

# Sh. A. K. Jain vs The Oriental Insurance Company Ltd. on 3 April, 2025

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:

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W.P.(C) 8514/2018

SH. A. K. JAIN

Through:

Mr. S.K. Pandey and Mr.  
Parmar, Advocates.

versus

THE ORIENTIAL INSURANCE  
COMPANY LTD.

Through: Mr. Rahul  
Advocate.

.....  
Ranjan

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The petitioner has filed this petition under Article 226 of the Constitution, challenging an order dated 09.05.2016 passed by the Disciplinary Authority of the respondent - Oriental Insurance Company Ltd., by which a penalty of recovery of Rs.50,000/- was imposed upon the petitioner. He also assails an order dated 06.02.2017 of the Appellate Authority, and an order dated 13.10.2017 of the Reviewing Authority, by which the disciplinary order against him was confirmed.

2. The petitioner joined the services of the respondent on 15.03.1984 as an Assistant (Clerical), and was promoted to the post of Assistant Manager in the respondent's Divisional Office at Noida, Uttar Pradesh.

3. The disciplinary proceedings arise out of a claim of the legal heirs of one Mr. Amit Kumar against Mr. Nepal Singh, who had taken an insurance policy from the respondent in respect of his commercial vehicle (truck) bearing Registration No. HR38J0987. The deceased was working as a helper in the said truck, and died on 14.08.2007, allegedly due to a fatal accident. His legal heirs filed a claim before the Commissioner of Workmen's Compensation, against the insured and the respondent. The claim resulted in an award against the respondent in the sum of Rs.5,42,275/- with 8% simple interest.

4. Based upon these proceedings, a chargesheet was issued to the petitioner on 27.05.2014, contemplating major penalty proceedings under Rule 25 of the Oriental Insurance Company [Conduct, Discipline and Appeal] Rules, 2014. The Articles of Charge alleged that the petitioner

recommended the claim for payment, overlooking various irregularities, and violation of the Company's Rules, particularly absence of General Diary ["GD"] Entry, First Information Report ["FIR"], Post Mortem Report ["PMR"], Medico-Legal Certificate ["MLC"] etc. In the statement of imputation of misconduct, it is alleged that the petitioner recommended the name of an advocate to defend the case before the Commissioner, and his recommendation was accepted by the then Divisional Manager. The Divisional Manager also filed a written statement in the proceedings before the Commissioner, denying the claim and seeking strict proof of the allegations. The imputation further records that one Shri Kailash Chand was deputed for criminal verification of the case, who reported that a GD Entry had been passed by the concerned police station, but no criminal case had been registered. It is further stated that the GD Entry number was not mentioned by Shri Kailash Chand, and that the report was received by the petitioner. The imputation of charge further records that one Smt. Girija Somani was deputed for claimant verification. She submitted her report to the Legal Department of the Divisional Office, but some discrepancies have been pointed out in the said Report also.

5. While acknowledging that the Commissioner had passed an award against the respondent, the following allegations were made in respect of the petitioner:

"Shri Ashok Kumar Jain on 08/12/2011 has prepared claim payment note and submitted the same for instruction/approval for payment of the award of Rs. 5,42,275/- plus 8% Interest Rs. 99,125/- less TDS Rs. 19,825/- Net Rs. 6,21,575/- mentioning that "--Since all the documents verified and found in order other than FIR however DD confirm by the Police Station."

Based on his recommendation, Shri Chander Shekhar then DM, DO- Noida on 04/01/2012 approved the claim for Rs. 6,21,575/-. Shri Ashok Kumar Jain on dtd. 04/01/2012 approved the claim payment voucher no. 7044001063 dtd. 04/01/2012 for Rs. 6,21,575/- in favour of Deputy Labour Commissioner, Noida."

6. As noted above, the respondent alleged that there were several irregularities in the claim submitted by the claimant, including the lack of an FIR, GD/Daily Diary ["DD"] Entry, PMR, Medico-Legal Report ["MLR"], and an incomplete Claimant Verification Report submitted by the Verification Officer. It was further alleged that the advocate asked the Divisional Office to provide certain documents, which were not provided. The petitioner has, therefore, been attributed with misconduct, for processing and recommending the payment without submitting the necessary documents.

7. The petitioner replied to the chargesheet on 16.06.2014, in which he denied the charges and contended that the claim had been processed in terms of the award of the Workmen's Compensation Commissioner. He further stated that the defending counsel had advised against filing of an appeal, and the competent authority had also approved implementation of the award. It has specifically been stated that the petitioner mentioned in the claim note about non-availability of certain documents, and sought instructions as to whether legal opinion of a Senior Advocate be obtained, but that the superior officer had not approved such a course.

