

ज्ञान दर्शन और चरित्र



Delhi Judicial Academy

# MOTOR ACCIDENT CLAIMS REFERENCER



Justice J. R. Midha

**Delhi Judicial Academy**  
**2011**





# **MOTOR ACCIDENT CLAIMS REFERENCER**

JUSTICE J. R. MIDHA

JUDGE

HIGH COURT OF DELHI

**Delhi Judicial Academy**

**2011**

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# CONTENTS

	<b>Page No.</b>
<b>Contents</b>	<b>iii-v</b>
<b>List of Cases</b>	<b>vi-ix</b>
<b>Message from Hon'ble Justice R.V. Raveendran</b>	<b>xi</b>
<b>Foreword by Hon'ble Chief Justice Dipak Misra</b>	<b>xii-xiii</b>
<b>Chairperson's note by Hon'ble Justice A.K. Sikri</b>	<b>xiv-xvi</b>
<b>Preface by Prof. (Dr.) Ved Kumari</b>	<b>xvii-xviii</b>
<b>Introduction by Hon'ble Justice J.R. Midha</b>	<b>1-5</b>
<b>Frequently Asked Questions</b>	<b>6-11</b>
<b>Chapter-1</b>	<b>12-25</b>
<b>Role of Police in Motor Accident Claim Cases</b>	
I Accident Information Report (AIR)	
- Directions of Hon'ble Supreme Court to Director Generals of Police of all States in respect of AIR	
- Directions of Delhi High Court to Police	
- Directions of Delhi High Court to Police with regard to accidents between the period 1994- 2009	
- Steps undertaken by Delhi Police	
II Procedure for Investigation of Motor Accident Cases by Police	
III Prosecution of Owner/Driver of Uninsured Vehicles	
IV Prosecution of Holders/Forgers of Fake Driving Licences	
- Directions of Hon'ble Supreme Court	
- Directions of Delhi High Court to deal with fake driving licences	
V Checklist of Delhi Police for Compliance of Claims Tribunal Agreed Procedure	
<b>Chapter-2</b>	<b>26-46</b>
<b>Role of Motor Accident Claims Tribunals</b>	
I Cognizance of Accident Information Report by MACT	
- Directions of Hon'ble Supreme Court to the High Courts with respect to filling of AIR	
- Directions of Delhi High Court to Claims Tribunals with respect to the procedure of processing AIR	
II Inquiry to be Conducted by MACT	
- Scope of Inquiry	
- Nature of Inquiry	
III Summary of Procedures of MACT	

- IV Protection of Award Amount
- Directions of Hon'ble Supreme Court with regard to protection and disbursement of award amount
  - Directions of Delhi High Court
    - Special scheme offered by banks
    - Deposit of amount directly in banks
    - Disbursement of award amount in phased manner
- V Deposit of Award Amount and Interest
- Notice of deposit of award amount and compliance
  - Directions with regard to maintenance of records by Nazirs
- VI Power of MACTs to Put Questions or Order Production
- Direction of Hon'ble Supreme Court
  - Judgment of Delhi High Court with regard to powers of MACT to order production.
- VII Checklist Prepared by Hon'ble Delhi High Court for Claim Tribunals

**Chapter-3****47-51****Role and Liability of Insurance Companies**

- I Direction of Hon'ble Supreme Court to Insurance Companies
- II Directions of Delhi High Court to Insurance Companies
- Deposit of admitted amount
  - Directions with respect to new cases
  - Directions with respect to pending cases
  - Deduction of TDS
- III Directions of other High Courts to the Insurance Companies
- IV Liability of the Insurance Company in Respect of Pillion Rider/Occupant in Two-wheeler/Private Car

**Chapter-4****52-56****Settlement of Claim Cases**

- I Scheme for Settlement of New Cases
- Claims Tribunal Agreed Procedure
  - Success rate
- II Scheme for Settlement of Pending Cases
- Schedule for settlement
- III Action Plan for Settlement of Claim Cases

**Chapter-5**

**57-86**

**Computation of Compensation**

- I Just Compensation
- II Computation of Compensation in Death Cases
  - Compensation in Case of Death of Non-dependent Spouse/Legal Representative
  - Compensation in Case of Death of Housewife
  - Compensation in Case of Death of Child
  - Compensation in Case of Death of a Professional/Student pursuing professional course
  - Compensation in Case No Proof of Income of Deceased
- III Computation of Compensation in Injury Cases

**Chapter-6**

**87-91**

**Delhi Motor Accident Claim Tribunal Rules 2008**

- I Salient Features of the Rules

**Chapter-7**

**92**

**Doctrine of Sovereign Immunity**

**Chapter-8**

**93-98**

**Suggestions for Amendment of Law Relating to Motor Accidents in India**

- I Suggestions of Hon'ble Supreme Court
- II Suggestions of Delhi High Court
  - South African Model (Road Accident Fund by way of cess on fuel)
  - Canadian Model (Road Accident Fund from three sources)
  - Right of legal representatives to claim compensation after the death of the injured
  - Other suggestions of Delhi High Court

**Annotations of Cases**

**99-105**

## LIST OF CASES

1. *A. Manavalagan v. A. Krishnamurthy & Ors.* - I(2005)ACC 304 : 2005 ACJ992, on pp 63
2. *Abati Bezbaruah v. Geological Survey of India* - (2003) 2 SCC 148: I(2003) ACC 352 (SC) : 2003 ACJ680, on pp 59, 64
3. *Abdul Subhan v. State (NCT of Delhi)* - 133(2006)DLT562, on pp 17
4. *All India Lawyers Union v. GNCTD* - MANU/DE/1250/1997, MANU/DE/0379/1998, on pp 12
5. *All India Lawyers Union v. Union of India. All India Lawyers Union v. Govt. of National Capital Territory Of Delhi* - MANU/DE/0280/2001: 2002 ACJ 2019, on pp 12
6. *Arun Kumar Aggarwal v. National Insurance Company* - JT2010 (7)SC304 : 2010 ACJ 2161, on pp 64
7. *Arvind Kumar Mishra v. New India Assurance Co.Ltd.* - 2010(10) SCALE 298 , on pp 70, 74, 76, 82
8. *Baburao Sataba Manabutaker v. Doreswamy* - MFA4072/1998 dated 4.9.2001, on pp 95
9. *Bajaj Allianz General Insurance Co. Ltd v. Kamla Bist* - MANU/DE/3608/2009 : III (2010) ACC 55, on pp 95
10. *Baker v. Willoughby* - 1970 AC 467, on pp 66
11. *Balaiah (T.) v. Abdul Majeed* - AIR 1994 AP 354, on pp 81
12. *Bartly v. State* - 55 Nebr 294 : 75 N.W.832, on pp 41
13. *Bhagwan Singh Meena v. Jai Kishan Tiwari* - 1999 ACJ 1200, on pp 85
14. *B.N.Kumar v. D.T.C.* - 118 (2005) DLT 36, on pp 84
15. *C. K. Subramonia Iyer v. T. Kunhikuttan Nair* - AIR 1970 SC 376, on pp 66
16. *Common Cause, A Registered Society v. Union of India* - AIR 1999 SC 2979, on pp 68
17. *DTC v. Meena Kumari and Ramkishan v. D.T.C.* - MANU/DE/0502/2010 : III (2010) ACC 72, on pp 100
18. *Davies & Anr. v. Powell Duffryn Associated Collieries Ltd.* - MANU/QB/0477/1942: (1942) 1 All ER 657: (1942) AC 601, on pp 59
19. *Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.* - 2003 (7) SCC 197: III (2003) ACC 57 (SC): 2003 ACJ 1775, on pp 67
20. *Dr.Gop Ramchandani v. Onkar Singh & Ors.* - 1993 ACJ 577, on pp 85
21. *DTC v. Sudarshan Yadav* - 1995 ACJ, 393, on pp 99
22. *Executive Engineer, PWD, Udaipur v. Narain Lal* - (1977) 2 LLN 415, 1977 LIC 1827 (Raj), on pp 81
23. *Fakeerappa & Anr. v. Karnataka Cement Pipe Factory & Ors.* - I(2004) ACC 494 : 2004 ACJ 699, on pp 59
24. *Fakkirappa v. Yallawwa & Anr.* - 2004 ACJ 141, on pp 59, 84
25. *General Insurance Counsel v. State of Andhra Pradesh* - IV (2007) ACC 385 (SC) , on pp 12
26. *Ghaziabad Development Authority v. Balbir Singh* - II (2004) CPJ 12 (SC) , on pp 32
27. *GM, KSRTC v. Susamma Thomas* - AIR 1994 SC 1631: (1994) ACC 346 (SC) : 1994 ACJ 1, on pp 27, 58, 59
28. *Haji Zainullah Khan v. Nagar Mahapalika, Allahabad* - 1994 ACJ 1993, on pp 65
29. *Head of Department, Air Force Station Amla v. Ram Kumar Giri* - MANU/DE/3609/2009 : III

- (2010)ACC 279, on pp 92
30. *Helen C. Rebello & Ors. v. Maharashtra State Road Transport Corpn. & Anr.* - 1999 ACJ 10, on pp 57
  31. *Iranna v. Mohammadali Khadarsab Mulla & Anr.* - 2004 ACJ 1396, on pp 86
  32. *Jai Prakash v. National Insurance Co. Ltd.* - MANU/SC/1949/2009 : 2010ACJ455, on pp 13, 17, 23, 33, 40, 47, 93
  33. *Jitendra Singh v. Islam* - 1998 ACJ 1301, on pp 86
  34. *Kanwar Devi v. Bansal Roadways* - 2008 ACJ 2182, on pp 65
  35. *Kannamma v. Dy. General Manager* - ILR 1990 Karn. 4300 (FB), on pp 95
  36. *Keith Rowe v. Prashant Sagar* - MANU/DE/1060/2010 : II (2010)ACC 64, on pp 63
  37. *Kiran Devi v. Surjeet Yadav* - MANU/DE/1059/2010 : II (2010)ACC 289, on pp 10, 65
  38. *K.Shankar v. Pallavan Transport Corporation* - 2001 ACJ 488, on pp 85
  39. *Lata Wadhwa v. State of Bihar* - AIR 2001 SC 3218, on pp 63, 64
  40. *Madan Lal Papneja v. State of Haryana & Ors.* - MANU/PH/2408/2010, on pp 76
  41. *Managing Director TNSTC Ltd. v. K.T. Bindu* - IV (2005)ACC 350, on pp 64
  42. *Master Sewa Ram v. Vijay* - MANU/DE/1063/2010 : III (2010)ACC 608, on pp 94
  43. *Mayur Arora v. Amit @Pange* - MANU/DE/1064/2010, on pp 7, 8, 9, 15, 27, 31, 42
  44. *M.Jaganathan v. Pallavan Transport Corporation* - 1999 ACJ 366, on pp 85
  45. *M.S. Grewal v. Deep Chand Sood* - II (2001)ACC 540, on pp 64
  46. *Nagappa v. Gurudayal Singh and Ors.* - AIR2003SC674: III (2002)ACC 766 (SC) : 2003 ACJ 12, on pp 68, 82
  47. *Nance v. British Columbia Electric Railway Co. Ltd.* - MANU/QB/0483/1951, on pp 59
  48. *National Insurance Co. Ltd v. Kanika Saboo* - MANU/DE/3622/2009 : III (2010)ACC 29, on pp 48
  49. *National Insurance Co. Ltd. v. Renu Devi* - III(2008)ACC 134 : 2009 ACJ 1921, on pp 65
  50. *National Insurance Co.Ltd v. Farzana* - MANU/DE/1893/2009 : II (2010)ACC 9 : 2009 ACJ 2763, on pp 64
  51. *New India Assurance Co. Ltd. v. Ganga Devi* - MANU/DE/3623/2009 : III (2010)ACC 6, on pp 65
  52. *New India Assurance Co. Ltd. v. Charlie* - AIR2005SC2157: II (2005)ACC 74 (SC) : 2005 ACJ 1131, on pp 59, 60, 64
  53. *New India Assurance Co. Ltd. v. Ganga Devi* - MANU/DE/1056/2010 : IV (2010)ACC 28, on pp 36
  54. *New India Assurance Co. Ltd. v. Geeta Devi* - MANU/DE/3614/2009 : IV (2009)ACC 761, on pp 101
  55. *New India Assurance Co. Ltd. v. Rakesh Ahuja* - MANU/DE/3616/2009 : IV (2010)ACC 34, MANU/DE/3421/2009 : IV (2010)ACC 40, on pp 18
  56. *New India Insurance Company Ltd v. Rajauna* - (1996) 1 TAC 149 (Kant), on pp 81
  57. *New India Assurance Company Ltd. v. Kashmiri Lal* - 2007 ACJ 688, on pp 8, 37, 38, 39
  58. *Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.* - AIR 2007 SC 1609: IV (2007)ACC 335 (SC) : 2007 ACJ 1284, on pp 59
  59. *Oriental Insurance Co. Ltd. v. Man Singh* - MANU/DE/3615/2009 , on pp 35

60. *Oriental Insurance Company Limited v. Koti Koti Reddy* - 2000(2) LLJ 552 (AP), on pp 81
61. *Oriental Insurance Co Ltd. v. Ram Prasad* - (2009) 2 SCC 712, on pp 82
62. *Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal* - 2008 ACJ 1300, on pp 83
63. *Orissa State Road Transport Corporation v. Bhanu Prakash Joshi* - (1994) 1 ACC 467 (Ori), on pp 81
64. *P. Satyanarayana v. I. Babu Rajendra Prasad and Anr.* - 1988 ACJ 88, on pp 68
65. *Pushpa Thakur v. Union of India* - 1984 ACJ 559, on pp 92
66. *Prakash v. Arun Kumar Saini* - MANU/DE/0337/2010 : 167 (2010) DLT 311, on pp 65
67. *Pratap Narain Singh Deo v. Srinvas Sabata* - AIR 1976 SC 222, on pp 81
68. *Pushpa Thakur v. Union* - 1984 ACJ 559, on pp 92
69. *Raj Kumar v. Ajay Kumar & Anr.* - MANU/SC/1018/2010, on pp 66, 69, 86
70. *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.* - MANU/SC/0146/1995 : (1995) 1 SCC 551: I (1995) ACC 281 (SC), on pp 64, 67
71. *R.K. Malik v. Kiran Pal* - 2009(8) Scale 451: II (2009) ACC 705 (SC), on pp 64
72. *R.K. Malik v. Kiran Pal* - III (2006) ACC 261 : 2007 ACJ 2010, on pp 64
73. *Rajasthan State Road Transport Corporation, Jaipur v. Smt. Poonam Pahwa* - 1997 ACJ 1049, on pp 37
74. *Rajesh Tyagi v. Jaibir Singh* - MANU/DE/3604/2009 : III (2010) ACC 658, MANU/DE/3603/2009 : MANU/DE/3602/2009 : III (2009) ACC 856, MANU/DE/3601/2009 : II (2010) ACC 781, MANU/DE/3663/2009 : MANU/DE/3600/2009, MANU/DE/3598/2009: II (2010) ACC 864, II (2010) ACC 867, on pp 6, 13, 14, 15, 17, 27, 48, 52, 94, 96
75. *Rajiv Dhawan v. Phirtu* - MANU/DE/3611/2009 : II (2010) ACC 927, II (2010) ACC 929, on pp 17
76. *Ramadevsing V Chudasma v. Hanrajbhai V. Kodala* - 1999 ACJ 1129: II (1999) ACC 730 (DB), on pp 49
77. *Ramakrishna Reddy v. Manager, Purchase, HMT Tools Ltd.* - 2003 ACJ 105, on pp 49
78. *Reliance General Insurance Co. Ltd. v. Rachan Devi* - MANU/DE/3606/2009, on pp 103
79. *Resham v. Harish Kaushik* - MANU/DE/1055/2010, on pp 101
80. *Reshma Kumari v. Madan Mohan* - MANU/SC/1303/2009, on pp 62
81. *Sadasihiv Krishan Adke v. M/s Time Traders* - 1992(1) LLJ 877, on pp 81
82. *Sarika v. Narain Singh* - MANU/DE/3613/2009 : III (2010) ACC 657, on pp 87
83. *Sarla Dixit & Ors. v. Balwant Yadav & Ors.* - (1996) 3 SCC 179: I (2004) ACC 396 (SC), on pp 64
84. *Sarla Verma v. Delhi Transport Corporation* - MANU/SC/0606/2009 : 2009 ACJ 1298, on pp 53, 58, 59, 61
85. *Sarmaniya Bai v. Madhya Pradesh Rajya Parivahan Nigam* - AIR 1990 MP 306 (FB): 1990 ACJ 862 (MP), on pp 37
86. *Sat Prakash v. Jagdish* - MANU/DE/0977/2010 : II (2010) ACC 914, on pp 99
87. *Shobha Gulhar v. Ram Pal* - MANU/DE/1061/2010, MANU/DE/1062/2010, on pp 35
88. *Sobat Singh v. Ramesh Chandra Gupta* - MANU/DE/1058/2010, MANU/DE/1057/2010 : II (2010) ACC 818, on pp 37
89. *Somari Devi v. Ragwar Singh* - MANU/DE/3612/2009 : III (2010) ACC 147, on pp 40
90. *Sumitra v. UP State Roadways Tpt. Corpn* - MANU/DE/1155/2009 : II (2010) ACC 586, on pp 100

91. *Sree Lalithambika Enterprises, Salem v. S.Kailasam* - 1988 (1) LLJ 63, on pp 81
92. *TaffVale Rly. Co. v. Jenkins* - MANU/QB/0452/1912, on pp 64
93. *T.N. State Transport Corpn. Ltd. v. S.Rajapriya & Ors.* - AIR 2005 SC 2985: II (2005) ACC 476 (SC), on pp 59, 60, 64
94. *The Oriental Insurance Co. Ltd v. Satpal* - MANU/DE/3618/2009 : III (2009) ACC 828, on pp 101
95. *U.P.State Road Transport Corpn. v. Krishna Bala & Ors.* - AIR 2006 SC 2688: III (2006) ACC 361 (SC) , on pp 59, 60
96. *Union OfIndia v. Dr. Rita Pant* - MANU/DE/3620/2009 : IV (2009) ACC 696, on pp 65
97. *United India Insurance Co. Ltd. v. Ram Kishan* – MAC.APP.No.247/2009, on pp 36
98. *United India Co. Ltd. v. Patrica Jean* - II ( 2002 ) ACC 460, on pp 64
99. *UOI v. Nanisiri* - MANU/DE/0218/2010 : II (2010) ACC 101, on pp 35
100. *UPSRTC & Ors. v. Trilok Chandra* - (1996) 4 SCC 362: I (1996) ACC 592 (SC) , on pp 54, 59
101. *Ward v. James* - (1965) ALL.ER 563, on pp 64, 83
102. *Yadava Kumar v. D.M., National Insurance Co. Ltd.* - 2010 (8) SCALE 567, on pp 70, 82
103. *Yashpal Luthra v. United India Insurance Co. Ltd.* - MANU/DE/3174/2009 : III (2010) ACC 130 , on pp 50
104. *Zamindar Motor Transport Co. Pvt. Ltd. v. New India Assurance Co. Ltd.* - MANU/DE/3617/2009 : III (2010) ACC 690, on pp 95



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### MESSAGE

Ready Referencers (or Judges' Guides) are collections of leading judgments and practice guidelines which are extremely useful to TrialJudges. Such guides which enable Judges to function effectively and efficiently, are quite common and popular in United Kingdom, USA, Canada and Australia. Unfortunately such Referencers are not readily available in India.

I am happy that Justice J.R. Midha of Delhi High Court under the aegis of the Delhi Judicial Academy, has produced a Referencer in regard to Motor Accident Claims, which will be of considerable assistance to Presiding Officers fo Motor Accident Claims Tribunals across the country and will go a long way to improve the quality and quantity of their disposals. I am sure that his effort will be an inspiration for similar efforts on other subjects in law and procedure.

New Delhi;  
26.11.2010



  
(R.V. Raveendran)

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## **FOREWORD**

Anyone, who pursues a career in law, in whichever sphere, terms himself significantly yet humbly as a student of law. A keen student of this stream has an innate inspiration that law should be the method taken recourse to, both procedurally and substantially, for attaining justice. The term 'justice' has many a definition, both in the denotative sense and connotative compass but fundamentally the idea of justice is wedded to truth and is meant for amelioration of grievances which a citizen individually has and also which the collective faces. With the modernization of society and acceleration of industrialization, certain side effects are bound to occur and hence, the increase in accidents on roads in cities, highways and other areas. That pyramids a different grievance.

An accident fatalistically may be looked at as an accident but it has its legal repercussions. The victim when injured and alive comes to the centre stage, the obligation of the temple of justice is to treat him with dignity and deal with his cause with sensitivity and promptitude with the proper application of parameters of law relating to compensation. A balance is to be struck between the 'wind fall concept' and the 'justness of compensation'. When the life spark of the victim gets extinguished, the family members and the dependants not only get the mental shock but they are at a loss as to how to sustain themselves and socially stand up. The cavil enters into the centre stage in both the categories pertaining to the quantum of compensation, fastening of liability and the immediacy of adjudication.

Some may harbor the idea that the litigation under the Motor Vehicles Act, 1988 is not of much importance and, in a way, easy. Such a thought is neither correct nor justified. When a tragedy occurs in a singular family, the collective feels that justice should be done. The thinkers in the field of law do correctly propagate that the delay has to be ostracized from the sphere of adjudication by all concerned. The process of investigation by the police as well as by the insurer gains signification. The role ascribed to the adjudicator becomes paramount. It is also to be borne in mind that the statutory law has gone a sea-change with the introduction of 1988 Act and the judicial perception has also been transformed.

**Cont.P/2**

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Under the law, the police has been conferred a definite role and the said role is mandatory in nature and the investigating agency cannot shirk its responsibility. The people at large are required to be aware of their legal rights. With the advent of computerization, the information have been made available on the website and the decisions rendered by this Court in that regard are really innovative and progressive. Precaution has been taken that all concerned endeavour to see a case relating to claim is expeditiously disposed, for in a case of this nature delay not only defeats justice but also destroys the soul and spirit of the affected family.

The book “Motor Accident Claim Referencer” by Justice J.R. Midha is a book based on many a decision of this Court and the Apex Court to throw a laser beam on all aspects and to educate the lawyers and adjudicators from many an angle. It carves out compartmentalized responsibilities in a significant manner and has also shown the prism of the innovative measures by taking recourse to the science of interpretation of not only the provisions of the law relating to insurance but also laws which are ancillary to the said field. The book does not only frescoe a pragmatic approach to deal with the problems but also provokes thoughts which are inspiring. It lays special emphasis on the point that an intellectual activism has the potentiality to usher in panacea to the problems faced by the persons who are poor and needy.

