court.

3.2 It is further stated that total 92 criminal cases in various Districts have been registered till date, of which, 28 advocates have been named as accused persons in 55 cases. Charge sheets against 11 advocates in 25 cases have been forwarded to the concerned trial Court till date.

3.3 It is further stated in the Status Report that Headquarter of the SIT is situated in Lucknow. Officers/employees have to go in the districts of the entire State and sometimes have to go in other States outside the State of Uttar Pradesh for conducting enquiry/investigation proceedings as and when so warranted. It is stated that due to the outbreak of Covid-19, there was a lockdown and termination of transportation services in the State and even some of the officers/employees have been got infected, enquiry/investigation process was adversely affected. It is stated that on getting the situation normal after completion of lockdown of Corona period, full attempts are being made to start this enquiry/investigation process speedily.

3.4 Learned counsel appearing on behalf of the SIT has also submitted that as the respective insurance companies are not ready to being complainants in the FIR, the investigating officer of the SIT has to become the complainant and therefore also it takes some time. It is reported that the investigating officer is also present in the Court.

4. We impress upon the investigating officer of the SIT to expedite the enquiry/investigation with respect to complaints already received from various insurance companies with respect to suspicious fake claims. We also call upon the SIT to file a further affidavit pointing out in how many cases the charge sheets have been filed; when the charge sheets have been filed (the date of filing of the charge sheets), in which Courts the charge sheets have been filed and in how many cases the charges have been framed by the concerned Magisterial Court.

5. A response affidavit has been filed on behalf of the Bar Council of Uttar Pradesh dated 05.12.2021 affirmed by an Advocate and the Member Secretary of the Bar Council of Uttar Pradesh. It is stated in the response affidavit that the Chairman and the Member Secretary of the Bar Council of Uttar Pradesh have assumed their office after being elected on 06.07.2021. The Chairman and the Member Secretary of the Bar Council of Uttar Pradesh have tendered unqualified and unconditionally apology for any act/s or omission/s on their part, which is neither deliberate nor intentional.

5.1 It is stated that the Bar Council of Uttar Pradesh also ensures that the errant advocates who are indulged in such activities of filing fake claim cases, in an unethical manner, may not be left scot-free and shall be dealt with appropriately in accordance with law. It is stated that the Bar Council of Uttar Pradesh is duty bound to take action against the errant advocates in accordance with law and it shall adhere with the directions of this Court in letter and spirit and will also ensure to conclude the disciplinary proceedings in the specified time period.

5.2 In the response affidavit, it is stated that pursuant to the earlier directions issued by this Court, directing the Bar Council of India and the Bar Council of Uttar Pradesh to file a detailed report and steps taken, the Bar Council of Uttar Pradesh has taken the following actions:

i) Vide letter dated 22.09.2021, it called upon the Workmen Compensation Commissioner, Uttar Pradesh and the General Manager, ICICI Lombard General Insurance Company Ltd. to provide the details and copy of the complaint. However, till 29.09.2021 no response was received.

ii) Subsequent thereto, the Bar Council of Uttar Pradesh again sent a reminder letter on 29.09.2021 to the Workmen Compensation Commissioner, Uttar Pradesh and the General Manager, ICICI Lombard General Insurance Company Ltd.

iii) the Office Superintendent of the Bar Council of Uttar Pradesh was also called upon to submit its report about the action taken pursuant to the earlier directions issued by this Court. However, no satisfactory response was furnished. Some complaints pertaining to the year 2013 were supplied. It was further reported that as per the office report, ICICI Lombard General Insurance Company Ltd. has not sent any complaint under the Advocates' Act as such an appropriate action could be taken upon receipt of such complaint. Furthermore, the Secretary of the Bar Council was called upon to provide the details of the advocates alleged to have been involved into such unethical practice, along with their names, enrolment number and addresses, so that appropriate proceedings can be drawn against the errant advocates in compliance of the directions issued by this Court.

a) The Bar Council of India vide its letter dated 22.11.2021 suspended 28 (twenty-eight) Advocates and the 'Bar Council of Uttar Pradesh' was directed to conclude the disciplinary proceedings against them within a specified period of 3 (three) months.

b) Pursuant to that, an emergent meeting of General House of the Bar Council of Uttar Pradesh was called on 27.11.2021 and Disciplinary Committees were also constituted on the same day.

c) That on the next day, i.e., 28.11.2021, the Chairman of the Bar Council of Uttar Pradesh, allocated that said cases to the Disciplinary Committees and consequently the said Disciplinary Committees issued notice issue to the errant 27 (twenty-seven) advocates, fixing therein next date of hearing on 08.12.2021. It may be clarified here that 1 (one) advocate namely Jai Singh has already been passed away/died.