8. The respondent proceeded with the disciplinary proceedings and an enquiry was held. The report of the Enquiry Officer was submitted on 17.10.2015. The Enquiry Report reveals the cases of both parties and summarises the evidence led before the Enquiry Officer. In the recording of evidence of the management's witnesses, the reports of Shri Kailash Chand and Smt. Girija Somani have been mentioned, but characterised as incomplete. It is stated that the advocate who was defending the claim proceedings wrote a letter to the Divisional Manager on 06.07.2011, seeking various documents, but the letter was not marked to anyone by the Divisional Manager. The evidence, as recorded in the Enquiry Report, also includes the fact that the advocate had sought some documents from the petitioner, but the petitioner informed him that no FIR has been lodged and no action had been taken by the police. The evidence of the witness was also that the defending advocate had not recommended an appeal, and that the Divisional Office, NOIDA, also found no discrepancy in the context of the documents and, therefore, did not file an appeal.

9. In the evidence of the petitioner, as recorded by the Enquiry Officer, it is specifically stated that the petitioner did not recommend the claim for approval, but suggested that an opinion from a Senior Advocate be obtained. However, the then Divisional Manager used his discretionary power to overrule the suggestion and direct satisfaction of the award. The petitioner stated that he had prepared the claim payment note in accordance with these instructions, after obtaining the advice of the defending advocate not to file an appeal, and the Divisional Manager having disagreed with the suggestion that a Senior Advocate's opinion be taken.

10. In the light of this evidence, the Enquiry Officer has recorded the following findings:

**"F. FINDINGS:-**

In the light of Management Proceedings, Defence Proceedings, deposition of Management Witness (PW-1), Deposition of CO Shri A. K. Jain, Listed documents (LD's), Additional listed documents (ALD's), Defence documents (DD's) & the analysis cum assessment, the findings are as under:-

Shri Ashok Kumar Jain, Assistant Manager (Retd.), DRO-II and ex- AM-DO Noida processed and recommended the subject WC claim with full knowledge that the WC claim folder did not contain GD entry, FIR, PMR & MLC. Shri Jain knew that all these documents were neither obtained by him nor by then DM-Shri R. K. Mishra who since retired as well. Even Shri Jain misguided in his claim note dated 08.12.2011 to then DM, Shri Chandra Shekhar of verifying all documents except FIR without disclosing that required documents were not in existence. Thus the charge is 'PROVED'."

11. The Disciplinary Authority, by its order dated 09.05.2016, noted the petitioner's representation against the Enquiry Report, to the effect that recommending the claim based on an award by the Commissioner could not be regarded as misconduct, and that the counsel had not recommended an appeal. However, the Disciplinary Authority recorded a conclusion that the petitioner had processed and recommended the claim with full knowledge that it did not contain a GD/DD Entry, FIR, PMR,

and MLR, and that this should have been reflected in the claim note. He, therefore, imposed the impugned penalty of recovery of Rs.50,000/- on the petitioner.

12. The petitioner's appeal and review application were rejected by the order of the Appellate Authority and the Reviewing Authority.

13. Having heard learned counsel for the parties, I am of the view that the petitioner's defence was not properly considered. The respondent- authorities have proceeded on the basis that the claim under the insurance policy was not supported by the required documents, including GD Entry, FIR, MLC, and PMR. However, what appears to have escaped due attention is the fact that a statutory authority with jurisdiction, being the Commissioner of Workmen's Compensation, had passed an award. In this context, the choice before the respondent was whether to appeal the award or to honour it. Although the impugned orders notice that an award had been passed, they proceed in the disciplinary proceedings as if this was merely a case of administrative processing of a claim lodged under an insurance policy, rather than satisfaction of a legally binding award.

14. The Enquiry Report notes the petitioner's specific case that the defending advocate had advised against filing an appeal, and the petitioner's recommendation for appointment of a Senior Advocate was not accepted. These aspects have, however, not been addressed. In fact, the report of the Enquiry Authority does not contain adequate reasoning, showing analysis of the evidence which had been led before him. There is no finding at all in respect of the petitioner's specific evidence that he had suggested the engaging a Senior Advocate, which had been declined by the Divisional Manager in exercise of his discretionary powers. The findings of the Enquiry Officer quoted above are laconic, and amount only to a recitation of his conclusions, rather than an expression of his reasoning.

15. The order of the Disciplinary Authority also does not allude to this aspect at all, while attributing defects in the claim note dated 08.12.2011.

16. On these facts, I am of the view that the disciplinary order against the petitioner does not meet the required standard of natural justice, as it is vitiated by a failure of reasoning, leading to a conclusion which can only be characterised as perverse. The petitioner was processing not just a policy claim, but an order of a statutory authority. The petitioner, and indeed the respondent Company, had no option but to pay the awarded amount in the absence of approval for filing of an appeal.

17. For the aforesaid reasons, the petition is allowed, and the orders of the Disciplinary Authority dated 09.05.2016, the Appellate Authority dated 06.02.2017, and the Reviewing Authority dated 13.10.2017, are set aside.

18. I am informed that the penalty amount of Rs.50,000/- has been withheld from the petitioner's gratuity payment. The same be paid to the petitioner with simple interest @ 10% p.a. from the date it was due until the payment is made. The payment be made within four weeks from today.

19. The writ petition stands disposed of in terms of the aforesaid directions.

PRATEEK JALAN, J APRIL 3, 2025/SS/JM/