The Delhi Judicial Academy by publishing such a book has paved the glorious path on academics and has lived the role of 'Academy' in every sense of the term. Such publications are always educative – building architecture of knowledge.



  
(Dipak Misra)



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### CHAIRPERSON'S NOTE

Amartya Sen, in his book 'Idea of Justice (2009)', has attempted to defeat and modify age old theories of justice that lay stress on the establishment of the just institutions to achieve justice, calls for introspecting the behaviour of human components in those institutions as well. According to his work, no doubt institutions “play a significant instrumental role in the pursuit of justice”, but one cannot overlook the importance of “individual and social behaviour” in those “institutions” in the enterprise of enhancing justice. If we apply his observation to the courts and judicial systems, we come to realization that only by these concrete building and up to date infrastructural facilities in them, we cannot expect that the justice would be achieved. These concrete building where thousands throng in the hope of the just solutions for their problems, pains and suffering have to be staffed with human beings capable of understanding the sufferings and plight of people who approach them. The judicial education discourse is one such attempt at enhancing the capabilities of individual judges so that they can acquire the sensitivities to perform optimally their duties and responsibilities and



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play a critical role in the justice administration. It is aimed towards helping the judiciary in improving the quality of justice rendered.

Justification for judicial training is on following two hypothesis:

(i) Cumulative training has a positive effect on productivity and performance; (ii) Training and innovation mutually support each other and have long term impact on justice administration due to improved judicial performance.

Keeping in mind the aforesaid parameters, the Delhi Judicial Academy has strived to develop scientific methodology for judicial training keeping in mind the **Identification of needs**.

It is the endeavour of the DJA to adopt all possible methods of judicial training to subserve the aforesaid objective of achieving judicial excellence. In this backdrop, it has been decided to bring out Bench Books/Referencers stating the scientific methodology for speedy justice coupled with leading judgements on the subject(s). This is the first such attempt in that direction where Referencer on Motor Accident Claims, prepared by Mr. Justice J.R. Midha is published by the DJA. His vast experience and depth of knowledge is manifest in this work which has made it unique. From the recent landmark judgments of the Supreme Court and the High Courts, he has beautifully culled out the Principles.



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In the process, everything is made so simple for the Judicial Officer for whom it can work as a 'Ready-Recknor.

While it is hoped that this Referencer is going to be of immense help to the Judges dealing with motor accident claims cases, I would extend invitation to other Hon'ble Judges and Judicial Officers to come out with similar Referencers on other subjects of law.



**(Justice A.K. Sikri)**

Chairperson, Judicial Education and  
Training Programme Committee

## PREFACE

This is the first Referencer published by the Delhi Judicial Academy and it is also the first Referencer on Motor Accident Claims in India. Hitherto it used to take a long time before the victims of road accident could receive the claimed amount as nobody seemed to understand the plight of the persons injured in a road accident or the family of the person who may have died in such accident when they filed a claim for compensation in such cases. The victims or their families were put under unduly harsh burden of proving their claims which they were unable to discharge most of the times due to lack of wherewithal to do so.

Hon'ble Justice J.R. Midha, Judge, High Court of Delhi, was appalled by long delays in settlement of claims and moved by the plight of victims when he heard appeals against the orders of the MACTs. He seized the opportunity of brining about change when he found that the Police had not been filing the Accident Information Report within thirty days as prescribed by the new provision added to the Motor Vehicles Act, despite the directions from the Court to that effect too. The Police became willing to make amends when faced with this realization.

Hon'ble Justice Midha has remained concerned about the subject even after he ceased to preside over MACT appeals. He continuously attends the programmes on MACT of the National Judicial Academy and other bodies to generate thought and initiative for development or adoption of similar procedure by judges in other jurisdictions in India. This Referencer is the result of his incessant work, command over the subject, and commitment to ameliorate the plight of poor victims of road accidents. The Delhi Judicial Academy has joined hands with him in this endeavour.

His personal exposure about the experience of his friend in Canada who got injured there but faced no financial burden, seems to have provided the spark that led Justice Midha to think deeply about the ways to provide relief to accident victims and their families. His orders and directions have ensured that the procedure for settling the claims of victims of road accident too becomes hassle free, expeditious, and just for settling claims of victims of road accidents. Human beings and their lives are precious and all possible care need to be taken to ensure that they receive timely relief after road accidents!

This Referencer addresses a wide range of questions relating to accident claims from role and responsibilities of police to computation of damages, no sovereign immunity of State against accident claims, to the obligations of the insurance companies, to duties and powers of the MACTs. This Referencer provides answers to most of the questions that one may have regarding motor accident claims and can be used by judges, police, insurance companies. The Referencer has been written in simple language that may be understood by all, including the victims of road accidents.

A lot has changed for the better in Delhi due to the orders and directions by the High Court of Delhi and the Supreme Court in the last two years. This Referencer contains the summary of all the directions and best practices to be followed by the three main agencies involved in motor accident claim cases, namely, the Police, the Insurance Companies, and the Motor Accident Claims Tribunals. It is an exhaustive reference book for dealing with MACT cases as it contains summary of all the directions, procedure, and best practices to be adopted by the three agencies involved in settlement of accident claims. It is an important resource for judges outside Delhi also as it contains various directions of the Supreme Court and other High Courts on the subject.

Delhi Judicial Academy is presenting this Referencer with the hope that it will be widely used by Judges across the country while dealing with motor accident claims for expeditious and just disposal of those cases. We are optimistic that the Agreed Procedure developed by the Delhi Police will be adopted in many more States providing the long needed succour to accident victims.



*Ved Kumari*

**Prof. (Dr.) Ved Kumari**  
Chairperson  
Delhi Judicial Academy

## INTRODUCTION

India has the largest number of road accidents in the world. The number of accidents in India claim more lives than in China. One lakh people die in road accidents in a year and the average number of deaths per day is more than 300, meaning thereby that more than ten persons die every hour. Motor vehicle accidents are increasing at an alarming rate.

Many years ago, one of my friends visited Canada where he met with an accident. He was immediately rushed to the hospital. The police immediately informed the Insurance Company of the insured vehicle whereupon the Insurance Company deputed their officer who visited the hospital and met my friend and also the Medical Superintendent to find out how much expenses were likely to be incurred on his treatment. On the basis of the statement of the Medical Superintendent, the officer prepared a cheque of US \$ 6000/- and offered the same to my friend without prejudice so that if more expenses are incurred, the same could be claimed later. The payment was made within 24 hrs of the accident. As a result, my friend was not burdened with any medical expenses.

The Insurance Companies in our country are aware of this procedure and they actually implement the same in case of loss/damage of the motor vehicles. If a car is damaged in an accident, the Insurance Company immediately appoints a surveyor who inspects the vehicle on the same day, takes the photographs, discusses the estimated loss with the workshop and gives clearance for repair of the vehicle within 24 hours. The cheque for the expenses on the repair of the vehicle is paid directly to the workshop.

In case of death of victims of road accident, the principles of calculation of compensation are well settled. The age and income of the victim and the number of dependants of the deceased victims have to be verified to compute the compensation. If the officer of the Insurance Company visits the house of the deceased victim immediately after the accident, these three things could be ascertained and necessary documents can be collected. At the time of grief, there would not be any possibility of manipulation/exaggeration and the compensation on that basis could be tendered to the family of the deceased victim. In the case of injury, the visit to the hospital and statement of the Medical Superintendent can give a very clear estimate of the expenditure likely to be incurred on the treatment. In addition, photographs can be taken and copies of the medical record can be collected and the amount of compensation could be tendered to the victims immediately.

The problem is acute for most of the victims of the road accidents who are poor persons walking on the road or riding on bicycles/scooters. The victims of the road accident need the compensation immediately. The death of the sole bread-earner of the family leaving behind old and infirm parents, helpless wife, and minor children leads them to starvation. Similarly, permanent disability or an incurable injury to the sole bread-earner of a family leads to equally anomalous situation. The drivers of the cars/trucks have least respect for the road users and they do not even care to stop and provide medical aid to the victims of the road accidents. The insurance companies display little respect for the law providing for compensation to the victims of the road accidents and they wait for a case to be filed before the Motor Accidents Claims Tribunal and on receipt of summons also, no steps are taken to resolve the case and the trial goes on for years.

Till June, 2009, the victims of road accidents were not given the compensation without filing a claim petition before the Motor Accidents Claims Tribunal even if the vehicle was validly insured. Consequently, the victims were forced to file an application for compensation before the Motor Accident Claims Tribunal and were entangled in an unnecessary, lengthy and costly litigation. Further, the law as it stood required the claimant to prove that the driver of the vehicle was guilty of rash and negligent driving. The burden thus

placed was very heavy and difficult to discharge by the claimants. The records of the police investigation were not made available to the Tribunal. The police officers, who investigated the accidents, were seldom available to give evidence and assist the Tribunal in coming to a proper conclusion. The insurance companies, in quite a few cases, took an unreasonable stand and raised all sorts of untenable pleas just to thwart the relief to the dependants. In many of the claims, it turned out to be beyond the capacity of the claimants to maintain their claim in a Court of law. Due to inordinate delay in the disposal of the petition before the Motor Accident Claims Tribunal, the badly needed relief to the claimants was not available for several years. Further time was taken in appeals. All along, the dependants had to carry on without any relief.

All this has been a matter of serious concern. Various legislative changes and judicial decisions of various Courts have created procedures and principles creating best practices to deal with the range of issues relating to Motor Accidents Claims.

Section 158(6) was incorporated by an amendment in the Motor Vehicles Act in 1994 which provides that the SHOs shall submit an Accident Information Report to the Motor Accident Claims Tribunals within 30 days of the accident and the Claims Tribunal shall treat the said report as a claim petition and conduct an inquiry into the same. This provision was not being implemented by the Delhi Police. In 2009, however, the Delhi Police agreed to strictly implement Section 158(6) of the Motor Vehicles Act. The Delhi Police also agreed to take additional measures in this regard which came into force on 1st July, 2009. On 13th July, 2009, Government of NCT of Delhi also notified the Delhi Motor Accidents Claims Tribunals Rules, 2008 which were pending since 1999.

Vide order dated 5th November, 2009, the Delhi High Court appointed a Committee comprising of Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law & Justice and Company Affairs; and Joint Commissioner of Delhi Police to evolve a mechanism for time-bound settlement of motor accident claims. The said Committee consulted all the seventeen Insurance Companies and submitted an Agreed Procedure which was approved by Delhi High Court and it came into force from 2nd April, 2010.

The Agreed Procedure provides: First, the police will carry out complete investigation within 30 days and submit a report to the Motor Accident Claims Tribunal. Second: the insurance companies will compute the compensation within 30 days thereafter and inform the Tribunal. Three: if the amount offered is acceptable to the claimant, it shall be paid within 30 days. Fourth: if the offer is not acceptable or the Tribunal finds it not fair, the Tribunal shall decide within 30 days, meaning thereby that the claimants shall get the award amount within 90 to 120 days of the accident. Thus, what took 5 to 10 years in Delhi will hopefully be over in a few months.

The Claims Tribunal Agreed Procedure is based on the consent of all the seventeen Insurance Companies and Delhi Police. Hence, the same cannot be strictly enforced outside Delhi without the consent of the local police but officers in other jurisdiction may initiate conversations with the concerned parties on similar lines.

The Claims Tribunal Agreed Procedure has revolutionised the motor accident compensation law inasmuch as the claimants get the compensation within 120 days of the accident without the need of filing a claim petition. However, the successful implementation of Claims Tribunal Agreed Procedure depends upon the strict implementation by the Police, Insurance Companies as well as the Claims Tribunals. The Delhi Police has prepared a Claims Investigation Manual and has given the training to the Inspectors for investigation of motor accident cases. Compensation in more than 800 cases has been awarded to the claimants within 120 days by implementing the Claims Tribunal Agreed Procedure. However, there is need to sensitise officers of

the Insurance Companies so that the decision as to the amount of compensation payable in accordance with law is taken by them within 30 days of the receipt of the Detailed Accident Report from the Police.

Another area of serious concern is the protection of the amount awarded to the claimants. Since most of the victims of road accidents belong to the lowest strata of the society, there is serious danger of exploitation of the poor victims. To protect the award amount, the Hon'ble Supreme Court and Delhi High Court issued various directions in pursuance to which the banks have started a special scheme under which the award amount is directly deposited by the insurance companies with the bank; the interest on the fixed deposit is directly credited to the savings bank account of the claimant; the original fixed deposit is retained by the bank; the maturity amount is directly credited to the claimants account; no loan, advance or withdrawal is permitted on the fixed deposit amount and no cheque book is given to the claimant. Directions have also been given to the Claims Tribunals to release the award amount in a phased manner. The implementation of the aforesaid directions has put an end to the exploitation of the poor victims of the road accidents. It is hoped that the Insurance and the banking sector will consider framing of Annuity Certificate scheme so that instead of a cheque of FDR an Annuity Certificate can be given<sup>1</sup>.

In another appeal before the High Court, the Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA) confirmed that all insurance companies are bound to pay compensation in respect of pillion rider on a two-wheeler and occupants in a private car in terms of their policy/directives. Pursuant to this admission, the IRDA immediately issued a circular to all the insurance companies and also convened a meeting on 26th November, 2009 whereupon all the seventeen insurance companies admitted their liability. As a result, huge litigation relating to the claims of occupants in a private car and pillion rider on a two-wheeler has come to an end.

Even though the law with respect to sovereign immunity is well-settled, namely, that the Government is liable to pay compensation in respect of injury/death caused by a Government vehicle on duty, the Union of India filed an appeal before Delhi High Court raising the plea of sovereign immunity. Notice was issued in the case to the Attorney General to consider the implication of the Government raising such a plea despite well-settled law. As a result, the Government reconsidered the matter and issued an Office Memorandum dated 30th June, 2010 to all the State Governments and Administrators of all the Union Territories stating that the defence of sovereign immunity should not be pleaded by any Department of the Government in cases claiming compensation arising out motor accidents involving use of the Government vehicle on official duty. This has put an end to the litigation across the country involving plea of sovereign immunity.

The Hon'ble Supreme Court and Delhi High Court have given valuable suggestions to the Government for amendment of the law relating to motor accident claim cases. on 14 September, 2009, Ministry of Road Transport and Highways, Government of India constituted an Expert Committee to review the Motor Vehicles Act, 1988 in a comprehensive manner, study the corresponding law in leading Asian countries, and make appropriate recommendations for the amendment in the Act. The expert committee appointed by Ministry of Road Transport and Highways has submitted its report dated 31st January, 2011 to the government in which it has recommended that a separate Act be enacted with respect to the motor accident claims compensation. The Committee has also recommended the adoption of the procedure for settlement of accident cases as laid down by the Hon'ble Supreme Court and the Delhi High Court. The Committee has also recommended the cashless treatment to the victims of the road accident during first 72 hours of the accident.

This Motor Accident Claims Referencer is a compilation of these and many more initiatives and directions

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<sup>1</sup> See discussion on paying out the compensation in case for annuity certificate at [www.justicecourtsanddelays.in](http://www.justicecourtsanddelays.in).

by the Hon'ble Supreme Court, Delhi High Court and other High Courts, over a period of time. The number of Motor Accident Claims that are filed every year is huge. Judges who preside over these high-volume courtrooms have a specially difficult task. While presiding over a tremendous number of cases, they must afford procedural due process to both parties. The 'inquiry', though summary, must endeavour a result that proximates the perfect, and do so in the least of time. The importance of this task cannot be overestimated because the majority of the claimants are poor and uneducated.

Considering this situation, it was thought fit to come out with this Referencer. It provides an overview of legal procedure for a judge dealing with motor accident claims. It is not a digest of law; rather, it is a readily accessible legal material for judges to use in the courtroom, providing, for example, procedural frameworks, statutory texts, and summaries of relevant case law to be used by judges while hearing cases as guide to assist in the disposition of a case. This Referencer is not a source of substantive law; rather it is a guide to procedure and practice, and a checklist for substantive law.

This Referencer is designed to help judges by providing them with an up-to-date summary of laws governing Motor Accident Claims as well as a guide to proper courtroom procedures. It is a reference tool that judges may use as they confront the range of Motor Accident Claims that come before them.

This Referencer is not exhaustive. This is meant to serve as an unbiased review of the relevant law and is not intended to advance the interests of one group (claimants, the insurance company, or the owner / driver) at the expense of the other.

This Referencer has been created as a significant part of the current move to bring about efficiency in, and streamline procedures before Motor Accident Claims Tribunals. It is hoped that the Presiding Officers of the Motor Accident Claims Tribunals will find this Referencer to be a valuable tool in their courts' legal preparedness. It is intended to increase communication between the Presiding Officers, the investigating police, and the parties; prevent delays; and increase efficiencies.

Before closing, a few words of advise to fellow judicial officers. It is suggested that all Presiding Officers should maintain a separate diary to note down their thoughts – solutions – on procedure and practice as they occur to them while going through the judicial process. These thoughts, unless noted down on the same day in the evening, are soon forgotten. Copying them at the end of the week or month in the second part of the diary (which part may be structured as per this Referencer), and then making it available for discussion at the time of the revision, will help achieve the best possible procedures. It is hoped that the Forms for Claim Tribunal as prepared in this Referencer will be improved by the presiding officers by making daily notes in the diary. Such suggestions may be discussed and shared in periodical conferences under the aegis of Delhi Judicial Academy.

This Motor Accident Claims Referencer begins with the compilation of Frequently Asked Questions as a ready reckoner to assist the reader in finding quick and short answers. Details of judgments laying down those principles and procedures may be found in the eight substantive Chapters following the FAQ. These Chapters deal with various aspects relating to procedure, rights and duties of various parties to Motor Accident Claims, computation of compensation, etc.. The ratio of the judgments relating to the duties of Police to file the Accident Information Report before the Claims Tribunals, procedure for investigation, prosecution of owner/driver of uninsured vehicles and holders/forgers of fake driving licences have been put in Chapter-1; role of Motor Accident Claims Tribunals, cognizance of Accident Information Report by the Claims Tribunals, scope and nature of inquiry, deposit of award amount and directions relating to protection of award amount has been put in Chapter-2; and the relevant judgments relating to role of insurance companies have been put in Chapter-3. The scheme of settlement of cases through Claims Tribunal Agreed Procedure and action plan for settlement of old cases has been put in Chapter-4, the

principles of computation of compensation in Chapter-5, salient features of Delhi Motor Accident Claims Tribunal Rules, 2008 in Chapter-6, and doctrine of sovereign immunity in Chapter-7. Suggestions for amendment of law have been compiled in Chapter-8. Lastly, the Referencer contains Annotations of cases giving quick access to the reader to the relevant case law on the subject. The List of Cases may be consulted to locate the detailed discussion in a given case.

In the end, I want to acknowledge the assistance given by different persons in preparation of this Referencer. I am grateful to the guidance and encouragement provided to me by Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India, to delve deeper in the subject matters specially on aspects relating to computation of compensation. I express my heartfelt thanks to Hon'ble Mr. Justice Dipak Misra, Chief Justice, High Court of Delhi for writing the Foreword to this Referencer giving due importance to sharing good practices among Judges in the country. I take this opportunity to record my appreciation of the Judicial Education and Training Programme Committee of the High Court of Delhi headed by Hon'ble Mr. Justice A. K. Sikri with Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Ms. Justice Indermeet Kaur as members, under whose able guidance and directions the Delhi Judicial Academy is expanding its horizons and taking up new ventures. I am thankful to Prof. (Dr.) Ved Kumari, Chairperson, Delhi Judicial Academy for her expert advice on organisation of materials in this Referencer and her efforts in its publication. Mr. Arun Mohan, Senior Advocate has offered valuable insights and suggestions that have greatly enriched the subject. Mr. Saurabh Kansal, Law Researcher has competently assisted in research, formatting and footnoting as well as provided valuable inputs. My Private Secretary, Mr. Surender Pal and other secretarial staff have stayed late hours and provided able assistance in the typing of the Referencer.



A handwritten signature in blue ink, appearing to read 'J.R. Midha', with a horizontal line underneath.

**J.R. Midha**

**Judge, High Court of Delhi**

## FREQUENTLY ASKED QUESTIONS

- Q.1 What are the duties of the police with respect to the filing of the Accident Information Report (AIR)?
- Ans. The SHO of the police station concerned within whose jurisdiction the accident has occurred has to submit an Accident Information Report (AIR) to the Claims Tribunal within 30 days of the recording of the FIR with an advance copy to the concerned Insurance Company. The police is also required to submit the documents including FIR, MLC/post-mortem report, fitness, permit and the relevant documents for assessment of compensation to the Claims Tribunal along with the report in Chapter 1
- Q.2 What steps have been taken by Delhi Police to implement Section 158(6) of the Motor Vehicles Act, 1988?
- Ans. Delhi Police has taken various steps to implement Section 158(6) of the Motor Vehicles Act on the directions of Delhi High Court in the case of *Rajesh Tyagi v. Jaibir Singh*<sup>2</sup> in June, 2009. The details of the steps taken are given in Chapter 1.
- Q.3 What are the directions of the Hon'ble Supreme Court and Delhi High Court with respect to the Accident Information Report?
- Ans. (i) The Accident Information Report has to be submitted along with attested copy of the FIR, site plan, photograph, registration cover, driving licence, permit and fitness certificate and post-mortem report (in case of death) by the SHO of the concerned Police Station before the Claims Tribunal within 30 days of the FIR with a copy to the insurance company.
- (ii) The police shall also collect and furnish the additional particulars regarding age, income and dependants of the victim of the road accident.
- (iii) The police shall notify the first date of hearing to the victim or the family of the victim (in the case of death) and the driver, owner and the insurer. If so directed, the police may secure their presence on the first date of hearing.
- (iv) The directions are reproduced in Chapter-1.
- Q.4 What are the directions of the Delhi High Court to Police with respect to the accidents between the period 1994 to 2009?
- Ans. The Delhi Police has to file Accident Information Report in respect of all pending cases filed before the Claims Tribunal after 14<sup>th</sup> November, 1994 and to serve the summons on the driver, owner and eye-witness, if not, already served. Delhi Police is also required to place on record the relevant documents before the Claims Tribunals including FIR, MLC, post-mortem report, site plan, driving licence, registration cover, insurance policy and fitness, permit in pending cases. The directions are reproduced in Chapter-1.
- Q.5 What is the procedure for investigation of motor accident cases by the Police?