6. We appreciate the steps taken by the Bar Council of Uttar Pradesh, taken on or after 22.09.2021, which shall ensure to maintain the purity of the legal profession in the State of Uttar Pradesh. We also impress upon the Bar Council of India/Bar Council of Uttar Pradesh to conclude the disciplinary proceedings in accordance with law as early as possible.

7. We have also heard at length Shri Atul Nanda, learned Senior Advocate and Shri Vishnu Mehra, learned Advocate appearing on behalf of the two insurance companies and learned counsel appearing on behalf of the State of Uttar Pradesh/SIT on the modus operandi of the advocates for filing fake cases under Motor Vehicles Act and Workmen Compensation Act. Separate notes have been filed pointing out the modus operandi in instituting the fake compensation petitions. Some of the modus operandi adopted are as under:

i) Non-road accident injury-death converted into road accident claims;

ii) fraudulent implantation of vehicle;

iii) false implantation of driver;

iv) claimant implantation;

v) multiple claims at various places at different territorial locations for compensation out of injury/death caused arising out of the same accident. Often the claim applications are filed both before various MACT Tribunals as well as the authorities under the Employees Compensation Act, 1923;

vi) fake/fabricated insurance policies; and

vii) fake/fabricated income documents/medical documents for exaggerated compensation

7.1 Investigating Officer of SIT has also filed a short note on modus operandi in instituting fake compensation petitions, which are based on rich experience during investigation/enquiry of the Criminal Cases/FIRs/Complaints, which are as under:

1. CASES OF HIT AND RUN

2. CASES OF KNOWN VEHICLES WITHOUT INSURANCE.

3. CASES OF FICTIONAL ACCIDENT AND FALSE PETITIONS

4. CASES RELATED TO CONNIVANCE OF VEHICLE OWNER/VEHICLE DRIVER/ADVOCATE

5. IMPEADING NAME AND ADDRESS OF FAKE PERSONS IN ACTUAL ACCIDENTS

6. CASES RELATED TO HANDICAPPED/ DECEASED PERSONS DUE TO OTHER REASONS

7. CASES RELATED TO FILING SAME CASE IN MORE THAN ONE COURTS

8. CASES RELATED TO AFFIXING PHOTOGRAPH OF A SAME PERSON IN THE COMPENSATION AMOUNT CHEQUE DISTRIBUTION REGISTER IN MORE THAN ONE PETITIONS

9. CASES TO GET THE PETITIONS DISMISSED AFTER TRANSFER OF FAVOURING DEPUTY LABOUR COMMISSIONER, RESUBMITTING THE PETITIONS AT HIS NEWLY POSTED PLACE

10. INSTITUTION OF PETITIONS IN OTHER DISTRICT INSTEAD OF INSTITUTING PETITIONS IN THE DISTRICT OF ACCIDENT SPOT/PLACE

11. CASES RELATED TO FAKE VAKALATNAMA

7.2 Shri Atul Nanda and Shri Vishnu Mehra, learned counsel appearing on behalf of the two insurance companies have submitted that despite various directions issued by this Court as well as the various High Courts, there is non-adherence to the provisions of Section 158(6) (pre 2019 amendment) and Section 159 (post 2019 amendment) of the Motor Vehicles Act. Reliance is placed on the decisions of this Court in the cases of General Insurance Council v. State of Andhra Pradesh, reported in (2007) 12 SCC 354; General Insurance Council v. State of Andhra Pradesh, reported in (2010) 6 SCC 768; Jai Prakash v. National Insurance Company Ltd., reported in (2010) 2 SCC 607 and recent decision of this Court dated 16.03.2021 passed in Writ Petition (Civil) No. 534/2020, reported in 2021 SCC OnLine SC 418. It is submitted that this Court in its order dated 16.03.2021 passed in Writ Petition (Civil) No. 534/2020 has issued the following directions:

A. Accident Information Report-

The jurisdictional police station shall report the accident under Section 158(6) of the Act (Section 159 post 2019 amendment) (hereinafter "the report") to the tribunal and insurer within first 48 hours either over email or a dedicated website.