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<sup>2</sup> MANU/DE/3601/2009 : II (2010) ACC 781.

Ans. The procedure for investigation of motor accident claim cases by the police in terms of the directions issued by the Hon'ble Supreme Court and Delhi High Court has been summarized by Delhi High Court in *Mayur Arora v. Amit*<sup>3</sup> and has been reproduced in Chapter-1.

Q.6 Can the driver/owner of an un-insured vehicle involved in an accident be prosecuted under Motor Vehicles Act?

Ans. The driver and owner of the un-insured vehicle are liable to be prosecuted under Section 196 of the motor Vehicles Act with imprisonment which may extend to three months, or with fine which may extend to ₹ 1000/-, or with both. The Hon'ble Supreme Court as well as Delhi High Court have issued directions to the Police to prosecute the owners/drivers of the un-insured vehicles under Section 196 of the Motor Vehicles Act. The directions are given in Chapter-1.

Q.7 What action can be taken against the drivers holding fake driving licence?

Ans. Forging and holding a fake driving licence is a serious offence and the person holding a fake driving licence is a danger to society inasmuch as he is not legally entitled to drive the motor vehicle and may not be knowing driving at all or his driving licence may have been suspended for involvement in some accident. The persons holding fake driving licence are liable to be prosecuted under law and cannot be permitted to drive on the road. The Hon'ble Supreme Court and Delhi High Court have issued directions for prosecution of the drivers holding fake driving licence as detailed in Chapter-1.

Q.8 What are the duties of the Claims Tribunal upon receipt of the Accident Information Report from the police?

Ans. The Claims Tribunals have to treat the AIR received from the police as a claim petition under Section 166 (4) of Motor Vehicles Act. The Hon'ble Supreme Court and Delhi High Court have issued various directions in this regard which are detailed in Chapter-2.

Q.9 What is the scope of Inquiry by the Claims Tribunal under Section 168 and 169 of the Motor Vehicles Act?

Ans. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record. The Delhi High Court has passed directions in this regard which are reproduced in Chapter-2.

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<sup>3</sup> MANU/DE/1064/2010.

Q.10 What is the nature of Inquiry under Section 168 and 169 of the Motor Vehicles Act?

Ans. The nature of inquiry before the Claims Tribunal is enumerated in Chapter-2.

Q.11 What is the procedure to be followed by the Claims Tribunal for conducting the inquiry into a motor accident claim?

Ans. Delhi High Court has summarized the procedure to be followed by the Claims Tribunal in motor accidents cases in *Mayur Arora v. Amit*<sup>4</sup>. The summary of procedure is reproduced in Chapter-2.

Q.12 How should the Claims Tribunal protect the award amount?

Ans. Most of the victims of the road accidents are from the lowest strata of the society and sole bread winners leaving behind large family. There is illiteracy in the country and minor children are involved. The legal representatives of the deceased have no knowledge of investment and saving. There is a danger of the money being wasted or even the victims being cheated. In order to protect the award amount from being wasted the Claims Tribunal shall examine the claimants to ascertain their financial condition to pass order with regard to the shares and mode of disbursement and the period and amount to be kept in the fixed deposit. Some portion of the award amount be immediately released to the claimants and the remaining amount be kept in the fixed deposit in such a manner that the claimants get the same in a phased manner. The original fixed deposit receipt should be retained by the Bank in safe custody and the monthly interest be credited automatically in the savings bank account of the claimant. The maturity amount of the fixed deposit be credited automatically in the savings bank account. No cheque book to be issued to the claimants and no loan, advance or withdrawal be allowed on the fixed deposit without the permission of the Claims Tribunal. The directions of the Hon'ble Supreme Court and Delhi High Court in this regard are given in Chapter-2.

Q.13 What is the procedure for deposit of the award amount?

Ans. The Insurance Company has to deposit the award amount within the time provided in the award, failing which the Claims Tribunal shall proceed to recover the award amount in terms of the directions of the Delhi High Court in the case of *New India Assurance Company Ltd. v. Kashmiri Lal*<sup>5</sup>. The Insurance Company is required to give notice of deposit to the Claimants and to pay interest till the notice of deposit to the claimants under Order XXI Rule 1 of the Code of Civil Procedure. The directions of Delhi High Court in this regard are given in Chapter-2.

Q.14 What are the powers of MACT to put questions or order production of documents?

Ans. Section 165 of the Indian Evidence Act, 1872 empowers the Judge to ask any question, in any form, at any time, from any witness or parties, about any fact, relevant or irrelevant and may order production of any document or thing. The object of Section 165 of the Indian Evidence Act is that the Judge is not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter and question witnesses on points which the lawyers for the parties have either overlooked or left obscure or wilfully avoided. The judgment of Delhi High Court in this regard is

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<sup>4</sup> *Ibid.*

<sup>5</sup> 2007 ACJ 688.

given in Chapter-2.

Q.15 Is there any checklist for use of the Claims Tribunals?

Ans. The Delhi High Court has prepared a checklist for use of the Claims Tribunals in the case of *Mayur Arora v. Amit*<sup>6</sup> which is provided in Chapter-2.

Q.16. What are the duties of the Insurance Companies in motor accident cases?

Ans. Where the vehicle is validly insured, the Insurance Company is required to investigate the claim upon receipt of AIR and to submit their response before the Claims Tribunal. If there is no defence under Section 149 of the Motor Vehicles Act, the Insurance Company is required to deposit the admitted amount according to their computation before the Claims Tribunal. The Insurance Company is also required to appoint a designated officer upon receipt of the intimation of the accident and such officer shall be responsible for processing and taking a decision in respect of that claim. The duties of the Insurance Company are enumerated in detail in Chapter-3.

Q.17 Is the Insurance Company liable in respect of occupant in a private car and a pillion rider on a two-wheeler insured under a comprehensive/package insurance policy?

Ans. The Insurance Company is liable to pay compensation for the death or injury of a pillion rider on a two-wheeler or occupants in a private car insured under a comprehensive/package policy. The judgment of Delhi High Court in this regard is given in Chapter-3.

Q.18 What is the special scheme for settlement of motor accident claims within 120 days?

Ans. The Delhi High Court constituted a Committee comprising of Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law & Justice and Company Affairs; and Joint Commissioner of Delhi Police which consulted all the seventeen Insurance Companies and with their consent, formulated a scheme for settlement of motor accident claims within 120 days. The Agreed Procedure provides: First, the police to carry out complete investigation within 30 days and submit a report to the Motor Accident Claims Tribunal. Second, the insurance companies to compute the compensation within 30 days thereafter and inform the Tribunal. Third, if the amount offered is acceptable to the claimant, it shall be paid within 30 days. Fourth, if the offer is not acceptable or the Tribunal finds it not fair, the Tribunal shall decide within 30 days. It means that the claimants shall get the award amount within 90 to 120 days of the accident. The detailed scheme is given in Chapter -4.

Q.19 What are the principles for computation of compensation in death cases?

Ans. The principles for computation of compensation in death cases are given in Chapter-5.

Q.20 What are the principles for computation of compensation in case of death of a child?

Ans. The principles for computation of compensation in case of death of a child are given in Chapter -5.

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<sup>6</sup> *Supra* note 2.

Q.21 What are principles for computation of compensation in case of death of a foetus?

Ans. The principles for computation of compensation in case of death of a foetus are given in Chapter -5.

Q.22 What are principles for computation of compensation in case of death of a professional?

Ans. The principles for computation of compensation in case of a death of a professional are given in Chapter -5.

Q.23 What are principles for computation of compensation in case of death of a housewife?

Ans. The principles for computation of compensation in death in case of a house are given in Chapter -5.

Q.24 What are principles for computation of compensation in case of death of a non-dependant spouse/legal representative?

Ans. The principles for computation of compensation in death of a non-dependent spouse/legal representative are given in Chapter -5.

Q.25 What are principles for computation of compensation in case of death of a person whose income is not proved by documentary evidence?

Ans. The principles for computation of compensation in death of a person in respect of income is not proved by documentary evidence laid down by Delhi High Court in the case of *Kiran Devi v. Surjeet Yadav*<sup>7</sup> are reproduced in Chapter-5.

Q.26 What are the principles for computation of compensation in injury cases?

Ans. The principles for computation of compensation in injury cases are given in Chapter-5.

Q.27 What are the principles for assessment of permanent disability?

Ans. The principles for assessment of permanent disability are given in Chapter-5.

Q.28 What are the principles for assessment of loss of earnings due to permanent disability?

Ans. The principles for assessment of loss of earnings due to permanent disability are given in Chapter-5.

Q.29 What are the principles for assessment of general damages in injury cases?

Ans. The principles for assessment of general damages in injury cases are given in Chapter-5.

Q.30 Can an uninsured vehicle be released on supardari?

Ans. Rule 6 of Delhi Motor Accident Claims Tribunal Rules, 2008 prohibits release of an uninsured

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<sup>7</sup>MANU/DE/1059/2010.

II (2010) ACC 289

motor vehicle involved in accident unless the registered owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in motor accident claim cases. On the expiry of three months of the seizure of such vehicle, the motor vehicle shall be sold in public auction by the Magistrate and the proceeds thereof shall be deposited with the Claims Tribunal within 15 days to be adjusted against the award. The salient features of Delhi Motor Accidents Claims Tribunal Rules, 2008 are given in Chapter-6.

Q.31 Can the award of the Claims Tribunal be enforced like a decree?

Ans. The Claims Tribunal is vested with all powers of a civil court in execution of a decree for enforcement of award under Rules 31 and 32 of Delhi Motor Accident Claims Tribunal Rules, 2008. Salient features of the Delhi Motor Accident Claims Tribunal Rules, 2008 are given in Chapter-6.

Q.32 Can the Government claim sovereign immunity in a motor accident claim arising out of accident of a Government vehicle on official duty?

Ans. The doctrine of sovereign immunity has no application insofar as compensation under Motor Vehicles Act is concerned. In pursuance to the directions issued by Delhi High Court, Union of India has issued a memorandum dated 30<sup>th</sup> June, 2010 to Chief Secretaries of all the States and Administrators of all the Union Territories stating that the plea of sovereign immunity should not be pleaded by Government in cases of motor accident claim cases involving use of a Government vehicle on duty. The directions in the said case are reproduced in Chapter-7.

## CHAPTER-1

### ROLE OF POLICE IN MOTOR ACCIDENT CLAIM CASES

#### I. Accident Information Report (AIR)

Section 158(6) was incorporated in the Motor Vehicles Act in 1994 and it provides that SHO of the Police Station shall send Accident Information Report (AIR) to the Claims Tribunal within 30 days of the recording of the FIR and a copy to the concerned Insurance Company. The object of Section 158 (6) of the Motor Vehicles Act is that the police should set the motor accident claim into motion as police is the first agency to take cognizance of the accident and it has the entire material required for initiating the proceedings for compensation.

2. On 28<sup>th</sup> October, 1996, a Public Interest Litigation titled *All India Lawyers Union v. GNCTD* was filed before Delhi High Court regarding non-compliance of Section 158(6) of the Motor Vehicles Act, 1988, in which notice was issued to the Delhi Police on 17<sup>th</sup> October, 1997<sup>8</sup> in reply to which Delhi Police submitted an affidavit before the Court that the SHOs were not aware of the latest amendment of the Motor Vehicles Act and, therefore, the said provision was not complied with. It was further submitted that the instructions were issued to all concerned to strictly comply with Section 158(6) of the Motor Vehicles Act, 1988. The writ petition was disposed of on 16<sup>th</sup> March, 1998<sup>9</sup> upon assurance of the Delhi Police that they shall strictly comply with the said provision.
3. Despite the aforesaid assurance of the Police and order dated, Section 158(6) was not complied with by the Delhi Police. Two more Public Interest Litigations were filed in Delhi High Court, namely, *All India Lawyers Union v. Union of India – C.W.P.Nos.4614/1996* and *All India Lawyers Union v. Govt. of National- Capital Territory Of Delhi C.W.P. Nos. 506/1999*. An affidavit dated 6<sup>th</sup> September, 1999 was filed by DCP(HQ) of Delhi Police in CWP No.506/1999 in which it was stated that the reports regarding accident cases were being sent to concerned Claims Tribunals whereupon the Tribunals were directed to furnish the requisite information and it was noticed that the police was only sending the copies of FIRs but no reports under Section 158(6) of the Motor Vehicles Act, 1988. The High Court disposed of both the writ petitions by a common order dated 12<sup>th</sup> April, 2001<sup>10</sup> again directing the police to strictly comply with the requirements of the statutory provisions.
4. The non-compliance of Section 158(6) of the Motor Vehicles Act, 1988 was brought to the notice of the Hon'ble Supreme Court in the case of *General Insurance Counsel v. State of Andhra Pradesh*<sup>11</sup>. Vide judgment dated 9<sup>th</sup> July, 2007 the Hon'ble Supreme Court directed all the State Governments and Union Territories to instruct all concerned police officers to comply with the requirements of Section 158(6) of the Motor Vehicles Act read with Rule 150 and Form 54 of the Central Motor Vehicles Rules. It was further directed that periodical checking be done by the concerned Inspector General of Police to ensure that the requirements are being complied and appropriate action be taken in cases of non-compliance.

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<sup>8</sup> MANU/DE/1250/1997.

<sup>9</sup> MANU/DE/0379/1998.

<sup>10</sup> MANU/DE/0280/2001, 2002 ACJ 2019..

<sup>11</sup> IV (2007) ACC 385 (SC)

**A. Directions of Hon'ble Supreme Court to Director Generals of Police of all States in respect of AIR**

In *Jai Prakash v. National Insurance Company*<sup>12</sup> the Hon'ble Supreme Court issued the following directions to the Director Generals of police of all states:-

**Directions to Police Authorities**

8. The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

- (i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules, 1989 ('AIR' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54; the police should also collect and furnish the following additional particulars in the AIR to the Tribunal: (i) The age of the victims at the time of accident; (ii) The income of the victim; (iii) The names and ages of the dependent family members.
- (ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, Insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.
- (iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.
- (iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim (in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing.

**B. Directions of Delhi High Court to Police**

The Delhi High Court passed the following directions to Delhi Police in *Rajesh Tyagi v. Jaibir Singh*<sup>13</sup> on 8<sup>th</sup> June, 2009:-

1. In terms of the said undertaking of the Delhi Police, the Accident Information Report (Form 54) be submitted with the concerned Motor Vehicles Tribunal within 30 days of the registration of FIR of accident. The Accident Information Report shall contain the following additional information:-

14. In case of death: Names and address of the next of kin of the deceased.

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<sup>12</sup> 1 (2010) ACC A SC.

<sup>13</sup> *Supra* note 2.

15. In case of injury: Nature of injuries suffered
16. Names and addresses of the eye-witnesses
17. In case of transport vehicles :
  - (i) Particulars of the permit
  - (ii) Particulars of the fitness certificate
2. The Accident Information Report shall be accompanied by the attested copies of the FIR, site plan, photographs, registration cover, driving licence, insurance policy, permit and fitness certificate of the offending vehicle. MLC and Post-mortem report shall be submitted as soon as they are received. If any of the aforesaid information or document is not available at the time of submitting the AIR, the same may be submitted as soon as the same is received.
3. Simultaneously upon filing of AIR by the SHO with the Claims Tribunal, the copy of the AIR be furnished to the Insurance Company along with the aforesaid documents.

**C. Directions of Delhi High Court to Police with regard to accidents between the period 1994- 2009**

With respect to the accidents during the period 1994-2009, Delhi High Court vide order dated 5<sup>th</sup> November, 2009 in *Rajesh Tyagi v. Jaibir Singh*<sup>14</sup> directed the Delhi Police to carry out the following action:-

- (i) The Delhi Police shall file Accident Information Reports under Section 158(6) of the Motor Vehicles Act in respect of all the pending cases filed before the Claims Tribunals after 14<sup>th</sup> November, 1994.
- (ii) The Delhi Police shall collect the list of all pending cases filed after 14<sup>th</sup> November, 1994 from the Claim Tribunals and shall file the Accident Information Reports at the time of the hearing of the claim cases before the learned Tribunal.
- (iii) The service of summons on the driver, owner and eye-witness in all pending cases, if not effected, shall be effected through the Delhi Police who shall ensure their service and production before the concerned Claims Tribunal.
- (iv) The Delhi Police shall also place on record the relevant documents before the Claims Tribunal including FIR, MLC/ post-mortem report, site plan, driving licence, registration cover, Insurance policy, fitness, permit, etc., at the time of hearing of the cases before the Claims Tribunal.
- (v) The Delhi Police has already deputed a Naib Court in every Claims Tribunal. The Naib Court shall remain present at the time of hearing of all the cases and the Claims Tribunal shall pass the appropriate order for filing of the report under Section 158(6), service to the owner, driver, and eye-witness or production of documents, as the case may be. The copy of such orders shall be given dasti to Naib Court whereupon the Naib Court shall note down the next date of hearing of the cases, coordinate with the concerned Police Stations and provide the status report of those cases to the Court on the next date of hearing. The compliance of this order shall be

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<sup>14</sup> MANU/DE/3600/2009.

done by Delhi Police in a phased manner.

- (vi) In the event of non-compliance of this order by Delhi Police, the concerned Tribunal shall bring the same to the notice of the ACP concerned in the monthly meeting between Claims Tribunals and the ACPs in terms of order dated 8<sup>th</sup> June, 2009.

#### **D. Steps undertaken by Delhi Police**

The Delhi Police has taken following actions to implement Section 158(6) of the Motor Vehicles Act on the directions of Delhi High Court in the case of *Rajesh Tyagi v. Jaibir Singh*<sup>15</sup> in June, 2009:-

- (I) A website ([www.dpaccicclaim.in](http://www.dpaccicclaim.in)) containing all relevant information/ documents which can be downloaded by the claimants, Insurance Companies as well as Tribunals.
- (ii) Register at police station level indicating the details such as FIR Number, date of dispatch of Form 54 to the learned MACT, etc. A column containing details of information not included in Form 54 along with reasons for its non availability is maintained in the register.
- (iii) Delivery of FIR to the Claims Tribunals on the date of registration.
- (iv) Entry in red ink in FIR index about date of dispatch of Accident Information Report (hereinafter referred to as AIR).
- (v) Mandatory checking of AIR dispatch records during six monthly inspections by Gazetted Officer.
- (vi) ACPs/SHOs to forward final reports to the Magistrate only after dispatch of AIR to the learned MACT, owner, and insurer of the offending vehicle and the victim/his or her family.
- (vii) MACT Monitoring Cell headed by Inspector in each District to monitor delivery of AIR (Form 54) in time.
- (viii) Monthly meeting of ACPs, PG Cell, In-charge of MACT Monitoring Cells with the Claims Tribunals.
- (ix) Appointment of Naib Court (a police officer) by District DCPs with the Claims Tribunals.
- (x) Review of pendency of AIR by District DCPs in weekly law and order meeting.
- (xi) Placement of AIR on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.
- (xii) Installation of checklist board in SHOs rooms.
- (xiii) Establishment of District Cells as pilot project in three districts.

#### **II Procedure for Investigation of Motor Accident Cases by Police**

The procedure for investigation of motor accident claim cases by the police under Section 158(6) of the Motor Vehicles Act read with the Delhi Motor Accidents Claims Tribunal Rules, 2008 in terms of the aforesaid directions issued by the Hon'ble Supreme Court and the High Court was summarized by Delhi High Court in *Mayur Arora v. Amit*<sup>16</sup> as under:-

<sup>15</sup> *Supra* note 2.

<sup>16</sup> *Supra* note 3.

1. Immediately upon the receipt of the intimation of the accident, the Investigating Officer of the police shall inspect the spot of accident, prepare a site plan and also take photographs of the accident spot. The Investigating Officer shall also conduct spot inquiry by examining the eye-witnesses/bystanders.
2. The Investigating Officer shall intimate the accident to Accident Claims Tribunal within 48 hours of the accident.
3. If the particulars of insurance are available, the intimation of the accident shall also be given to the concerned Insurance Company of the offending vehicle.
4. The particulars of the accident shall also be uploaded on the website of Delhi Police.
5. Immediately upon receipt of intimation, the Insurance Company shall appoint a Designated Officer for each case. The Designated Officer shall be responsible for dealing/processing of that case and for taking decision for the amount of compensation payable in accordance with law after the Accident Information Report by the police.
6. The Investigating Officer shall collect the relevant evidence relating to the accident as well as computation of compensation.
7. The Investigating Officer shall file the Accident Information Report with the Claims Tribunal within 30 days of the accident with copy to the Insurance Company and the claimant.
8. The Accident Information Report shall be accompanied by certified copies of the FIR, site plan, photographs, registration cover, driving licence, Insurance policy, permit, MLC, post-mortem report, challan and the documents relating to the proof of age, occupation, income and the number of legal representatives and their age in death case and proof of injuries and expenditure incurred by the insured in injury cases.
9. Where the Investigating Officer is unable to complete the investigation of the case within 30 days for reasons beyond his control, such as cases of hit and run accidents, cases where the parties reside outside the jurisdiction of the Court cases, where the driving licence is issued outside the jurisdiction of the Court, or where the victim has suffered grievous injuries and is undergoing treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time whereupon the Claims Tribunal shall suitably extend the time in the facts of each case.
10. The Investigating Officer shall produce the driver, owner, claimant and eye-witnesses before the Claims Tribunals along with the Accident Information Report. However, if the Police is unable to produce the owner, driver, clamant and eye-witnesses before the Claims Tribunal on the first date of hearing for reasons beyond its control, the Claims Tribunal shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. The Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the Accident Information Report before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Claims Tribunal.
11. The police shall follow the Manual prepared by them for investigation of motor accident claim cases and filed in the case of *Rajesh Tyagi v. Jaibir Singh*. The relevant instructions contained in the Police Manual and the standing order No.157/2008 at page Nos.14 to 21 and the check list prepared by the police in this regard are attached to this order for ready

reference of the Claims Tribunal.

12. The Investigating Officer shall also comply with the directions given by this Court in *Rajesh Tyagi v. Jaibir Singh* and *Abdul Subhan v. State (NCT of Delhi)*.<sup>17</sup> The checklist prepared by the police shall be attached to the Accident Information Report.