B. Detailed Accident Report-

Police shall collect the documents relevant to the accident and for computation of compensation and shall verify the information and documents. These documents shall form part of the Report. It shall email the Report to the tribunal and the insurer within three months. Similarly, the claimants may also be permitted to email the application for compensation with supporting documents, under Section 166 to the tribunal and the insurer within the same time.

C. The tribunal shall issue summons along with the Report or the application for compensation, as the case may be, to the insurer by email.

D. The insurer shall email their offer for settlement/response to the Report or the application for claim to the tribunal along with proof of service on the claimants.

E. After passing the award, the tribunal shall email an authenticated copy of the award to the insurer.

F. The insurer shall satisfy the award by depositing the awarded amount into a bank account maintained by the tribunal by RTGS or NEFT. For this purpose, the tribunal shall maintain a bank account and record the relevant account details along with the directions for payment to the insurer in the award itself.

G. Each tribunal shall create an email ID peculiar to its jurisdiction for receiving the emails from the police and the insurer as mentioned above. Similarly, all insurer throughout India shall also create an email ID peculiar to the jurisdiction of each claim tribunal. These email IDs would be prominently displayed at tribunal, the police stations and the office of the insurers for the benefit of the claimants. Similarly, these email IDs shall also be prominently displayed on the website maintained by the tribunal and the insurer.

H. Insurers shall appoint nodal officers for each tribunal and provide their contact details, phone and mobile phone numbers, and email address to Director Generals of State Police and the tribunals.

7.3 Shri Atul Nanda, learned senior counsel appearing on behalf of Bajaj Allianz General Insurance Company Limited has also made two suggestions in its note. He has submitted that if the earlier directions issued by this Court in the aforesaid decisions are implemented fully and in letter and spirit and Section 159 of the Motor Vehicles Act is complied with by all the Police Officers pan India and the accident information report

as contemplated under Section 159 (post 2019 amendment) is out on the Government Portal - National Register of vehicle registration known as "VAHAN" AND "SAARTHI", in that case, it can solve the problem of filing more than one claims in different States with respect to the same accident.

It is submitted that the Transport Authorities under the Motor Vehicles Act, 1988 is maintaining a National Register of vehicle registration known as "VAHAN" AND "SAARTHI". It is submitted that this has rendered the issuance and verification of the driving licenses and registration of vehicles, transparent and hassle free. It is submitted that these existing databases can be rendered useful for the purposes of adjudication of claims also if they can be expanded to include details of the accidents and drivers. It is submitted that if the "VAHAN" portal is modified to allow and the police officials who is investigating the accident in question is required to mandatorily endorse an entry of the accident against such portal with an automatic intimation on the registered mobile of the owner, it will be very useful in preventing the submission of such fake claims.

7.4 It is further submitted by Shri Atul Nanda, learned senior counsel that SITs are required to be constituted in each of the States. It is submitted that only in the States of UP, Rajasthan and Gujarat, the SIT is existing. It is therefore prayed that the respective State Governments may be directed to constitute SIT with respect to complaints of suspicious fake claims/petitions which may be headed by an officer not below the rank of Additional Director General of Police, with adequate infrastructure and human resource.

8. Having heard learned counsel appearing on behalf of the respective insurance companies and the learned counsel appearing on behalf of the State of UP/SIT and the suggestions made, we are of the opinion that before any further directions are issued, we may have the response from the Ministry of Transport, Government of India to have their suggestions for remedial and preventive measures for curbing the menace of filing of false/fraud claim petitions.

We accordingly direct the Registry to implead the Ministry of Transport, Government of India as a party-respondent and issue notice. We request Shri K.M. Nataraj, learned Additional Solicitor General of India to appear on behalf of the Ministry of Transport, Government of India and to assist the Court and to come out with suggestions how to curb the menace of filing false/fake claim petitions. After getting the response/suggestions, we may issue further directions to be applied pan India.

Put up for further consideration on 25.01.2022.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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