### III **Prosecution of Owner/Driver of Uninsured Vehicles**

1. The Hon'ble Supreme Court in the case of *Jai Prakash v. National Insurance Company*<sup>18</sup> has issued following directions for Prosecution of Owner/Driver of Uninsured Vehicles:

Section 196 of the Act provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 196 shall be punishable with imprisonment which may be extended to three months, or with fine which may extend to ₹ 1000/-, or with both. Though the statute requires prosecution of the driver and owner of uninsured vehicles, this is seldom done. Thereby a valuable deterrent is ignored. We therefore direct the Director Generals to issue instructions to prosecute drivers and owners of uninsured vehicles under Section 196 of the Act.

2. Delhi Police has not been prosecuting the owners and drivers of uninsured vehicles under Section 196 of the Motor Vehicles Act. The Delhi High Court issued Show Cause Notice to the Commissioner of Police on 19th August, 2009 in *Rajiv Dhawan v. Phirtu*<sup>19</sup> in pursuance to which the Delhi Police has issued a Standing Order No.157/2009 for adding Section 196 of the Motor Vehicles Act in all pending investigations and for filing of supplementary challans in the cases pending trial in respect of uninsured vehicles.

### IV **Prosecution of Holders/Forgers of Fake Driving Licences**

There are large number cases relating to fake driving licences and no action is taken against the fake driving licence holders as well as persons who fabricate/forged fake driving licences. Forging and holding a fake driving is a serious offence and the person holding a fake driving licence is a danger to the society inasmuch as he is not legally entitled to drive the motor vehicle and may not be knowing driving at all or his driving licence may have been suspended for involvement in some accident. The persons holding fake driving licence are liable to be prosecuted under law. The fake driving licence holders should not be permitted to drive on the road.

#### A. **Directions of Hon'ble Supreme Court**

In the case of *Jai Prakash v. National Insurance Company*,<sup>20</sup> the Hon'ble Supreme Court has issued following directions in this regard:

20. Whenever the insurance companies find that the driver of the insured vehicle possessed fake/forged driving license, they should lodge a complaint with the concerned police for prosecution. This will reduce the incidence of fake licences and increase the road travel safety.

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<sup>17</sup> 133 (2006) DLT 562.

<sup>18</sup> *Supra* note 12.

<sup>19</sup> II (2010) ACC 929.

<sup>20</sup> *Supra* note 12.

**B. Directions of Hon'ble Delhi High Court to deal with fake driving licences**

1. In *New India Assurance Co. Ltd. v. Rakesh Ahuja*<sup>21</sup> Delhi High Court constituted a Committee to draw up a mechanism for prosecution of fake driving licence holders/forgers under Sections 465, 468, 471 and 474 of the Indian Penal Code and to make Delhi roads safe by ensuring that the fake driving licence holders do not drive freely on Delhi roads any more. The Committee constituted by Delhi High Court held its meeting on 14<sup>th</sup> December, 2009 and submitted its report before the High Court on 23<sup>rd</sup> December, 2009.
2. Based upon the report of the Committee, the Delhi High Court passed the following directions on 23<sup>rd</sup> December, 2009<sup>22</sup>:-
  - (i) All complaints relating to fake driving licence by the Insurance Company and/or owner of a vehicle be made in writing to DCP/Crime, Police Headquarter, I.P. Estate, New Delhi. DCP/Crime has nominated Mr. Mohan Singh Dabas, ACP/Anti-Auto Theft Squad, Crime Branch, Phone No.011-26925457 as nodal officer to monitor the fake driving licence cases.
  - (ii) All the Insurance Companies shall make a complaint whenever they get information of fake driving licence. The Insurance Companies shall also compile the data of fake driving licences in respect of accidents which have occurred in the last three years, i.e., after 1<sup>st</sup> January, 2007 in Delhi and shall make a complaint to the DCP, Crime Branch, Delhi Police in the format given in para -11 (ii) of the order dated 3<sup>rd</sup> December, 2009. The complaint shall be accompanied by the copy of the fake driving licence. The complaint shall be transmitted electronically to Delhi Police at the E-mail ID: acp-scrb-dl@nic.in. along with the scanned copy of the licence said to be fake. The complaint shall also be made in writing duly signed by the authorized officer of the Insurance Company.
  - (iii) The Delhi Police shall take the following actions in respect of the aforesaid complaints:-
    - (a) If the case is pending investigation, then to ensure further investigation into the issue of fake driving licence in the concerned Police Station.
    - (b) In pending trial cases, to ensure filing of supplementary charge-sheet on this aspect.
    - (c) The cases in which the trial has already been completed, to ensure registration of fresh FIR by the concerned police station.
  - (iv) ACP/Anti Auto theft shall maintain record of all such complaints and action taken by police.
  - (v) Delhi Police shall create a database of information regarding fake licences and licence holders received from Insurance Companies or other sources.
  - (vi) Whenever the police registers an FIR against a person for driving with a fake licence, particulars of that FIR be entered in the entry against the information

<sup>21</sup> MANU/DE/3616/2009; IV (2010) ACC 34.

<sup>22</sup> MANU/DE/3421/2009; IV (2010) ACC 40.

received.

- (vii) The office of DCP/Crime shall prepare and maintain a tabulator chart (database) of the information received and look for any 'patterns' within it. It shall take such action according to law against those concerned as it considers proper.
  - (viii) The police shall place the information of those cases where the Driving Licence produced was found to be fake on a website so that the Transport Authorities in other States can access it and be armed with this information before issuing a Driving Licence for such a person in that State.
3. All the Insurance Companies have been directed to put the aforesaid directions to immediate compliance insofar as fresh cases of driving licences are concerned. All the Insurance Companies have also been directed to compile the data relating to the fake driving licences in respect of the accidents during the last three years and to make the complaint to Delhi Police within a period of four weeks.

**V. Checklist of Delhi Police for compliance of Claims Tribunal Agreed Procedure**

Case FIR No. \_\_\_\_\_ Date \_\_\_\_\_ u/s \_\_\_\_\_

P.S. \_\_\_\_\_ Name of IO \_\_\_\_\_

Mobile No of IO \_\_\_\_\_ AIR No \_\_\_\_\_

Note: IO must fill up the proforma by ticking the appropriate box to ensure compliance of all directions as mentioned in Claims Tribunal Agreed Procedure. The concerned SHO and ACP/SDPO shall also ensure compliance of all the points mentioned below.

**PART-I**

**IMMEDIATE ENQUIRY FORM**

(For gathering information to be submitted within 48 hours)

- 1. FIR No., date & u/s \_\_\_\_\_
- 2. Name of the Police Station \_\_\_\_\_
- 3. Source of Information \_\_\_\_\_  
(Name, Address & Tel. No.)
- a) Driver/Owner \_\_\_\_\_
- b) Victim \_\_\_\_\_
- c) Witness \_\_\_\_\_
- d) Hospital/Medical facility \_\_\_\_\_
- 4. Date \_\_\_\_\_
- 5. Time and place of accident \_\_\_\_\_

6. Nature of Accident
  - a) Simple b) Grievous c) Fatal \_\_\_\_\_  
**(if MLC is U/O, it be clarified from the doctor if the injury could be grievous)**
7. Name & address of the injured/deceased \_\_\_\_\_  
 \_\_\_\_\_
8. Whether medical attendant for victim  
 secured by erring driver/owner in terms  
 of section 134(a) MV Act \_\_\_\_\_
9. Details of the hospital where taken \_\_\_\_\_
10. Multi angle photographs to be taken \_\_\_\_\_
11. Detailed site plan (scaled in case of fatal) \_\_\_\_\_
12. Details of the eyewitnesses (attach additional sheets, if required)
  - (I) Name \_\_\_\_\_
  - (ii) Address \_\_\_\_\_
  - (iii) Contact Number \_\_\_\_\_
  - (iv) Statement \_\_\_\_\_
13. Registration Particulars of the vehicle (if available immediately)
  - (I) Registration No. \_\_\_\_\_
  - (ii) Engine No. \_\_\_\_\_
  - (iii) Chassis No. \_\_\_\_\_
14. If vehicle is registered outside Delhi,  
 the name of the RTA \_\_\_\_\_ District \_\_\_\_\_ State \_\_\_\_\_
15. Insurance Details **(in grievous injury, the Insurance Certificate and verification report regarding its genuineness be submitted to MACT within 48 hrs)**
  - (i) Name & address of the insurance company \_\_\_\_\_  
 \_\_\_\_\_
  - (ii) Policy No. \_\_\_\_\_
  - (iii) Insurance certificate and validity of policy \_\_\_\_\_
16. Details of driving license of erring driver \_\_\_\_\_
  - (i. **whether valid for the type of vehicle being driven)**
  - (ii. **whether he is holding any other license -to obtain in writing from driver)**
 \_\_\_\_\_
17. Details of driving license of the victim, (wherever applicable)  
 \_\_\_\_\_

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18. If the D/L is issued from outside Delhi,  
 the name of the RTA \_\_\_\_\_ District \_\_\_\_\_ State \_\_\_\_\_

19. Name and address of the owner / driver (if available)

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**PART-II**

(For filing of detailed accident report within 30 days)

**1. Collection of relevant evidences:-**

- (i) Photographs of the scene of accident from all angles
- (ii) In the case of death:-
  - (a) Proof of age of deceased 
    - Birth certificate
    - School certificate
    - Any other \_\_\_\_\_
  - (b) Proof of occupation
  - (c) Proof of income 
    - Salary slip
    - Income tax returns
    - Agricultural income
    - Others \_\_\_\_\_
  - (d) No. of legal representative
- (iii) In case of injuries:-
  - (a) Proof of injuries suffered (MLC etc.)
  - (b) Expenses incurred by the injured

**2. Collection of relevant documents :-**

- (i) Driving license
- (ii) R.C.
- (iii) Insurance Certificate
- (iv) Fitness (in case of commercial vehicle )
- (v) Permit (in case of commercial vehicle )
- (vi) MLC
- (vii) Death certificate
- (viii) P.M. Report
- (ix) Birth certificate of deceased
- (x) Salary slip, if employed
- (xi) Certificate of employer
- (xii) Income-Tax return
- (xiii) Prescription slip of doctor
- (xiv) Bill for medical expenses.

**3. Verification of above mentioned documents:-**

- (i) Driving license Verified   
 (to be valid for vehicle being driven)  
 If not verified, the reason thereof \_\_\_\_\_
- (ii) R.C. Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (iii) Insurance Certificate Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (iv) Fitness (in case of commercial vehicle ) Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (v) Permit (in case of commercial vehicle ) Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (vi) MLC Collected
- (vii) Death certificate Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (viii) P.M. report Collected   
 If not collected, the reason thereof \_\_\_\_\_

- (ix) Birth certificate of the deceased(s) Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (x) Salary slip Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (xi) Certificate of employer Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (xii) Income-Tax return Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (xiii) Prescription slips of doctor Verified   
 If not verified, the reason thereof \_\_\_\_\_
- (xiv) Bill for medical expenses Verified   
 If not verified, the reason thereof \_\_\_\_\_

**4. Whether Detailed Accident Report (DAR) filed with the claim Tribunals within 30 days or not.**

- (i) Filed
- (ii) If not filed, the reason thereof \_\_\_\_\_

**5. DAR shall be accompanied by the following documents:-**

- (i) Report U/S 173 Cr.P.C.
- (ii) FIR
- (iii) MLC
- (iv) PM Report
- (v) Photographs
- (vi) Site Plan
- (vii) Mechanical Inspection report
- (viii) Seizure memos
- (ix) Death Certificate
- (x) Proof of age of deceased
- (xi) Occupation and income proof of deceased
- (xii) Age of the legal representatives of the deceased
- (xiii) Proof of injuries and expenses in the case of injuries along with affidavit about the verification of the said documents

**6. Whether the driver, owner, claimants and eye-witness have been produced before the Claim Tribunals alongwith the DAR or not.**

- (i) Produced
  - Driver
  - Owner
  - Claimants
  - Eye-witness
- (ii) If not produced, the reason thereof in case of
  - Driver \_\_\_\_\_
  - Owner \_\_\_\_\_
  - Claimants \_\_\_\_\_
  - Eye-witness \_\_\_\_\_

**7. Whether copy of DAR has been furnished to the concerned insurance company or not.**

- (i) Furnished
- (ii) If not furnished, the reason thereof \_\_\_\_\_

**8. Whether copy of DAR has been furnished to the claimants or not.**

- (i) Furnished
- (ii) If not furnished, the reason thereof \_\_\_\_\_

**9. Whether copy of DAR has been furnished to the Secretary, Delhi Legal Services Authority, Central Office, Pre-Fab Building, Patiala House Court, New Delhi or not.**

- (i) Furnished
- (ii) If not furnished, the reason thereof \_\_\_\_\_

**10. Whether an advance notice has been given to the concerned Insurance Company about the date of filing of the DAR before the Claim Tribunals or not.**

- (i) Given
- (ii) If not furnished, the reason thereof \_\_\_\_\_

**11. Whether the Claim Tribunal has accepted the Detailed Accident Report or not**

- (i) Accepted
- (ii) If not furnished, the reason thereof \_\_\_\_\_

**12. Has the investigation of the accident been completed within 30 days**

Yes

No

If no, the reason beyond his control, such as

- (i) Hit & run accident
- (ii) The parties reside outside the jurisdiction of the court
- (iii) The DL is issued outside the jurisdiction of the court
- (iv) The victim has suffered grievous injuries and is still undergoing treatment
- (v) Any other reason(specify) \_\_\_\_\_  
\_\_\_\_\_

**13. Whether the IO has approached the claim tribunal for extension of time.**

Yes

No

If yes,

- (i) Date of extension of time \_\_\_\_\_
- (ii) Period of extension of time \_\_\_\_\_

**14. Whether the IO has complied the points within the extension time**

Yes

No

If no, reason thereof \_\_\_\_\_  
\_\_\_\_\_

**Signatures of:-**

**Investigating Officer** \_\_\_\_\_

**Inspector Investigation** \_\_\_\_\_

**SHO** \_\_\_\_\_

**ACP** \_\_\_\_\_

**Addl. DCP-II/C (through Inspector MACT Cell)**

## CHAPTER-2

### **ROLE OF MOTOR ACCIDENT CLAIMS TRIBUNALS**

#### **I Cognizance of Accident Information Report by MACT**

Section 166 (4) was incorporated in the Motor Vehicles Act in 1994 and it provides that the Claims Tribunal shall treat the Accident Information Report (AIR) under Section 158(6) as a claim petition. The object of Section 166(4) of the Motor Vehicles Act is that poor and helpless victims of the road accidents being ignorant of their rights, the cognizance of the claim for compensation be taken by the Claims Tribunal directly on the basis of the Accident Information Report of the police without the requirement of a separate claim petition by the claimant.

#### **A. Directions of Hon'ble Supreme Court to the High Courts with respect to filing of AIR**

In *Jai Prakash v. National Insurance Company*<sup>23</sup> the Hon'ble Supreme Court has issued following directions to the Claims Tribunals:-

#### **Directions to the Claims Tribunals**

12. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary Registers, forms and other support is extended to the Tribunal to give effect to Section 166(4) of the Act.
13. For complying with Section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:
  - (a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.
  - (b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant/s appear, the miscellaneous application shall be converted to claim petition. Where a claimant/s file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.
  - (c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any 'Police Officer - Advocate -Doctor' nexus, which has come to light in several cases).

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<sup>23</sup> *Supra* note 12.

- (d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.
  - (e) The Tribunal shall categorise the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.
  - (f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition.
  - (g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the claims tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in fixed deposit and disbursed as per the directions contained in *General Manager, KSRTC v. Susamma Thomas*.<sup>24</sup>
  - (h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.
14. The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Section 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.
- B. Directions of Delhi High Court to Claims Tribunals with respect to the procedure of processing AIR**

The Delhi High Court has given following directions to the Motor Accident Claims Tribunals on 8<sup>th</sup> June, 2009 in *Rajesh Tyagi v. Jaibir Singh*<sup>25</sup> for enforcement of Section 166(4) of the Motor Vehicles Act:-

- (i) Maintenance of a register for recording of the FIR to be received daily from the police stations. The Accident Information Report and private claim petition filed in respect of an FIR be marked in this register.

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<sup>24</sup> 1994 (2) SCC 176.

<sup>25</sup> *Supra* note 2.

- (ii) Maintenance of a separate institution register for registering the AIR as miscellaneous application.
- (iii) Listing of AIR on the judicial side and issuance of notice to the claimant, owner, driver and Insurance Company.
- (iv) Notice to the claimant, owner, and driver be served through the Investigating Officer.
- (v) Notice of Insurance Company be served through the nominated counsel of each company.
- (vi) AIR be listed as a separate category in the cause list as miscellaneous application.
- (vii) After appearance of the claimant, the AIR be registered as a claim petition.
- (viii) If the claimant has filed a separate claim petition, the AIR be tagged with the claim petition<sup>26</sup>.

## **II Inquiry to be Conducted by MACT**

Section 168 of the Motor Vehicles Act provides that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunals shall follow such summary procedure as it thinks fit. However, it has been noticed that the Tribunals have been conducting a normal civil trial instead of an inquiry due to which the disposal of the claim petition was getting unduly delayed.

### **A. Scope of Inquiry**

In *Mayur Arora v. Amit*<sup>27</sup> the Delhi High Court held as under on the scope of inquiry:-

- 10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved

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<sup>26</sup> All the Motor Accident Claims Tribunals in Delhi have set up the aforesaid system for compliance of Section 166(4) of the Motor Vehicles Act, 1988. The Delhi Police is filing Accident Information Report along with the relevant documents including driving licence, registration cover, insurance policy, fitness and permit of the offending vehicle, before the Tribunal within 30 days of the accident.

<sup>27</sup> *Supra* note 3.

from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record.

**B. Nature of Enquiry**

With respect to the nature of inquiry, the High Court accepted the following principles to be applicable to the inquiry under Sections 168 and 169 of the Motor Vehicles Act, 1988:-

1. On a fair reading of the statute, the wide power given to the Tribunal, the absence of 'onus' upon the claimant, the general position of the claimants and their wherewithal with the social obligation of the welfare State, all indicate that the procedure of the Claims Tribunal has to be Inquisitorial though keeping in view that most other procedures in the country are Adversarial, it would be proper to conceive and put in practice something which is a mix of the two.
2. To explain the difference, the Claims Tribunal would not be simply passive, give both the parties sufficient opportunity to adduce evidence, and at the end of the 'trial' announce who has won. At the same time, he will not assume the role of investigator and of the prosecutor apart from being the Judge in the Inquisitorial system.
3. Even in the pure Adversarial system (where, in the past, the Judge remained passive and even in civil and criminal litigation), there has been a slow and steady move towards more active participation of the Judge. There have been two factors. The first is to do greater justice by removing imbalance between the two parties (and their lawyers); and the second is to more efficiently manage the cases and bring about efficiency
4. The proceedings before the Claims Tribunal are more of an Inquiry rather than an Adversarial trial. In other words, it is not that the claimant has to allege everything which the insurance can (without bothering to ascertain the facts) deny and then the Court expects proof of one and every allegation made in the claim petition.
5. Keeping in view the wording of the statute, the use of the phrase 'hold an inquiry' as also particularly the absence of the word 'trial' and; the larger purpose of the statute as demonstrated by the Statement of Objects and Reasons; observation into what has gone on; the type of the claimants; the type of the issues; and the need to bring about efficiency, procedure as are tailored to the subject has to be evolved by the Claims Tribunal.
6. The nature of the claims before the Claims Tribunal do not vary as widely as they do before a Civil Court, and there is an element of stereotype in them.
7. The facts which are to be ascertained are usually known and it is to be found out whether those facts exist or do not exist. It is only in that sense that an Inquiry is to be carried out.
8. Most of these facts are such which are to be proved by documents, generally as copies of records. If these are listed and summoned so that they are before the Claims Tribunal, it can make a world of a difference.
9. There is a distinction between proof of a document and what the document proves. Some of the documents can be taken at their face value. In fact, the onus is reversed

so that the evidence in proof can be asked only if there is specific denial. The photocopies of documents or entries from the Transport Department can be presumed as correct leaving the onus to disprove on one who disputes it. Every document produced does not require a proof as if it were an unregistered Will leaving a large estate to an outsider.

10. If an allegation is denied, the respondent must state his reasons for the denial and if necessary, put forward his own version of events. Subject to certain exceptions, the general rule is that if a defendant fails to deal with an allegation, it is to be taken as an admission.
11. If following this procedure which is generally collection of documents, a case appears to be one which can be disposed of at the first hearing, it should be so disposed of. There can, however, be cases where there is need for further inquiry. But that will have to depend upon whether a sufficient defence has been raised.
12. If the case needs further inquiry, the Court may frame issues. Issues help as a signpost to how the matter has to be proceeded with. They are signposts of topics (facts). However, before the issues, if a prefatory note on the facts which are not in dispute or not sufficiently in dispute or facts that can be taken judicial notice of, is made, the controversy stands narrowed down, the issues are more accurately framed and serve a greater purpose.
13. The present practice of framing the issues in a wide form calls for a change. Instead, what the Claims Tribunals as a part of 'following such procedures as it thinks fit' should do is to first go through the file and identify: (i) the chain of material facts and events (most of which are ordinarily not disputed); (ii) the scope of defences that are permissible; (iii) the factual questions that survive for decision; (iv) the missing links, and (v) the points of law which will need application to the facts and determination. After putting down a page or two of written material to depict the aforesaid, and also narrow down the controversy, frame pointed issues which bring out the factual and legal questions. The onus of the sub-issues has to be more correctly placed. The defence expected has to be not a mere denial but a positive one after the Respondents have investigated. The scope of the issues when framed could be narrow and not wide.
14. It is not always that if issues have been framed, further evidence is required. The matter can be disposed of after hearing the arguments based on the material on record or some evidence on a specific point may be called for. In any inquiry, there is also a duty of the Court to see that the evidence which could have been brought is brought so that justice is done. A template for a judgment keeping in view the various types of cases that come, can be developed by Claims Tribunal in consultation with each other and then slowly perfected over time.
15. For these issues, a form which is more of a checklist can be developed and the Claims Tribunal can simply correlate the claim, the response and the material on record and then come to a conclusion whether any issue arises or is to be treated as an admitted fact or what could the pointed issue that is to be framed.
16. These principles may be kept in mind by the Claims Tribunals while dealing with the motor accident claim cases.

### III **Summary of Procedures of MACT**

In *Mayur Arora v. Amit*<sup>28</sup> the Delhi High Court summarized the procedure of MACT as under:-

1. The Claims Tribunals shall examine whether the Accident Information Report is complete in all respects and shall pass appropriate order in this regard. If the Accident Information Report is not complete in any particular respect, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.
2. The Claims Tribunals shall treat the Accident Information Report filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act. However, where the Police is unable to produce the claimants on the first date of hearing, the Claims Tribunal shall initially register the Accident Information Report as a miscellaneous application which shall be registered as a main claim petition after the appearance of the claimants.
3. The Claims Tribunal shall list the miscellaneous Accident Information Report (AIR) for preliminary hearing to enable the police to notify such date to the victim/family of the victim, owner, driver and insurer of the vehicle involved in the accident.
4. After the appearance of the claimants, the miscellaneous petition shall be converted and registered as a claim petition. Where the claimant(s) have filed a separate claim petition, the AIR shall be tagged to the claim petition. If no independent claim has been preferred, the Claims Tribunal shall call upon the claimant to submit statement of facts regarding compensation in Form 'G' along with documents mentioned in Rule 8 of the Rules.
5. The Claims Tribunal shall also inquire and satisfy itself that the AIR relates to real accident and that is not the result of any collusion/fabrication.
6. The notice to the claimant, owner, driver and eye-witness shall be served through the Investigating Officer of the police. The notice to the Insurance Company shall be served through the nominated counsel of each company.
7. The Claims Tribunal may examine the claimant on oath to elucidate the material information (Rule 10).
8. The Claims Tribunal may visit the site of the accident for local investigation but in such event, must prepare a brief memorandum of facts observed, making it part of the record (Rule 15).
9. The Claims Tribunal may require production of the vehicle involved in the accident for inspection (Rule 16)
10. The Claims Tribunal may summarily examine the Investigating Officer of the police, the eye-witness or any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not and whether any or all of the parties are present or not. The notice to the eye-witness be sent through the police (Rule 17).

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<sup>28</sup> *Supra* note 3.

11. The Claims Tribunal may direct the Medical Officer or the Board of Medical Officers to examine the injured and give opinion indicating the degree and extent of disability, if any suffered within 15 days of receipt of direction (Rule 18).
12. The Claims Tribunal shall obtain supplementary information and documents, which may be found necessary from the police, medical and other authorities (Rule 25).
13. If the Claims Tribunal finds that the claim petition cannot be disposed of at one hearing, it shall record the reasons which necessitate the adjournment (Rule 29).
14. The designated officer of the Insurance company appointed within 10 days of receipt of intimation of the claim, shall take a reasoned decision with respect to the compensation payable in accordance with law to the claimant within 30 days of the receipt of the Accident Information Report and shall submit the same with the Claims Tribunal.
15. If there is no defence under Section 149 of the Motor Vehicles Act, 1998, the Claims Tribunal may direct the Insurance companies to deposit the admitted amount according to their computation with the Claims Tribunal following the principles of Order XII Rule 6 of the Code of Civil Procedure. The Tribunal shall by a summary inquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.
16. With respect to the pending cases relating to Motor Accident Claims, all the Insurance Companies shall appoint a designated competent officer responsible for processing of each case within 10 days and such officer shall process the claim within 30 days and pass a reasoned decision/order in writing about the amount payable in accordance with law. The decision of the designated officer along with the report of the Investigator shall be filed before the learned Tribunal within 20 days of the date of the decision of the designated officer.
17. The Tribunal shall categorize the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability. Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary inquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition. Where the insurer disputes the liability, the Claims Tribunal shall frame the issues.
18. Where the Insurance Company has computed the compensation in accordance with law without any delay, has deposited the admitted amount and has contested the case only with respect to the disputed amount or has bonafide defence, the interest should be awarded according to bank rates. However, where the Insurance Company has failed to discharge its obligations or acted capriciously or arbitrarily or negligent exercise or non-exercise of power, which has resulted in harassment and mental suffering to the claimant, the Claims Tribunal may consider awarding higher interest in terms of the judgment of the Apex Court in the case of *Ghaziabad Development Authority v. Balbir Singh*.<sup>29</sup>

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<sup>29</sup> II (2004) CPJ 12 (SC).

19. Wherever the lawyer client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant's counsel to be deposited with the Bank along with the award amount to be released by the Bank directly to the counsel.
20. The aforesaid observations are without prejudice to the discretion of every Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act.
21. Where the vehicle is not insured, the Claims Tribunal shall ensure that the police has prosecuted the owner/driver of the offending vehicle under Section 196 of the Motor Vehicles Act by calling report from the Police. The Claims Tribunal shall also call for a report from concerned Metropolitan Magistrate to find out whether the owner of the offending vehicle has given security for satisfaction of the award or the vehicle has been sold in terms of Rule 6 of Delhi Motor Accidents Claims Tribunal Rules, 2008. The Claims Tribunal may also direct the owner and driver of the offending vehicle to furnish their affidavit of assets and income in Form-16A, Appendix-E under Order XXI Rule 41(2) of the Code of Civil Procedure and sufficient security under Order XXXVIII Rule 2 of the Code of Civil Procedure.
22. While conducting the inquiry, the Claims Tribunal must be on guard against fanciful or false claims. The victims may deserve sympathy, but the matter has to be approached and decided according to law. Incidence of exaggerated or false claims has to be deftly dealt with. In appropriate cases, the Claims Tribunal should not hesitate to lodge a complaint under Section 340 Cr.P.C. Similarly, the Insurance Company which puts forward an evasive or irresponsible defence is liable to be burdened with costs, but where the defence is found to be false, similar action ought to be taken against them. In order to ensure efficiency of procedures and accuracy of the result (determination of the amount), purity in the information received by the Claims Tribunal and veracity of the documents that are placed before the Tribunal, whatever be the source must be brought about.

#### **IV Protection of Award Amount**

Most of the victims of the road accident are from the lowest strata of the society and sole bread winners leaving behind large family. There is illiteracy in the country and minor children are involved. The legal representatives of the deceased have no knowledge of investment and saving. There is a danger of the money being wasted or even the victims being cheated. There is no uniform system for passing directions of fixed deposit and even the direction for fixed deposit varies from 3 to 10 years and it is not clear what happens to the money thereafter.

##### **A. Directions of Hon'ble Supreme Court with regard to protection and disbursement of award amount**

The Hon'ble Supreme Court in the case of *Jai Prakash v. National Insurance Company*<sup>30</sup> approved the scheme formulated at the instance of Delhi High Court and observed as under:

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<sup>30</sup> *Supra* note 12.

18. To protect and preserve the compensation amount awarded to the families of the deceased victim special schemes may be considered by the insurance companies in consultation with the Life Insurance Corporation of India, State Bank of India or any other Nationalized Banks. One proposal is for formulation of a scheme in consultation with Nationalized Banks under which the compensation is kept in fixed deposit for an appropriate period and interest is paid by the Bank monthly to the claimants without any need for claimants having to approach either the court or their counsel or the Bank for that purpose. The scheme should ensure that the amount of compensation is utilized only for the benefit of the injured claimants or in case of death, for the benefit of the dependent family. We extract below the particulars of a special Scheme offered by a nationalized Bank at the instance of the Delhi High Court:
- (i) The fixed deposit shall be automatically renewed till the period prescribed by the Court.
  - (ii) The interest on the fixed deposit shall be paid monthly.
  - (iii) The monthly interest shall be credited automatically in the saving account of the claimant.
  - (iv) Original fixed deposit receipt shall be retained by the Bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.
  - (v) The original fixed deposit receipt shall be handed over to the claimant at the end of the fixed deposit period.
  - (vi) Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.
  - (vii) No cheque book shall be issued to the claimant without permission of the court.
  - (viii) No loan, advance or withdrawal shall be allowed on the fixed deposit without permission of the court.
  - (ix) The claimant can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimant, the bank shall provide the said facility.
19. The Insurance companies may also consider offering an annuity instead of lump sum compensation. They may prepare an annuity scheme with the involvement of Life Insurance Corporation of India or its own actuaries, under which they can pay a monthly annuity to the widow (for life) and to minor children (till they attain majority) and in addition a lump sum at the end of 20 or 25 years to the widow. The benefit such annuity scheme may also be extended to victims who are permanently disabled in accidents. Once such schemes are in place, the victims and the Tribunal will have some choice in the manner of payment of compensation.

## **B. Directions of the Delhi High Court**

To protect the award money from being wasted, the Delhi High Court in *Oriental Insurance Co. Ltd. v. Man Singh*<sup>31</sup> directed LIC, RBI, SBI and PNB to formulate a special scheme for victims of road accident in which higher rate of interest is provided and the amount is kept in such a manner that the monthly payment to the victims of the road accident increases 10% every year to meet the inflation.

### **Special scheme offered by banks**

1. UCO Bank and State Bank of India have formulated special scheme for victims of road accidents on the directions of the High Court. The salient features of the scheme of UCO Bank are as under:-
  - (i) The fixed deposit be renewed automatically till the period prescribed by the Court.
  - (ii) The interest on the fixed deposit be paid monthly.
  - (iii) The monthly interest be credited automatically in the saving account of the claimant.
  - (iv) Original fixed deposit receipt be retained by the bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.
  - (v) The original fixed deposit receipt be handed over to the claimant at the end of the fixed deposit period.
  - (vi) Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.
  - (vii) No cheque book shall be issued to the claimant without permission of the Court.
  - (viii) No loan, advance or withdrawal shall be allowed on the fixed deposit without permission of the Court.
  - (ix) The claimant can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimant, the bank shall provide the said facility.
  - (x) Half yearly statement of account shall be filed by the UCO Bank with the High Court/Tribunal.
  - (xi) UCO Bank has appointed Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi, Mobile No.09310356400 who shall co-ordinate with the High Court and the various Tribunals for opening of the Fixed Deposit and Saving Bank Account for the victims of the road accidents.
  
2. Notice was issued to all other banks through Indian Banks Association in *Shobha Gulhar v. Ram Pal*,<sup>32</sup> in response to which all the banks have agreed to extend the same facility to the claimants which is recorded in the order dated 7<sup>th</sup> April, 2010.<sup>33</sup>

### **Deposit of award amount directly in banks**

In *Union of India v. Nanisiri*,<sup>34</sup> it was brought to the notice of this Court that after the deposit

<sup>31</sup> MANU/DE/3615/2009.

<sup>32</sup> MANU/DE/1061/2010.

<sup>33</sup> MANU/DE/1062/2010.

<sup>34</sup> MANU/DE/0218/2010.

of cheques by the Insurance Companies with the Claims Tribunal, no intimation was given to the claimants and in many cases, by the time, the claimant gets the information of deposit of the cheque, the cheque has already expired. It was stated that in many cases, the cheques have also been lost. Vide judgment dated 13<sup>th</sup> January, 2010, the High Court observed that this problem can be resolved by directing the Insurance Companies to directly deposit the award amount with the bank with the direction to the bank to keep specified amount in fixed deposit in terms of the award and release the balance amount by transferring the same to the Saving Bank Account of the victim/claimant. All the Motor Accident Claims Tribunals were, therefore, directed to henceforth direct the Insurance Companies to directly deposit the award amount in the bank within 30 days with further directions as to the disbursement of the same in terms of the award and the case be kept pending till the compliance is placed on record.

### **Disbursement of award amount in phased manner**

1. In *New India Assurance Co. Ltd. v. Ganga Devi*,<sup>35</sup> it was pointed out by the learned counsel for the claimants that the Claims Tribunals were passing directions for releasing part of the award amount and the remaining amount was kept in fixed deposit for a long period due to which the claimants are unable to meet their exigencies and have to approach the Tribunal again and again for release of the award amount. It was suggested by learned counsel for the claimants that a direction be given to the Claims Tribunal to keep the amount in fixed deposit in such a manner that the claimants get the award amount in a phased manner which will take care of their exigencies such as illness, marriage of children, education, etc. Vide order dated 20<sup>th</sup> January, 2010, the High Court directed that the Claims Tribunal to consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example, if a sum of ₹ 5,50,000/- has been awarded to the claimants, ₹ 50,000/- may be released immediately and the remaining amount of ₹ 5,00,000/- may be kept in 10 fixed deposits of ₹ 50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years. If the family of the claimants have school/college going children, the maturity period of the fixed deposit receipts be kept preferably in the month of 'March' every year so that the family is able to meet the annual expenses towards the admission and tuition fee of the children.
2. In *United India Insurance Co. Ltd v. Ram Kishan*<sup>36</sup> vide order dated 21<sup>st</sup> April, 2010, the Delhi High Court has directed that since the FDRs have to be retained by the Bank, Bank need not prepare the FDRs. Instead, the Bank may issue the passbook of the fixed deposit account in which the fixed deposit amount as well as the interest paid are reflected and as and when the fixed deposit gets matured, the maturity amount should automatically be credited in the Saving Bank Account of the beneficiary. This will save the botheration of the bank to prepare the FDRs and it shall also save the botheration of the beneficiary to approach the bank again and again for discharge of the FDR. The effect of this modification would be that the bank will issue two passbooks to the beneficiary, one in respect of the Saving Bank Account in which the monthly interest and the maturity amount of the fixed deposit would be credited and the other in respect of fixed deposit account.

<sup>35</sup> MANU/DE/1056/2010; IV (2010) ACC 28.

<sup>36</sup> MAC.APP.No.247/2009.

## V. **Deposit of Award Amount and Interest**

Order XXI Rule 1(a) and (2) of the Code of Civil Procedure provides that the judgment debtor shall give notice of deposit of the award amount to the decree-holder either through Court or directly to the decree-holder. Order XXI Rule 1(4) of the Code of Civil Procedure provides that the interest shall cease to run from the date of service of the notice referred to in Sub-Rule (2).

### A. **Notice of deposit of award amount and compliance**

In *Sobat Singh v. Ramesh Chandra Gupta*,<sup>37</sup> it was noticed by Delhi High Court that neither the Insurance Companies give any notice of deposit to the Claimants nor the Claims Tribunal give notice of deposit to the claimants as a result of which the claimants do not get the payment on time and due to delay, the Insurance companies use the money of the claimants without making payment of interest. It was also noticed by the High Court that the Claims Tribunals and the Insurance Companies do not follow the directions given by Delhi High Court in the case of *New India Assurance Company Ltd. v. Kashmiri Lal*.<sup>38</sup> In *Sarmaniya Bai v. Madhya Pradesh Rajya Parivahan Nigam*<sup>39</sup> the Full Bench of Madhya Pradesh High Court held that the Claims Tribunal possess inherent jurisdiction to enforce its own award in accordance with the provisions of the Motor Vehicles Act and also according to the provisions of the Code of Civil Procedure as applicable to execution of orders and decree passed by a Civil Court. In *Rajasthan State Road Transport Corporation, Jaipur v. Smt. Poonam Pahwa*<sup>40</sup> the Hon'ble Supreme Court held that Order XXI Rule 1 of the Code of Civil Procedure is applicable to motor accident claim cases and in the event of failure to give intimation of deposit, the judgment debtor would be liable to pay interest under Order XXI Rule 1(2) of the Code of Civil Procedure. On 23<sup>rd</sup> February, 2010, the High Court passed the following directions:-<sup>41</sup>

1. 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).
2. 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.
3. 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

<sup>37</sup> MANU/DE/1058/2010.

<sup>38</sup> *Supra* note 5.

<sup>39</sup> AIR 1990 MP 306 (FB).

<sup>40</sup> 1997 ACJ 1049.

<sup>41</sup> II (2010) ACC 818.

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.

4. 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.
5. 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 *New India Assurance Company Ltd. v. Kashmiri Lal*<sup>42</sup> which are as under:-
  - (a) While filing the written statement, the concerned insurance company is required to furnish details of its Bank account and the Bank to the Court. In case a written statement has already been filed in an existing claim, all insurance companies are required to furnish the name of the concerned Bank and their account numbers within 3 months from today.
  - (b) Within a period of 30 days of the award, which is the period prescribed for depositing the amount under Section 168(3) of the Act to the High Court, the insurance company is required to tender the payment awarded by the MACT by issuing cheques in the name of the claimant(s) unless and until a stay order has been obtained from the High Court. The names of the claimants who are to be paid the amounts along with the amount payable is required to be stated in the award.
  - (c) If after the expiry of 90 days which is the prescribed period for preferring an appeal under Section 173(1) of the Act, payment of the amount awarded by the MACT has not been made, notice must be issued to the Bank named by the Insurance Company directing such Bank to deposit the cheque drawn in the name of the claimant/claimants legally entitled as per the award covering the amount(s) as per the MACT award within a week of receipt of such orders and cheques should be retained for being given to the claimant.
  - (d) Once the amount is deposited by cheque as per the aforesaid procedure the

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<sup>42</sup> *Supra* note 5.

MACT is required to ensure that within a period of six weeks thereafter the amount is disbursed to the claimants under the supervision of the Presiding Officer by issuing the said cheque to the claimant so that the claimants are not put to undue harassment.

- (e) In case for some reason it is not possible to make the payment to the claimant within six months of the issue of the cheques in the name of the claimant, then the MACT should ensure that such cheques are returned to the Insurance Companies in lieu of fresh cheques drawn in favor of the appropriate account of the MACT which are required to be deposited in an interest bearing short term fixed deposit for a six monthly period by the MACT.
  - (f) In case the MACT has to resort to the procedure prescribed under sub para (c) above which requires it to secure the amount through the banks upon a failure of the insurance company to deposit the amount within the time stipulated by Section 168(3) and the above procedure, cost of ₹ 5000/- payable to the claimant is required to be imposed on the Insurance Companies.
  - (g) If directions given by the MACT to the Banks are not complied with, the MACT may order freezing of Bank Accounts to the extent covered by the award.
6. In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in *New India Assurance Company Ltd. v. Kashmiri Lal*.<sup>43</sup> The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.
  7. In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels.
  8. 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.

**B. Directions with regard to maintenance of records by Nazirs**

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<sup>3</sup>
- e) Date of deposit of the award amount
- f) Date of notice of deposit by the depositor

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<sup>43</sup> *Ibid.*

- 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)

#### VI. **Power of MACT to Put Questions or Order Production**

1. Section 165 of the Indian Evidence Act, 1872 empowers the Judge to ask any question, in any form, at any time, of any witness or of parties, about any fact, relevant or irrelevant and may order production of any document or thing. The object of Section 165 of the Indian Evidence Act is that the Judge is not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter and question witnesses on points which the lawyers for the parties have either overlooked or left obscure or wilfully avoided.

2. Section 165 of the Indian Evidence Act is reproduced hereunder:-

#### SECTION 165. JUDGE'S POWER TO PUT QUESTIONS OR ORDER PRODUCTION

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this Section shall not authorize any Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.

#### **A. Directions of Hon'ble Supreme Court**

In *Jai Prakash v. National Insurance Company*<sup>44</sup> the Hon'ble Supreme Court held that the Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.

#### **B. Judgment of Delhi High Court with regard to powers of MACT to put questions.**

In *Somari Devi v. Ragwar Singh*,<sup>45</sup> the Delhi High Court has laid down the scope of Section

<sup>44</sup> *Supra* note 12.

<sup>45</sup> MANU/DE/3612/2009; III (2010) ACC 147.

165 of the Indian Evidence Act. This judgment shall help in expeditious disposal of the cases. By examining the parties and the witnesses, the Judge can reach the truth and cut short the delay. The relevant findings of Delhi High Court are reproduced hereunder:-

13. This section invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.
14. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.
15. Mr. Edmund Burke arguing in Warren Hastings Trial said that it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves through negligence, ignorance, or corrupt collusion, could not bring it forward. He has a duty of his own, independent of them, and that duty is to investigate the truth. If no prosecutor appears, the Court is obliged through its officer, the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the Judge is to see it done effectively, and to act his own part in it.
16. In *Bartly v. State*, 55 Nebr 294 : 75 N.W.832 Harrison, C.J., said:  
 “It is undoubtedly necessary that the Judge who presided should acquire as full a knowledge of the facts and circumstances of the case on trial as possible, in order that he may instruct the jury, and correctly, to the extent his duty demands, shape the determination of the litigated matters, that Justice may not miscarry, but may prevail; and doubtless, it is allowable at times, and under some circumstances, for the presiding Judge to interrogate a witness.”
17. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.
18. The framers of the Act, in the Report of the Select Committee published on 1st July, 1871 along with the Bill settled by them, observed as follows:-  
 “Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.

That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the

Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases probably the vast numerical majority the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly than he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter.”

19. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or wilfully avoided.

**VII. Checklist prepared by Hon'ble Delhi High Court for Claim Tribunals**

In *Mayur Arora v. Amit*,<sup>46</sup> the Delhi High Court has prepared the following checklist to be used by Claims Tribunals in motor accident claim cases:-

1. Date of accident : .....
2. FIR No., date and under Sections : .....
3. Name of the Police Station : .....
4. Name and phone No. of the Investigating Officer : .....
5. Registration No. of the Offending vehicle : .....
6. Engine and chassis No. of the offending vehicle : .....
7. Name, address and phone No. of the owner of the offending vehicle : .....
8. Name, address and phone No. : .....

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<sup>46</sup> *Supra* note 3.

of the driver of the  
offending vehicle

9. Particulars of the driving licence:-

Driving Licence No. : .....  
 Issue by : .....  
 Period : From.....to.....  
 Class of vehicle : .....

10. Particulars of the permit : .....  
 (In case of commercial vehicle)

11. Particulars of fitness certificate : .....  
 (In case of commercial vehicle)

12. Name and address of the : .....  
 Insurance Company, policy : .....  
 number and period of policy : .....

13. Name, address and phone No.: : .....  
 of the designated officer  
 of Insurance Company

14. Date of appointment : .....  
 of the designated officer  
 of Insurance Company

15. Name of the victim : .....

16. Age of the victim : .....

17. Occupation of the victim : .....

18. Income of the victim : .....

19. In case of death, particulars of legal representatives of the victim:-

(i) Names of legal : .....  
 representatives

(ii) Age of legal representatives : .....

(iii) Relationship : .....

20. In case of injury :

(i) Nature of injury : .....

(ii) Disability (if any) : .....

- (iii) Period of treatment : .....
- (iv) Expenditure on treatment : .....
- 21. Date of filing of Accident : .....
- Information Report (AIR)
- 22. Documents filed along with AIR :
  - (i) FIR : .....
  - (ii) MLC : .....
  - (iii) Post-mortem report : .....
  - (iv) Photographs : .....
  - (v) Site Plan : .....
  - (vi) Mechanical Inspection : .....
  - Report
  - (vii) Seizure Memo : .....
  - (viii) Driving Licence : .....
  - (ix) Permit : .....
  
  - (x) Fitness Certificate : .....
  - (xi) Insurance Policy : .....
  - (xii) Notice under Section : .....
  - 133 of the Motor
  - Vehicles Act
  - (xiii) Statement of the : .....
  - eye-witnesses
  - (xiv) Report under Section 173, : .....
  - CrPC
- 23. Whether the police has : .....
- verified the aforesaid documents
- 24. Date of service of AIR on the : .....
- Insurance Company
- 25. Date of service of AIR : .....
- on the claimant
- 26. Whether AIR is complete : .....

in all respects?

- 27. Deficiencies in the AIR : .....
- 28. Whether the designated : .....  
 officer of the Insurance Company  
 has submitted the report within  
 30 days of the AIR?
- 29. Whether the Insurance Company : .....  
 has admitted the liability?
- 30. If so, the amount assessed by the : .....  
 Insurance Company
- 31. Defences raised by the : .....  
 Insurance Company
- 32. Whether the claimant has filed : .....  
 the application in Form 'G' along  
 with the affidavit, photograph  
 and proof of residence?
- 33. Name and address of the : .....  
 eye-witnesses
- 34. Documents on record relating to:-
  - (i) Proof of age of the victim : .....
  - (ii) Proof of occupation : .....  
 of the victim
  - (iii) Proof of income of : .....  
 the victim
  - (iv) In case of death:-
    - (a) Proof of number of : .....  
 legal representatives
    - (b) Proof of age of legal : .....  
 representatives
    - (c) Proof of relationship : .....
  - (v) In case of injury :
    - (a) Proof of injury : .....

- (b) Proof of disability : .....  
(if any)
  - (c) Proof of period of : .....  
treatment
  - (d) Proof of expenditure : .....  
on treatment
  - (e) Proof of future: : .....  
treatment
  - (f) Cost of artificial : .....  
Limb, (if applicable)
  - (g) Proof of absence : .....  
from duty
  - (h) Proof of expenses on : .....  
conveyance incurred by injured
  - (I) Proof of services of : .....  
attendant and expenses incurred
35. Whether the above documents : .....  
have been verified by the police

### CHAPTER-3

#### **ROLE OF INSURANCE COMPANIES IN MOTOR ACCIDENT CLAIM CASES**

##### **I. Direction of Hon'ble Supreme Court to Insurance Companies**

The Hon'ble Supreme Court in the case of *Jai Prakash v. National Insurance Company*<sup>47</sup> has given following suggestions to the insurance companies with regard to deposit of admitted amount and also cashless treatment for the victims of road accidents:-

##### **SUGGESTIONS FOR INSURANCE COMPANIES**

15. In cases of death, where the liability of the insurer is not disputed, the insurance companies should, without waiting for the decision of the Motor Accidents Claims Tribunal or a settlement before the Lok Adalat, endeavour to pay to the family (Legal representatives) of the deceased, compensation as per the standard formula determined by the decisions of this Court.
16. In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer treatment at its cost to the injured, without waiting for an award of the Tribunal. If insurance companies can meet the bills for treatment of those who have taken a medical insurance policy, we see no reason why they should not extend a similar treatment to the accident victims of vehicles insured with them.
17. In countries like United Kingdom, the percentage of motor accident claims, with reference to the accidents is very low. This is because immediately after being notified of the accident, the insurer makes its own enquiries and satisfies itself about its liability and voluntarily assesses and pays the compensation to the victim. Only where the insurer denies the claim or where the victim is not satisfied with the quantum of compensation paid, the matter goes to court. There is no reason why insurance companies in India should not adopt such a procedure. In death cases, the calculation of compensation is now standardized by several decisions of this Court [See for example: *Sarla Verma v. Delhi Transport Corporation*, 2009 (6) SCC 121]. The insurers can either by relying upon the police report (AIR) or by enquiring with the family or the employer of the deceased, ascertain the three inputs required for calculation of the compensation, that is, age of the deceased, income of the deceased and number of dependent family members. With these particulars, the insurers can easily calculate the compensation and offer, either lump sum compensation or an annuity. Similarly in cases of injuries, the insurers can offer treatment in hospitals approved by it and meet the expenses or pay the bills, or if the victim has already undergone the treatment, reimburse the cost of treatment. It can also reimburse other items of special damages, the damages for pain suffering, which is also standardized in several decisions of this Court. By such voluntary payment there will be all round benefits. The insurers save interest and litigation cost and discharge their obligation to the society. The victims will be relieved from financial hardship and benefit from timely effective treatment. Burden on courts will be reduced and judicial man power can be diverted to more complex cases.

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<sup>47</sup> *Supra* note 12.

## II. **Directions of Delhi High Court to Insurance Companies**

### A. **Deposit of admitted amount**

In *Rajesh Tyagi v. Jaibir Singh*,<sup>48</sup> the Insurance companies have been directed to investigate the claim upon receipt of the AIR in terms of their Third Party Claim Procedure Manual and to submit their reply along with the copy of the investigation report and the computation of compensation according to them before the Claims Tribunals within 60 days wherever the accident, driving licence, permit, evidence and other documents relate to Delhi and 90 days where the documents relate to outside Delhi. If there is no defence under Section 149 of the Motor Vehicles Act, 1988, the Insurance Companies have been directed to deposit the admitted amount according to their computation with their reply before the Claims Tribunal. The copy of the AIR furnished by the Police to the Insurance Company shall be sufficient notice of the institution of the claim petition before the Claims Tribunal.

### B. **Directions with respect to new cases**

In order to streamline the system, Delhi High Court directed that immediately upon receipt of intimation of the claim, the Insurance Companies shall first appoint a competent designated officer who shall be responsible for processing and taking a decision in respect of that claim and the name of such officer shall be disclosed in the reply/written statement to be filed before the Claims Tribunal. The designated officer so appointed shall appoint an Investigator and after receipt of report of the Investigator, the designated officer shall take the reasoned decision in writing as to the amount payable to the claimants in accordance with law. The decision of the designated officer on the claim shall be filed along with the reply/written statement before the Claims Tribunal. If the learned Tribunal comes to the conclusion at the time of deciding the claim that the designated officer had delayed or defeated the claim, appropriate order shall be passed by the learned Tribunal in respect of the designated officer at the time of passing the award.

### C. **Directions with respect to pending cases**

With respect to the pending cases relating to Motor Accident Claims in Delhi, all the Insurance Companies have been directed to appoint a designated competent officer responsible for processing of each case within 10 days and such officer shall process the claim within 30 days and pass a reasoned order in writing about the amount payable in accordance with law. The order of the designated officer along with the report of the Investigator shall be filed before the Tribunal within 20 days of the date of the order of the designated officer.

### D. **Deduction of TDS**

1. The Insurance Companies had been deducting TDS from the interest on award amount directed to be deposited by an interim order pending final determination of the appeals. After deduction, the TDS certificate is issued in the name of the Registrar General of the Court. The claimants cannot get the refund/adjustment of the TDS deducted and they suffer loss of TDS amount to that extent.
2. In *National Insurance Co. Ltd. v. Kanika Saboo*<sup>49</sup> Delhi High Court held that the deposit of award amount including interest with the Court under interim direction of the Court pending final determination of the appeal is only an inchoate right and,

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<sup>48</sup> MANU/DE/3374/2009.

<sup>49</sup> MANU/DE/3622/2009; II (2010) ACC 29.

therefore, Section 194-A of the Income Tax Act does not apply and no TDS can be deducted.

### III. Directions of other High Courts to the Insurance Companies:-

1. In *Ramakrishna Reddy v. Manager, HMT Ltd.*<sup>50</sup> the Division Bench of Karnataka High Court held as under:-

19. We may also at this stage refer to the pernicious habit of some branches of insurance companies in filing stereotyped written statements denying all and everything. They routinely deny the insurance, then alternatively plead that even if there was an insurance, there was a breach of terms of the policy, that driver did not have a valid driving licence, and lastly there was no negligence on the part of driver of the insured vehicle. They do not bother to verify whether the insurance policy covered the risk or not and whether driver had a licence or not. We recognize that insurers are sometimes handicapped for want of full information, while giving instructions to their counsel and, therefore, the objections may be general in nature. We are also conscious that we cannot frown upon a party taking all permissible defences. But, applications for motor accident claims are not to be treated by insurers as normal private adversary litigation, where technical contentions can abound in pleadings and the sole intention is winning the *lis*. Under the policies of insurance, the insurers discharge statutory obligations towards third parties. They should do so keeping in view the object and spirit of the Act, and the position of hapless victims of motor accidents. Insurers should balance their concern to safeguard its financial interest, with their obligations as instruments of social justice, under the *Motor Vehicles Act*.

19.1 The claimants are not litigants by choice, but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self, and because the owner and insurer of the vehicle involved, fail to pay the compensation. The insurer should bear in mind that the claimants are also handicapped in obtaining particulars of the insurance policy held by owner or driving licence held by the driver of the vehicle, and they solely depend upon the police for these particulars. The insurer should, therefore, verify whether there was any insurance policy or not, whether the insured was covered by insurance policy in regard to the claim or not, and whether the driver had a licence or not before filing its statement of objections and narrow down the area of controversy. If the insurers were to file 'play it safe' written statements, without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and the claimants are put to misery and unjustly kept away from the direly needed compensation. It is time that insurers get rid of 'deny everything and await the award syndrome' and become responsible and responsive opponents in motor accident claims. We make it clear that the above observations are intended only for those officers of insurance companies who refuse to recognize their statutory obligations to third parties, under the insurance policies issued to the insured.

2. In *Ramadevsing v. Chudasma*,<sup>51</sup> the Division Bench of Gujarat High Court held as under:-

26. So far as the funds to defend their cases are concerned, insurance company would

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<sup>50</sup> 2003 ACJ 105.

<sup>51</sup> 1999 ACJ1129.

never feel paucity of funds. They raise defences all and sundry and at times their goal is to see that the claim of the claimant, if not defeated is at least delayed. With this purpose and motive they contest the claims under the *Motor Vehicles Act*. We have not come across any case where on receipt of the notice by the claimant(s) for the claim or in service of the summons from the Claims Tribunal the insurance company, more particularly, in cases where insurance of the vehicle is not disputed, offering or making payment at least of the amount which according to it the claimants would be entitled to. We have yet to come across such gesture. The only purpose with which the insurance company depends the claim petition is to see as to how the case of the claimant is defeated and on its failure to do so, how the claim of the claimant would be reduced to a minimum and/or delayed.

#### **IV Liability of the Insurance Company in Respect of Pillion Rider/Occupants in Two-Wheeler/Private Car.**

1. A comprehensive/package insurance policy covers the occupants in a private car and a pillion rider on a two-wheeler and there is a specific clause in the insurance policies in this regard. Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA) are the statutory authorities to regulate the tariff and terms and conditions of the insurance policies and there are directions of both these authorities to insurance companies to cover the occupants in a private car and a pillion rider on a two-wheeler under comprehensive/package policy.
2. All the comprehensive/package insurance policies contain a specific clause to the effect that the occupants in a private car and pillion rider on a two wheeler are covered. However, despite the clause in the policy and the directions of the TAC and IRDA, the insurance companies do not accept their liability and litigation in this regard is pending in various Courts all over the country.
3. In *Yashpal Luthra v. United India Insurance Co. Ltd.*<sup>52</sup> Delhi High Court examined the officers of United India Insurance Co. Ltd. as well as TAC and IRDA under Section 165 of the Indian Evidence Act, 1872. All the officers admitted the liability of the Insurance Companies in such matters. The Court also issued notice to all other insurance companies. On 16<sup>th</sup> November, 2009, IRDA issued fresh circular reiterating the factual position. IRDA thereafter convened a meeting dated 26<sup>th</sup> November, 2009 of all the 17 Insurance Companies who after deliberations, admitted their liability in respect of occupants in a private car and a pillion rider on a two-wheeler under the comprehensive/package policy. All the Insurance Companies agreed to comply with the Circular dated 16<sup>th</sup> November, 2009 issued by IRDA re-stating the position relating to the liability of the insurance companies. All the Insurance Companies further agreed to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and to issue instructions to their respective lawyers and the operating officers within seven days. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in respect of appeals filed by the claimants before the High Courts on the above aspect. The number of appeals pending before the High Courts have been agreed to be identified by the Insurance Companies within two

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<sup>52</sup>MANU/DE/3174/2009; III (2010) ACC 130.

weeks and the withdrawal to be done within four weeks thereafter.

4. The High Court held that where the vehicle is covered under a comprehensive/package policy, there is no need for a Motor Accident Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In view of the Tariff Advisory Committee's directives and those of the Insurance Regulatory Development Authority, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the case before it. All the Motor Accident Claims Tribunals functioning in Delhi have been directed to take note and ensure that no such plea is allowed to be put forward by any insurance company.
5. In pursuance to the above judgment, large number of pending cases all over the country relating to the claims of the occupants in a private car and pillion rider on a two wheeler have come to an end, and the claimants who have been denied compensation on this ground, ultimately got the compensation due to them.

## CHAPTER-4

### SETTLEMENT OF CLAIM CASES

#### I. Scheme for Settlement of New Cases

In *Rajesh Tyagi v. Jaibir Singh* the Delhi High Court constituted a Committee comprising of Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law & Justice and Company Affairs; and Joint Commissioner of Delhi Police on 5<sup>th</sup> November, 2009. The Committee consulted all the seventeen Insurance Companies and with their consent, prepared Claims Tribunal Agreed Procedure which was approved by Delhi High Court. The Delhi Police consented to implement the said Claims Tribunal Agreed Procedure initially for a period of six months as a pilot project on trial basis from 2nd April, 2010 to 1st October, 2010. However, on 24th September, 2010, the Delhi Police agreed to extend the implementation of the Claims Tribunal Agreed Procedure on the permanent basis beyond 1st October, 2010. The undertaking of Delhi Police has been accepted by Delhi High Court on 24th September, 2010<sup>53</sup> and the Agreed Procedure has been directed to be implemented on the permanent basis by all concerned including the Claims Tribunals, Delhi Police and the Insurance Companies w.e.f. 2nd October, 2010.

#### A. Claims Tribunal Agreed Procedure

The salient features of the Claims Tribunal Agreed Procedure approved by the Delhi High Court are as under:-

- (i) The Investigating Officer of the Police shall intimate the accident to the Claims Tribunal within 48 hours of the accident. The particulars of the accident shall be uploaded on the website of the Delhi Police and the intimation shall also be given to the Insurance Companies.
- (ii) The Insurance Company shall appoint a designated officer who shall be responsible for dealing/processing of that case.
- (iii) The investigating officer of the Police shall collect the relevant evidence relating to the accident as well as computation of compensation and shall complete the investigation within 30 days.
- (iv) The Investigating Officer of the Police shall file the Detailed Accident Report (DAR) with the Claims Tribunal within 30 days of the accident with a copy to the Insurance Company, claimant and Delhi Legal Services Authority.
- (v) The Investigating Officer shall produce owner, driver, claimant and eye-witness before the Claims Tribunal along with the Detailed Accident Report.
- (vi) The Insurance Company shall take a decision as to the quantum of compensation payable to the Claimants and submit the decision before the Claims Tribunals within 30 days of the Detailed Accident Report.

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<sup>53</sup> MANU/DE/2519/2010.

- (vii) The amount assessed by the Insurance Company shall constitute a legal offer to the claimants who shall submit their response within 30 days. If the offer is acceptable to the claimants, the Tribunal shall pass a consent award and the Insurance Company shall make the payment of the award amount to the claimants within 30 days.
- (viii) If the offer of the Insurance Company is not acceptable to the claimants or the Insurance Company has any defence available under law, the Claims Tribunal shall conduct an inquiry under Section 168 and 169 of the Motor Vehicles Act and shall pass an award within a period of 30 days thereafter.

**B. Success Rate**

In pursuance to above mentioned Claims Tribunal Agreed Procedure, compensation in more than 800 cases has been awarded by the Claims Tribunals to the claimants within 120 days.

**II Scheme for Settlement of Pending Cases**

On 29<sup>th</sup> May, 2009, all the four nationalized insurance companies, namely, New India Assurance Company Limited, Oriental Insurance Company Limited, National Insurance Company Limited and United India Insurance Company Limited agreed to settle all the pending death cases in Delhi according to the principles laid down by the Hon'ble Supreme Court in *Sarla Verma v. Delhi Transport Corporation*<sup>54</sup> with a slight reduction of multiplier by 2. The nationalized Insurance companies have also agreed to pay interest at the rate of 5% per annum.

**A. Schedule for settlement**

The schedule agreed to by all the nationalized companies for settlement of pending death cases is as under:-

**MULTIPLIER**

<b>Age of the deceased (in years)</b>	<b>Multiplier</b>
15 –25	16
30–26	15
35–31	14
40–36	13
45–41	12
50–46	11
55–51	9
60–56	7
65–61	5
Above 65	3

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<sup>54</sup>2009 (6) Scale 129.

**DEDUCTION FOR PERSONAL AND LIVING EXPENSES****Deceased unmarried**

- (i) Deduction towards personal expenses : 1/2 (50%)
- (ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased : 1/3<sup>rd</sup> (33.33%)

**Deceased married**

- (i) 2 to 3 dependent family members : 1/3 deduction towards personal expenses
- (ii) 4 to 6 dependent family members : 1/4 deduction towards personal expenses
- (iii) More than 6 family members : 1/5 deduction towards personal expenses

**FUTURE PROSPECTS**

- (i) Below 40 years of age : Actual salary +50% towards future prospects
- (ii) Between 40-50 years : Actual salary +30% towards future prospects
- (iii) More than 50 years job : Actual salary only.No addition for future prospects
- (iv) Wages not sufficiently /proved : Minimum wages + 50% towards inflation and price index

**NON-PECUNIARY DAMAGES**

- (i) Compensation for loss of estate : ₹ 5,000/- to ₹ 10,000/-
- (ii) Compensation for loss of consortium : ₹ 5,000/- to ₹ 10,000/-
- (iii) Compensation for loss of love and affection : ₹ 5,000/- to ₹ 10,000/-
- (iv) Funeral expenses, cost of transportation of body and medical expenses : Actual

**RATE OF INTEREST**

Rate of interest: 5.0%

**III Action Plan for Settlement of Claim Cases**

The following plan for disposal of motor accident claim cases prepared by Justice J.R. Midha for expeditious disposal of motor accident cases was circulated by the Ministry of Law & Justice in the **National Consultation for Strengthening the Judiciary towards Reducing the Pendency and Delays** on 24th October, 2009:-

**I. FRESH ACCIDENT CASES**

The Police is the first agency to take cognizance of a motor accident and it has the entire evidence required for initiating the proceedings for compensation.

The Police shall file an Accident Information Report under Section 158(6) of the Motor Vehicles Act before the Claims Tribunal along with all the relevant documents required by the insurance company to settle the claim.

The Police shall also produce the owner, driver, eye-witness and claimants before the Claims Tribunal.

The Police shall simultaneously serve the copy of the Accident Information Report on the Insurance Company.

The Tribunal shall treat the Accident Information Report of the Police as a claim petition under Section 166(4) of the Motor Vehicles Act.

The Tribunal shall conduct an inquiry under Section 168 of the Motor Vehicles Act and shall pass an award after recording the statement of the claimants, driver, owner and eye-witness.

Delhi Police has started the above system after the notice of contempt issued by the Delhi High Court for failure to comply with Section 158(6) of the Motor Vehicles Act for the last 15 years.

This system shall save the time lost in service of the owner, driver and eye-witness and the collection of relevant documents for passing the award.

By this system, a claim petition can be decided in 2-3 months time with 2-3 hearings against normal 50-100 hearings spread over 5-10 years.

## **II. DISPOSAL OF ARREARS OF PENDING MACT CASES**

Large number of cases is pending for service of driver, owner and eye-witness of the offending vehicle. The Police be directed to produce them before the Claims Tribunal.

As per the Procedural Manual of Nationalized Insurance Companies for Motor Claims, the Insurance Company has to appoint an investigator immediately upon the receipt of the intimation of claim and upon receipt of the report of the Investigator, the Company has to compute the compensation in accordance with law and has to offer the same to the claimant. However, in actual practice, the Insurance company appoints an investigator, compute the compensation and make a provision of liability in their accounts but do not offer the compensation to the claimant and vehemently contest the claim petition before the Tribunal. The Insurance Companies be directed to appoint an officer in each case who shall be responsible for processing and settlement of each case according to their Procedural Manual. The admitted amount along with the computation and the investigator's report be filed by the Insurance Company in all pending cases.

Where the service is complete, the death cases can be disposed of according to the attached Schedule agreed to by the Insurance Companies (The Schedule is based on the law settled by the Hon'ble Supreme Court with a slight reduction of multiplier by two and interest at the rate of 5%).

## **III. NEED FOR NEW LAW**

More than one lakh people die in road accident a year, meaning thereby that one person die every ten minutes. A large number of cases are hit and run where the particulars of the offending vehicles are not traceable. A large number of vehicles are uninsured and the

victims do not get any compensation in those cases. Even in the case of insured vehicles, the insurance companies do not have any attitude to process and settle the claim and they wait for the award of the Tribunal. Most of the victims of the road accident are sole bread winners from the poorest strata of the society and their family starve after the death of the victim. The Insurance companies vehemently fight the cases. The version of the Insurance Companies is that the claim-premium ratio is 400%, i.e., they are paying ₹ 400 towards claim against ₹ 100 as premium in motor insurance.

The road users have a fundamental right to life and liberty which shall include the duty of the State to ensure safety on roads and to ensure due process of law for expeditious payment of compensation in the event of injury or death of the road user arising out of permitting the use of motor vehicles on the roads.

South African Model is best suited for our country which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission.

The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes, and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety.

The South African model system shall also save the cost of manpower used by Insurance companies to issue policies. The report of Road Accident Fund Commission in South Africa is available on the website, <http://www.transport.gov.za/library/docs/raf/index.htm>.

Delhi High Court has passed an order dated 25<sup>th</sup> September, 2009 advising the Government to examine the South African Law.

## CHAPTER-5

### COMPUTATION OF COMPENSATION

#### **I Just Compensation**

Section 168 of the Motor Vehicles Act, 1988 provides that the claims tribunal shall make an award to determine the amount of compensation which appears to be “just”.

In *Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.*,<sup>55</sup> the Hon'ble Supreme Court held that:-

15. The Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be 'just'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance to the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot in joy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measures of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a side discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

In *Helen C. Rebello & Ors. v. Maharashtra State Road Transport Corpn. & Anr.*,<sup>56</sup> the Hon'ble Supreme Court held that:-

32. The word 'just', as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just.

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<sup>55</sup> 2003 (7) SCC 197.

<sup>56</sup> 1999 ACJ 10.

## II. Computation of Compensation in Death Cases

The compensation in death cases is computed by the multiplier method. According to the multiplier method, compensation is based on the pecuniary loss caused to the dependants by the death of the victim of the road accident. The dependency of the dependants is determined by taking the annual earning of the deceased at the time of the accident. Thereafter, effect is given to the future prospects of the deceased. After the income of the deceased is established, the deduction is made towards the personal expenses of the deceased which he would have spent on himself. If the deceased was unmarried, normally 50% of the income is deducted towards his personal expenses. If the deceased was married and leaves behind two to three dependents, 1/3<sup>rd</sup> deduction is made; if the deceased has left behind four to six family members, deduction of 1/4<sup>th</sup> of his income is made and where the number of dependent family members exceeds six, the deduction of 1/5<sup>th</sup> of the income is made. The remaining amount of income after deduction of personal expenses is taken to be the loss of dependency of the family members which is multiplied by 12 to determine the annual loss of dependency. The annual loss of dependency of the dependants of the deceased is multiplied by the multiplier according to the age of the deceased. A table of multiplier is given in Schedule-II of the Motor Vehicle Act but there was some error in the said table which has been corrected by the Hon'ble Supreme Court in the judgment of *Sarla Verma v. DTC*.<sup>57</sup> The amount so calculated according to the principle of multiplier is the pecuniary loss of dependency of the deceased. Legal representatives of the deceased are also entitled to non-pecuniary damages for loss of love and affection, loss of consortium and loss of estate.

In the case of *G.M., K.S.R.T.C. v. Susamma Thomas*,<sup>58</sup> the Hon'ble Supreme Court held that the proper method for calculation of compensation is the multiplier method which is logically sound and legally well-established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of claimant, whichever is higher. For assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct there from such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants, and thereafter it should be capitalised by multiplying it by a figure representing the proper number of year's purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis ad in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, "it is the overall picture that matters", and the court must try to assess as best as it can, the loss suffered.<sup>59</sup>

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<sup>57</sup> *Supra* note 54.

<sup>58</sup> *Supra* note 24.

<sup>59</sup> *Ibid.*

In the case of *Sarla Verma v. DTC*,<sup>60</sup> the Hon'ble Supreme Court considered *GM, KSRTC v. Susamma Thomas*,<sup>61</sup> *UPSRTC & Ors. v. Trilok Chandra*,<sup>62</sup> *Abati Bezbaruah v. Geological Survey of India*,<sup>63</sup> *Fakeerappa & Anr. v. Karnataka Cement Pipe Factory & Ors.*,<sup>64</sup> *T.N. State Transport Corpn. Ltd. v. S.Rajapriya & Ors.*,<sup>65</sup> *New India Assurance Co. Ltd. v. Charlie & Anr.*,<sup>66</sup> *U.P.State Road Transport Corpn. v. Krishna Bala & Ors.*,<sup>67</sup> and *Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.*,<sup>68</sup> and also two English decisions - namely; *Davies & Anr. v. Powell Duffryn Associated Collieries Ltd.*<sup>69</sup> and *Nance v. British Columbia Electric Railway Co. Ltd.*,<sup>70</sup> and laid down following principles for assessment of compensation in cases of death:-

- (i) **Future Prospects** - With respect to the future prospects, the Hon'ble Supreme Court observed as under:-

In *Susamma Thomas* this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah*, the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

- (ii) **Deduction** - With respect to the deductions towards personal expenses, the Hon'ble Supreme Court held as under:-

Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

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<sup>60</sup> *Supra* note 54.

<sup>61</sup> *Supra* note 24.

<sup>62</sup> 1996 ACJ 831.

<sup>63</sup> AIR 2003 SC 1817 : 2003 ACJ 680.

<sup>64</sup> I(2004) ACC 494 : 2004 ACJ 699.

<sup>65</sup> AIR 2005 SC 2985.

<sup>66</sup> AIR 2005 SC 2157 : 2005 ACJ 1131.

<sup>67</sup> AIR 2006 SC 2688.

<sup>68</sup> AIR 2007 SC 1609 : 2007 ACJ 1284.

<sup>69</sup> MANU/QB/0477/1942.

<sup>70</sup> MANU/QB/0483/1951.

(iii) **Multiplier** - With respect to multiplier, the Hon'ble Supreme Court held as under:-

In *New India Assurance Co. Ltd. v. Charlie*, this Court noticed that in respect of claims under Section 166 of the MV Act, the highest multiplier applicable was 18 and that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in *TN State Road Transport Corporation Ltd. v. Rajapriya*, and *UP State Road Transport Corporation v. Krishna Bala*. The multipliers indicated in *Susamma Thomas*, *Trilok Chandra* and *Charlie* (for claims under Section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163A of MV Act (with appropriate deceleration after 50 years):

<b>Age of the deceased</b>	<b>Multiplier scale as envisaged in <i>Susamma Thomas</i></b>	<b>Multiplier scale as adopted by <i>Trilok Chandra</i></b>	<b>Multiplier scale in <i>Trilok Chandra</i> as clarified in <i>Charlie Act</i></b>	<b>Multiplier specified in second column in the Table in II Schedule to MV Act</b>	<b>Multiplier actually used in Second Schedule to MV Act (as from the quantum of compensation)</b>
(1)	(2)	(3)	(4)	(5)	(6)
Upto 15 yrs	-	-		15	20
15 to 20 yrs.	16	18	18	16	19
21 to 25 yrs.	15	17	18	17	18
26 to 30 yrs.	14	16	17	18	17
31 to 35 yrs.	13	15	16	17	16
36 to 40 yrs.	12	14	15	16	15
41 to 45 yrs.	11	13	14	15	14
46 to 50 yrs.	10	12	13	13	12
51 to 55 yrs.	9	11	11	11	10
56 to 60 yrs.	8	10	09	8	8
61 to 65 yrs.	6	08	07	5	6
Above 65 yrs.	5	05	05	5	5

20. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to *Susamma Thomas* (set out in column 2 of the table above); some follow the multiplier with reference to *Trilok Chandra*, (set out in column 3 of the table above); some follow the multiplier with reference to *Charlie* (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per *Susamma Thomas*, 14 as per *Trilok Chandra*, 15 as per *Charlie*, or 16 as per the

multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163A of MV Act. In cases falling under Section 166 of the MV Act, Davies method is applicable.

21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying *Susamma Thomas, Trilok Chandra and Charlie*), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

**SUMMARY – Summary of principles laid down by the Hon'ble Supreme Court in *Sarla Verma v. DTC*<sup>71</sup> is as under:-**

- **Multiplier**

Age of the deceased (in years)	Multiplier approved by the Supreme Court
Upto 15	
20 – 15	18
25 – 21	18
30 – 26	17
35 – 31	16
40 – 36	15
45 – 41	14
50 – 46	13
55 – 51	11
60 – 56	09
65 – 61	07
Above 65	05

- **DEDUCTION FOR PERSONAL AND LIVING EXPENSES**

**Deceased unmarried**

- (i) Deduction towards personal : 1/2 (50%) expenses

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<sup>71</sup> *Supra* note 54.

- (ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased : 1/3<sup>rd</sup> (33.33%)

### **Deceased married**

- (i) 2 to 3 dependent family members : 1/3rd deduction towards personal expenses
- (ii) 4 to 6 dependent family members : 1/4th deduction towards personal expenses
- (iii) More than 6 family members : 1/5th deduction towards personal expenses
- (iv) Subject to the evidence to the contrary. : Father, brother and sisters will not be considered as dependents

### **FUTURE PROSPECTS**

- i. Permanent job below 40 years of age : Actual salary tax + 50% towards future prospects
- ii. Permanent job between 40- 50 years : Actual salary tax + 30% towards future prospects
- iii. More than 50 years with permanent job : Actual salary only  
No addition for future prospects
- iv. Deceased employed at a fixed salary (without provision for annual increments) : Only actual income to be taken  
No addition
- v. Departure from this Rule : Only in rare and exceptional cases involving special circumstances

### **NON-PECUNIARY DAMAGES**

- i. Compensation for loss of estate : ₹ 5,000/- to ₹ 10,000/-
- ii. Compensation for loss of consortium : ₹ 5,000/- to ₹ 10,000/-
- iii. Compensation for pain and sufferings and hardship : Nil
- iv. Funeral expenses, cost of transportation of body and medical expenses : Actual

In the case of *Reshma Kumari v. Madan Mohan*,<sup>72</sup> the Hon'ble Supreme Court again noticed the catena of Indian and English cases, most of which were noticed in *Sarla Verma* (but *Sarla Verma* was not noticed) and

<sup>72</sup>MANU/SC/1303/2009.

in view of the divergence of opinion to the question whether the multiplier specified in the Second Schedule should be taken to be a guide for calculation of the amount of compensation payable in a case falling under Section 166 of the 1988 Act referred the matter to the larger bench.

### **Compensation in Case of Death of Non-dependent Spouse/Legal Representative**

Non-dependant spouse/legal representative of the deceased is not entitled to compensation for loss of dependency. However, the non-dependant spouse/legal representative is entitled to the loss of estate. The loss of estate is computed by taking the savings of the deceased. The quantum of savings can be taken as 1/3 of the income of the deceased where the spouses were having common establishment and 1/4 where the spouses were having independent establishment. Where the claimants are non-dependent brothers/sisters claiming loss of estate, the saving can be taken as 15% of the income. The above percentages are subject to any specific evidence to the contrary by the claimants. Such savings are then multiplied to compute the total loss of estate of the claimants. These principles are enunciated in the judgment of the Karnataka High Court in the case of *A. Manavalaganda v. A. Krishnamurthy*<sup>73</sup> and followed by Delhi High Court in the case of *Keith Rowe v. Prashant Sagar*.<sup>74</sup>

### **Compensation in Case of Death of a Housewife**

In *Lata Wadhwa v. State of Bihar*,<sup>75</sup> the Hon'ble Supreme Court held that:-

11. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000/- per annum in cases of some and Rs. 10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given datas for determination of compensation, did not assist in any manner by providing the datas for estimating the value of services rendered by such housewives. But even in the absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs. 36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000/- instead of Rs. 25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000/- per annum and multiplier applied is eight. Though, the multiplier applies is correct, but the values of services rendered at Rs. 10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs. 20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs. 20,000/- per annum and then after applying the

<sup>73</sup> I(2005) ACC 304 : 2005 ACJ 1992.

<sup>74</sup> MANU/DE/1060/2010 : II (2010) ACC 64.

<sup>75</sup> AIR 2001 SC 3218.

multiplier, as already applied and thereafter adding Rs. 50,000/- towards the conventional figure.

In *Arun Kumar Aggarwal v. National Insurance Company*,<sup>76</sup> the Hon'ble Supreme Court held that:-

60 It is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3<sup>rd</sup> income of the earning/surviving spouse for the purpose of computing the compensation.

The Hon'ble Supreme Court upheld that compensation of Rs.6.00 lakhs by taking the value of services of deceased at Rs.5,000/- per month considering that the income of the spouse of deceased was Rs.15,416/- per month.

### **Compensation in Case of Death of a Child**

In the case of *R.K. Malik v. Kiran Pal*,<sup>77</sup> children died in an accident of a school bus which fell into river Yamuna. The Claims Tribunal awarded the compensation according to the Second Schedule of the Motor Vehicles Act. The Delhi High Court, in appeal, awarded a further sum of Rs.75,000/- towards non-pecuniary compensation. The Hon'ble Supreme Court, in appeal in *R.K. Malik v. Kiran Pal*<sup>78</sup> considered *Sarla Dixit v. Balwant Yadav*,<sup>79</sup> *Managing Director TNSTC Ltd. v. K.T. Bindu*,<sup>80</sup> *T.N. State Transport Corporation Ltd. v. S. Rajapriya*,<sup>81</sup> *New India Assurance Co. Ltd. v. Charlie*,<sup>82</sup> *United India Co. Ltd. v. Patrica Jean*,<sup>83</sup> *Taff Vale Rly. Co. v. Jenkins*,<sup>84</sup> *Abati Bezbaruah v. Dy. Director General Geological Survey of India*,<sup>85</sup> *UPSRTC & Ors. v. Trilok Chandra*,<sup>86</sup> *Ward v. James*,<sup>87</sup> and *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*,<sup>88</sup> and held that the claimants were also entitled to future prospects in terms of the judgment in the case of *Lata Wadhwa v. State of Bihar*<sup>89</sup> and *M.S. Grewal v. Deep Chand Sood*<sup>90</sup> and Rs.75,000/- was awarded to the claimants towards future prospects. Following the aforesaid judgment, the Delhi High Court has awarded compensation of Rs.3,75,000/- to the parents of a seven year old child in the case of *National Insurance Company Ltd. v. Farzana*.<sup>91</sup>

<sup>76</sup> JT2010 (7) SC 304 : 2010 ACJ 2161

<sup>77</sup> III (2006) ACC 261 : 2007 ACJ 2010.

<sup>78</sup> 2009 (8) Scale 451 : II (2009) ACC 705 (SC).

<sup>79</sup> 1996 ACJ 581.

<sup>80</sup> IV (2005) ACC 350.

<sup>81</sup> *Supra* note 65.

<sup>82</sup> *Supra* note 66.

<sup>83</sup> II (2002) ACC 460.

<sup>84</sup> MANU/QB/0452/1912.

<sup>85</sup> *Supra* note 63.

<sup>86</sup> *Supra* note 62.

<sup>87</sup> (1965) ALL.ER 563.

<sup>88</sup> I (1995) ACC 281.

<sup>89</sup> *Supra* note 75.

<sup>90</sup> II (2001) ACC 540.

<sup>91</sup> MANU/DE/1893/2009 : II (2010) ACC 9 : 2009 ACJ 2763.

### **Compensation in Case of Death of a Foetus**

In *Prakash v. Arun Kumar Saini*,<sup>92</sup> the Delhi High Court held that an unborn child aged five months onwards in mother's womb till its birth is to be treated as a child in existence. The unborn child to whom the live birth never comes is held to be a 'person' who can be the subject of an action for damages for his death. The foetus is another life in woman and loss of foetus is actually a loss of child in the offing. However, the love and affection of the parents for seven year old child cannot be equated with that of a foetus which has yet to take birth. The love and affection develops after the birth of the child and it keeps on growing and goes deep in the memory. The death of a seven year old child would leave deep memories and, therefore, deeper hurt. In case of death of a child, the photographs of the child and other articles belonging to him/her keep on reminding the parents of the child and make them sad. Memories are also refreshed when parents see other children of same age and it takes a very long time for pain and suffering to dissolve, whereas there are no such memories in case of a foetus and, therefore, lesser hurt. The Delhi High Court awarded Rs.2,50,000/- towards death of unborn child.

### **Compensation in cases of Death of a Professional/student pursuing professional course**

The compensation in respect of death of a professional is computed on the basis of earning capacity of the deceased as held by the Hon'ble Supreme Court in the case of *Haji Zainullah Khan v. Nagar Mahapalika*<sup>93</sup> and followed by Delhi High Court in the case of *Union of India v. Dr. Rita Pant*.<sup>94</sup> The compensation in respect of death of a student pursuing a professional course is determined according to his earning capacity after completion of the professional course. In *New India Assurance Company Limited v. Ganga Devi & Ors.*,<sup>95</sup> the deceased had completed his MBBS and was doing one year internship. It was proved that after completion of his internship he would have earned Rs.18,000 to Rs.20,000/- per month which was taken into consideration for computation of compensation.

### **Compensation in Cases of no Proof of Income of Deceased**

In *Kiran Devi v. Surjeet Yadav*,<sup>96</sup> an accident resulted in to death of a man aged 44 years having no proof of income. The minimum wages as prescribed by the State Government at the time of accident were taken for the purpose of compensation. Following the judgments of *Delhi High Court in Kanwar Devi v. Bansal Roadways*<sup>97</sup> and *National Insurance Co. Ltd. v. Renu Devi*,<sup>98</sup> the Court took judicial notice of the increase of minimum wages to meet the price index and inflation rate. The Court held the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects. The Delhi High Court took the average of minimum wages of Rs.4,100 and its double to compute the loss of income and applied the multiplier of 14 to compute the loss of dependency at Rs.7,74,900/-

### **III. Computation of Compensation in Injury Cases**

In injury cases, the claimants are entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages are also known as special damages and are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money. Non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

<sup>92</sup> MANU/DE/0337/2010 : 167 (2010) DLT 311.

<sup>93</sup> 1994 ACJ 1993.

<sup>94</sup> MANU/DE/3620/2009 : IV (2009) ACC 696.

<sup>95</sup> MANU/DE/3623/2009 : III (2010) ACC 6.

<sup>96</sup> *Supra* note 7.

<sup>97</sup> 2008 ACJ 2182.

<sup>98</sup> III (2008) ACC 134 : 2009 ACJ 1921.

The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life.

The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain, suffering, loss of amenities of life, disfiguration, loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejection and unhappiness in future life, etc.

The above list is not exhaustive in nature and there may be special or additional circumstances depending on the facts in each case.

In the case of *Raj Kumar v. Ajay Kumar & Anr.*,<sup>99</sup> decided on 18<sup>th</sup> October, 2010, the Hon'ble Supreme Court laid down the following general principles for computation of compensation in injury cases:-

#### **General principles relating to compensation in injury cases**

4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See *C. K. Subramonia Iyer v. T. Kunhikuttan Nair* – AIR 1970 SC 376, *R. D. Hattangadi v. Pest Control (India) Ltd.* - 1995 (1) SCC 551 and *Baker v. Willoughby* – 1970 AC 467).
5. The heads under which compensation is awarded in personal injury cases are the following :
 

Pecuniary damages (Special Damages)

  - (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
  - (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :
    - (a) Loss of earning during the period of treatment;
    - (b) Loss of future earnings on account of permanent disability.
  - (iii) Future medical expenses.

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<sup>99</sup> MANU/SC/1018/2010.

## Non-pecuniary damages (General Damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses – item (iii) – depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages – items (iv), (v) and (vi) --involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

In *R.D. Hatangadi v. Pest Control (India) Pvt. Ltd.*,<sup>100</sup> the Hon'ble Supreme Court held that:-

Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

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<sup>100</sup> *Supra* note 88.

In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

In the case of *Common Cause, A Registered Society v. Union of India*,<sup>101</sup> the Hon'ble Supreme Court held that:-

121. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary loss is not so calculable. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do.

In *Nagappa v. Gurudayal Singh and Ors.*,<sup>102</sup> the Hon'ble Supreme Court held that:-

26. While calculating such damages, the Tribunal/court is required to have some guesswork taking into account the inflation factor. This aspect is well discussed by M.J. Rao, J. (as he then was) in *P. Satyanarayana v. I. Babu Rajendra Prasad and Anr.* 1988 ACJ 88. The learned Judge has given a Classification of Injuries: A Useful Guide and has observed thus:-
  24. If a collection of cases on the quantum of damages is to be useful, it must necessarily be classified in such a way that comparable cases can be grouped together. No doubt, no two cases are alike but still, it is possible to make a broad classification which enables one to bring comparable awards together. Such classifications have been made by Bingham in his *Motor Claims Cases*, Munkman in his *Employer's Liability* and Kemp & Kemp in their *Quantum of Damages*. (Munkman p.181).
  26. (sic) Cases relating to injuries have been classified into four categories, i.e.: (a) total works; (b) partial wrecks and (c) where limits and eyes and other specific parts of the body are lost, which can be sub-grouped according to the type of limb lost and (b) smaller injuries which cannot be specifically grouped but for which compensation can be assessed by comparison with injuries of loss of limbs, e.g., comparing permanent 'wrist injuries' with 'loss of hand', or comparing a temporary broken arm with the loss of the arm etc. Such comparisons are often made by judges. Munkman points out that in America, Mr. Melvin M. Belli, an eminent lawyer, classified injuries into 11 categories as (1) Back; (2) Traumatic amputation of leg; (3) Paralysis; (4) Hand or arm off; (5) Death; (6) Multiple fractures; (7) Burns; (8) Personality change; (9) Blindness; (10) Brain injury and (11) Occupation diseases. By 1967, awards (say) for blindness had risen to 930,000 dollars (Munkman pp. 181-182). Today after 20 years, these awards must have gone up further. The

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<sup>101</sup> AIR 1999 SC 2979.

<sup>102</sup> 2003 ACJ 12 : 2003 ACJ 12.

'total wreck' category comprises of cases of complete incapacity for work and virtually no enjoyment of life, e.g., paralysis, severe brain injury causing insanity, multiple injuries leaving the victim a total cripple. The 'partial wreck' cases are also cases where the entire body is affected and not one set of limbs alone as in the third category. Cases of brain injuries resulting in a personality change and multiple injuries with grave disfigurement fall in this second category. The third category does not present much difficulty for sub-classification. The fourth category deals with minor injuries in a limb which be compared with major injuries in the same limb.

In case of a permanent disability, percentage of permanent disability is determined on the basis of the disability certificate issued by the Medical Board constituted by the competent authority. The permanent disability also results in functional disability and the loss of earning capacity is determined on the basis of the loss of functional disability. In the case of *Raj Kumar v. Ajay Kumar & Anr.*, Civil Appeal No.8981/2010 decided on 18th October, 2010, the Hon'ble Supreme Court laid down the following principles for assessment of future loss of earnings due to permanent disability:-

#### **Assessment of future loss of earnings due to permanent disability**

6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.
7. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60%

permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* – 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* – 2010 (8) SCALE 567).
9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.
11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Referencer for evaluation of permanent physical impairment (for example, the *Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons*, prepared by *American Academy of Orthopedic Surgeons* or its Indian equivalent or

other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.
13. We may now summarise the principles discussed above :
  - (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
  - (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
  - (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

- (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.
14. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration 'A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the *permanent disability of the limb* as a consequence of the injury was 60% and the consequential *permanent disability to the person* was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- |    |   |   |              |
|----|---|---|--------------|
| a) | Annual income before the accident                                 | : | Rs.36,000/-. |
| b) | Loss of future earning per annum (15% of the prior annual income) | : | Rs. 5400/-.  |
| c) | Multiplier applicable with reference to age                       | : | 17           |
| d) | Loss of future earnings : (5400 x 17)                             | : | Rs. 91,800/- |

Illustration 'B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

- |    |   |   |                |
|----|---|---|----------------|
| a) | Annual income prior to the accident                               | : | Rs.36,000/-    |
| b) | Loss of future earning per annum (75% of the prior annual income) | : | Rs.27,000/-    |
| c) | Multiplier applicable with reference to age                       | : | 17             |
| d) | Loss of future earnings : (27000 x 17)                            | : | Rs. 4,59,000/- |

Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

- |    |   |   |                 |
|----|---|---|-----------------|
| a) | Minimum annual income he would have got if had been employed as an Engineer | : | Rs.60,000/ -.   |
| b) | Loss of future earning per annum (70% of the expected annual income)        | : | Rs. 42,000/ -.  |
| c) | Multiplier applicable (25 years)  | : | 18              |
| d) | Loss of future earnings : (42000 x 18)                                      | : | Rs. 7,56,000/ - |

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C), however, are based on actuals taken from the decision in *Arvind Kumar Mishra (supra)*].

15. After the insertion of section 163A in the Act (with effect from 14.11.1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation :

“5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents : -

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following :-

- (a) In case of permanent total disablement the amount payable shall be arrived at by *multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or*
- (b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.”

16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the

evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses.

### **Assessment of compensation**

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate.
18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.
19. The evidence showed that at the time of the accident, the appellant was aged around 25 years and was eking his livelihood as a cheese vendor. He claimed that he was earning a sum of Rs.3000/- per month. The Tribunal held that as there was no acceptable evidence of income of the appellant, it should be assessed at Rs.900/- per month as the minimum wage was Rs.891 per month. It would be very difficult to expect a roadside vendor to have accounts or other documents regarding income. As

- the accident occurred in the year 1991, the Tribunal ought to have assumed the income as at least Rs.1500/- per month (at the rate of Rs.50/- per day) or Rs.18,000/- per annum, even in the absence of specific documentary evidence regarding income.
20. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses.
  21. As the income of the appellant is assessed at Rs.18000/- per annum, the loss of earning due to functional disability would be 20% of Rs.18000/- which is Rs.3600/- per annum. As the age of appellant at the time of accident was 25, the multiplier applicable would be 18. Therefore, the loss of future earnings would be  $3600 \times 18 =$  Rs.64,800/- (as against Rs.55,080/- determined by the Tribunal). We are also of the view that the loss of earning during the period of treatment (1.10.1991 to 16.6.1992) should be Rs.12750/- at the rate of Rs.1500/- for eight and half months instead of Rs.3600/- determined by the Tribunal. The increase under the two heads is rounded off to Rs.20,000/-.

In the case of *Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Anr.*,<sup>103</sup> the accident resulted 70% permanent disablement. The Hon'ble Supreme Court held the functional disability to be 70%. The loss of earning capacity was computed according to the multiplier method. The Hon'ble Supreme Court held as under:-

The basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases – and that is now recognized mode as to the proper measure of compensation – is taking an appropriate multiplier of an appropriate multiplicand.

In *Madan Lal Papneja v. State of Haryana & Ors.*,<sup>104</sup> decided on 12<sup>th</sup> November, 2010, the Punjab & Haryana High Court held as under:-

## **VII. Disability assessment, as per government guidelines**

8. In all cases resulting in grievous injuries that include fractures that further result in disablement, temporary or permanent, there is a practice to simply accept whatever the doctor assesses. There is hardly ever any cross examination in the disability assessment to the doctor, except a suggestion that his assessment is high. It is important to know how the assessment is made and what the percentage of disability

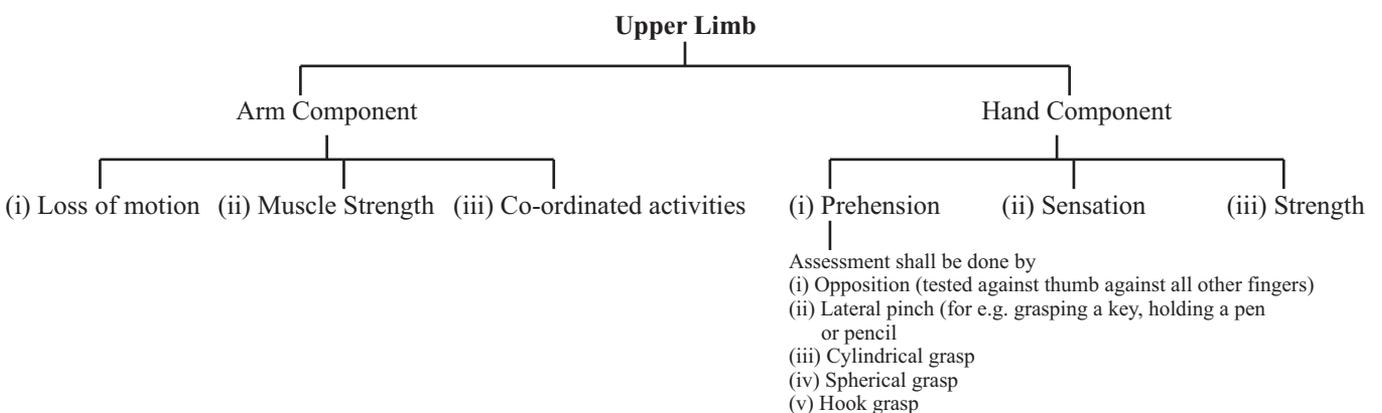
<sup>103</sup> 2010 (10) SCALE 298.

<sup>104</sup> MANU/PH/2408/2010.

signifies. In order to review the guidelines for evaluation of various disabilities and procedure for certification and to recommend appropriate modification/alterations, a committee was set up in 1988 by the Government of India, Ministry of Social Justice & Empowerment under the Chairmanship, DGHS, GOI with subcommittee, one each in the area of Mental Retardation, Locomotor/ Orthopaedic, Visual and Speech & Hearing disability. After considering the reports of committee, keeping in view the provisions of Persons with Disabilities (Equal opportunities Protection of rights and Full participation) Act 1995, guidelines for evaluation of following disabilities and procedure for certification was notified vide no. 'The Gazette of India, Extra ordinary Part-II Section 1, Dated 13, June 2001' for:

1. Visual Impairment
  2. Locomotor /Orthopedic Disability
  3. Speech and Hearing Disability
  4. Mental Retardation
  5. Multiple Disabilities
9. In the guidelines, the functional (permanent physical impairment or PPI) due to congenital, post disease or trauma have been evaluated. This is commonly interpreted as disability which is not so, in strict terms. In case of loco motor conditions, broadly, the body has been divided into upper limb, lower limb & trunk. In principle, the function of one part cannot be replaced by other, therefore each functional part in itself is 100% and thus loss of function/ PPI of that part is taken as 100%. On the other hand, the whole body value cannot exceed 100%. Thus in case the impairment is seen in more than one function or body part, the mathematical sum may exceed 100 but total of body/individual cannot exceed 100%. Thus a total of one or all segments of body cannot exceed 100% in any situation.
10. The guidelines shall be applied for determining the % of disability. If a doctor or a medical board makes an assessment there shall be no mistake in accepting the same, prima facie. However, if the assessment is doubted, it is necessary to cross-verify with the mode of assessment prescribed under the guidelines [The method of computation is meant only to provide a theoretical basis for an inquisitive judge/lawyer/litigant]. Broadly, it necessary to know that the injury to upper limb is assessed thus:

a) Upper limb assessment



11. (i) The value of maximum range of motion (ROM) in the arm component is 90%. Each of the three joints of the arm (shoulder, elbow and wrist) is weighed equally, i.e., 30% or 0.30. This could be understood through an illustration. A fracture of the right shoulder may affect ROM so that active abduction (abduct is to draw away from the medial line of the body) is reduced to say, 90°. It is possible to take the arm thrown downwards from alongside the leg to touch the ear by abducting it to 180°. The relative loss is 50% of its efficacy, but in terms of the arm component, the % of loss shall be  $50 \times 0.30 = 15\%$  loss of motion for the arm component. If more than one joint is involved, the same method is applied and the losses in each of the affected joints are added. If the loss of abduction of the shoulder is 60°, loss of extension of wrist (as opposed to bending, extending means straightening. Medically, they are referred respectively as palmar flexion and dorsi flexion) is 40°, then the loss of range of motion for the arm is  $(60 \times 0.30) + (40 \times 0.30) = 30\%$ .
- ii) The strength of muscles could be tested by manual testing like 0-5 grading.
- 0. - 100% (complete paralysis)
  - 1. - 80% (flicker of contraction only)
  - 2. - 60% (power detected when gravity is excluded, i.e., when the arm moves sideways and not upwards against gravity)
  - 3. - 40% (movement against force of gravity but not against examiner's resistance)
  - 4. - 20% (minimal weakness)
  - 5. - 0% (normal strength)

The mean percentage of muscle strength loss is multiplied by 0.30. If there has been a loss of muscle strength of more than one joint, the values are added as has been described for loss of ROM.

(iii) Principles of evaluation of co-ordinated activities shall be:

- a. The total value for co-ordinate activities is 90%
- b. Each activity has value of 9%

(iv) Combining the values for the arm component:

The value of loss of function of arm component is obtained by combining the values of ROM, muscle strength and co-ordinated activities, using the following formula:

$$\frac{a + b(90 - a)}{90}, \text{ where 'a' will be the higher score and 'b' will be the lower score.}$$

12. The total value of hand component is 90%.

i) The principles of evaluation of prehension include:

- a. Opposition (8%) tested against index finger (2%), middle finger

(2%), ring finger (2%) and little finger (2%).

- b). Lateral pinch (5%) tested by asking the patient to hold a key.
- c). Cylindrical grasp (6%) tested for (a) large object 4" size (3%) and small object 1" size (3%)
- d). Spherical grasp (6%) tested for (a) large object 4" size (3%) and small object 1" size (3%)
- e.) Hook grasp (5%) tested by asking the patient to lift a bag.

ii) Principles of evaluation of sensations:

Total value of sensation is 30%. It includes, 1. Radial side of thumb (4.8%, that is the outer side), 2. Ulnar side of thumb (1.2%, that is the inner side), 3. radial side of each finger (4.8%) and 4. Ulnar side of each finger (1.2%). Total value of strength is 30%. It includes, 1. Grip strength (20%), 2. Pinch strength (10%). 10% additional weightage is to be given to the following factors viz., 1. Infection; 2. Deformity; 3. Mal-alignment; 4. Contractures; 5. Abnormal mobility (when a person has a wobbly hand, for example); 6. Dominant extremity (4%), i.e., depending on the lack of strength.

iii) Combining value of the hand component shall mean the final value or loss of function of hand component obtained by summing up of loss of prehension, sensation and strength.

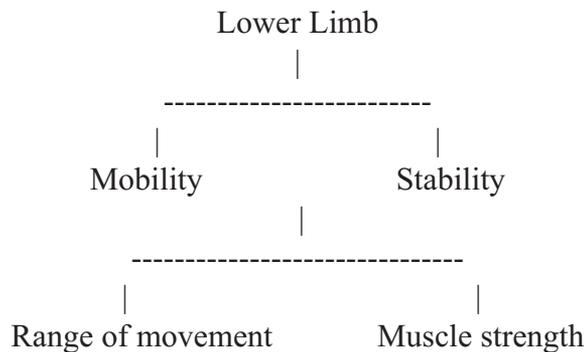
iv) Applying the formula mentioned in the preceding paragraph, the % of disability for the combined arm and hand components could be calculated. If the impairment of the arm is say 27% and impairment of the hand is 64%, the combined value is:

$$\frac{27(90-64)}{64} = 71.8\%$$

where 64 is the higher value  
90 and 27 is the lower value.

b) Lower limb assessment

13. The lower extremity is divided into mobility component and stability component. Mobility component includes range of movement and muscle strength. To put it graphically,



(i) The value of maximum ROM in the mobility component is 90%. Each of the 3 joints, i.e., hip, knee, foot-ankle is weighed equally at 30% or 0.30. For example, a fracture of the right hip affects range of motion, so that active abduction is 270 against the abduction of 540 found for the left hip. There is a 50% relative loss of abduction. The % of loss of mobility component is  $50 \times 0.30 = 15\%$ . If more than one joint is involved, the same method as applied above is applied and the losses in each of the affected joints are added. For example, if the loss of abduction of the hip is 60% and loss of extension is 40%, the loss of ROM for mobility component is  $(60 \times 0.30) + (40 \times 0.30) = 30\%$

(ii) Principles of evaluation of muscle strength consists of: (1) Taking the value for muscle strength in the leg to be 90% and (2) Taking the strength of muscle tested by manual testing like 0 to 5 grading:

- Grade 0 - 100%
- Grade 1 - 80%
- Grade 2 60%
- Grade 3 40%
- Grade 4 20%
- Grade 5 0%

The mean % of muscle strength loss is first multiplied by 0.30. If there has been a loss of muscle strength of more than one joint, the values are added as described for ROM.

(iii) Combining values of mobility component. Suppose an individual has a fracture of the right hip joint and has in addition to 16% loss of motion, 8% loss of strength muscles, combining the values, the disability is:

$$\frac{8(90-16)}{90} = 22.6\%$$

(iv) Principle of evaluating the stability component consists of taking the total value as 90% and tested on 'scale method' and clinical method.

c) Traumatic and non-traumatic leisions

14. Cervical spine fractures are assessed on the basis of evaluation of vertebral compressions, fragmentation, involvement of posterior elements, nerve root involvement of posterior elements and moderate neck rigidity. They are assessed by X ray examination and treated surgically. Cervical inter-vertebral disc disorders, thoracic and dorso-lumbar spine fractures resulting in acute pain, paraplegia, vertebral compression resulting in severe pain, neurogenic low back disc injuries resulting in severe pain are assessed on a scale of 0 to 100%. Without the accompaniment of any compression, fractures or leisions, there could be persistent muscle spasm, stiffness of spine with mild, moderate to severe radiological changes

are assessed in the range of 0 to 30% .

### VIII. Efficacy of disability of assessment

#### a) Assessment of compensation for pain.

15. In the manner of assessment of pain and suffering, the disability assessed will be a good guide to know how the particular injury affects performance in the work place and elsewhere. Head injury or spinal injury are sometimes regressive and lead to further complications like epilepsy, numbness, acute pain and spasms. There is a need to know the real sufferer from a malingerer. Expert's evidence through a doctor will help the tribunal in determining the appropriate response to prayer for compensation.

#### b) Translating disability into loss of earning power

16. All injuries and assessments of disability do not impact the earning capacity [*Orissa State Road Transport Corporation v. Bhanu Prakash Joshi*-(1994) 1 ACC 467 (Ori); *New India Insurance Company Ltd v. Rajauna*-(1996) 1 TAC 149 (Kant); *Balaiah (T.) v. Abdul Majeed*-AIR 1994 AP 354]; nor in a similar way. The disability has to be seen in the context of the particular occupation or calling that the victim is engaged in. For instance, a mal-union of fracture in the lower limb and stiffness at the knee for a professional driver of motor vehicle may completely make him unfit to be a driver. In *Oriental Insurance Company Limited v. Koti Koti Reddy*-2000(2) LLJ 552 (AP), the injuries caused to the claimant were on the forehead and right leg, particularly at joint and foot. The permanent disability was assessed at 30% by the doctor and due to calcanean fracture, it was in evidence that he could not work as driver. The WC Commissioner assessed the loss of earning capacity as 100% and the HC upheld the assessment. A deformity of the hand could affect a carpenter differently than how it may be irrelevant for, say, a telephone operator. In *Pratap Narain Singh Deo v. Srinvas Sabata*- AIR 1976 SC 222, an amputation of the arm of a carpenter was taken to result in 100% loss of earning capacity; In *Sadasihiv Krishan Adke v. M/s Time Traders*- 1992(1) LLJ 877, a coolie lost his leg. The injury to his leg resulted in his walking with crutches and the Court assessed the loss of earning capacity to be 100%. The attempt at the trial shall always be to elicit how the particular percentage of disability has affected the job that the person was doing and if not suitable for the same job, to what other type of employment that he or she is fit for, in the changed circumstances and what is likely to be the loss of income. With the passing of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, a person may continue in the same employment, notwithstanding such disability, the ascertainment of loss of earning capacity will still be relevant to know the employability of the person in open market with the particular disability. The continuance of employment despite the injury may not itself dis-entitle the person from claiming compensation. Posing the question what such injury results, the Madras High Court said in *The Management of Sree Lalithambika Enterprises, Salem v. S. Kailasam*- 1 988 (1) LLJ 63 that the employer may continue an injured person in employment and deny that any loss of earning capacity has resulted in spite of privation of an organ. This, the court said, could not be supported and cannot be the intendment of the WC Act . To the same effect, see *Executive Engineer, PWD*,

*Udaipur v. Narain Lal-(1977) 2 LLN 415, 1977 LIC 1827 (Raj)*. It must be noticed both the Workmen's Compensation Act and the MV Act use the expression loss of earning capacity differently from disability per se and without making reference to the claimant's evidence and the expert opinion of a doctor, it will be arbitrary to simply take the % of disability as % of loss of earning capacity. If a Tribunal assesses compensation at a fixed sum for every % of disability, it will result in overlapping of claims if assessment of loss of earning capacity is independently assessed. There are certain recent decisions of the Supreme Court itself [*Arvind Kumar Mishra v. New India Assurance Co Ltd and another C.A.No.5510 of 2005 dated Sep.29, 2010; Yadav Kumar v. The Divisional Manager, National Insurance Co. Ltd & another C.A.No.7223 of 2010, dated Aug.31, 2010*], where the % of disability assessed has been taken as synonymous with % of loss of earning power, but it must be assumed that the court took the value of % of disability to be the same as % of earning power, having regard to the special facts and circumstances. When the loss of earning power and compensation are determined, it is not necessary to make any deduction for personal expenses, as we do, for determining dependency for claimants in fatal accidents. The reason is obvious; the claimant is alive to receive the whole loss of income in injury cases and this principle has also been recognized in *Oriental Insurance Co Ltd. v. Ram Prasad-(2009) 2 SCC 712*.

## **IX. Future medical expenses**

17. The question of providing for future medical expenses was specifically dealt with by the Supreme Court in *Nagappa v. Gurudayal Singh - AIR 2003 SC 674, (2003) 2 SCC 274* when it observed that the MV Act does not provide for further award after a final award is passed. Therefore in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed, when medical expenses are incurred after finalization of the award. Hence, the only alternative is that at the time of passing of final award, the Tribunal should consider such eventuality and determine compensation accordingly. It is most desirable that the Tribunal elicits from the doctor himself if a future medical treatment shall be necessary and the likely expenses.

## **Assessment of General Damages**

What damages should be awarded to a claimant, who has become paraplegic, on account of injuries received in an accident, is a vexed question. It is really difficult to assess the exact amount of compensation, which would be equivalent to the pain, suffering and the loss suffered by the claimant. It can never be full compensation, but it must be fair and just. No amount of money can restore the physical frame of the claimant, yet the Courts have to make an effort to assess the compensation, which may provide relief to the injured.

The general damages are “so far as money can compensate” meaning thereby that it is impossible to equate money with human suffering or personal deprivation. The money awarded can be calculated so as to make good a financial loss. Money may be awarded so that something tangible may be procured to replace something else of like nature, which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process, there must be the endeavour to secure some uniformity in the general method of approach. It is, therefore, eminently desirable that so far as possible,

comparable injuries should be compensated by comparable awards. The general damages awarded in the case of injuries are therefore to a considerable extent conventional.

The principles for computation of general damages laid down in *Ward v. James*<sup>105</sup> are as under:-

- (1) The award should be moderate, just and fair and it should not be oppressive to the respondent;
- (2) The award should not be punitive, exemplary and extravagant; and
- (3) So far as possible similar cases must be decided similarly. The community of public at large may not carry the grievance of discrimination.

Principles of uniformity and predictability are very important. There should be some measure of uniformity in awards, so that similar decisions may be given in similar cases otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Secondly, the parties should be able to predict with some measure of accuracy the sum, which is likely to be awarded in a particular case. For, by this means, the cases can be settled peacefully, a thing very much to the public good.

In *Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal*,<sup>106</sup> the Delhi High Court discussed the principles relating to the award of non-pecuniary compensation towards pain and suffering, loss of amenities of life and disfiguration. The Delhi High Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the courts have awarded about Rs.3,00,000/- under the heads of non-pecuniary damages for permanent disability of 50% and above. The findings of the Delhi High Court are as under :-

10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.
11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.
12. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.
13. Pecuniary loss may include the following:
  - (i) Special damages or pre-trial pecuniary loss.

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<sup>105</sup> *Supra* note 87.

<sup>106</sup> 2008 ACJ 1300.

- (ii) Prospective loss of earnings and profits.
  - (iii) Medicinal expenses.
  - (iv) Cost of future care and other expenses.
14. Non pecuniary loss may include the following:
- (i) Pain and suffering.
  - (ii) Damages for mental and physical shock.
  - (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
  - (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
  - (v) Disfigurement.
  - (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

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18. In order to properly appreciate the contentions advanced by the learned counsel for the appellant, I note the following judgments:-

- (i) *B.N.Kumar vs. D.T.C., 118 (2005) DLT 36.*

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded Rs.3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded Rs.75,000/- for 'pain and suffering' and Rs.2,00,000/- for 'continuing disability suffered by him'. Thus, a total of Rs.2,75,000/- was awarded under this head.

- (ii) *Fakkirappa vs. Yallawwa & Anr., 2004 ACJ 141*

In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':-

- |  |                  |
|--|------------------|
| (i) Pain and suffering                         | : Rs.50,000/-    |
| (ii) Loss of amenities of life                 | : Rs.1,00,000/-  |
| (iii) Loss of marriage prospects               | : Rs.50,000/-    |
| (iv) Damages for amputation of leg before knee | : Rs. 1,50,000/- |
| (v) Loss of expectation of life                | : Rs.50,000/-    |

Total : Rs.4,00,000/-

(iii) *K. Shankar v. Pallavan Transport Corporation, 2001 ACJ 488*

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'.

(i) For permanent disability	: Rs.80,000/-
(ii) Pain and suffering	: Rs.50,000/-
(iii) Loss of expectation of life and proper marital alliance	: Rs.50,000/-
(iv) For mental agony	: Rs. 1,00,000/-
Total : <u>Rs.2,80,000/-</u>	

(iv) *M. Jaganathan v. Pallavan Transport Corporation, 1999 ACJ 366*

In said case, injured aged 45 years sustained injuries in an accident on 21.6.1990. The injury sustained by the injured resulted in the amputation of his left leg above the knee. Division Bench of Madras High Court awarded following compensation under the head 'non pecuniary damages':-

(i) Pain and suffering	: Rs.1,00,000/-
(ii) Compensation for continuing permanent disability	Rs.2,00,000/-
(iii) Mental agony, torture and humiliation because of amputation	: Rs.75,000/-
Total : <u>Rs.3,75,000/-</u>	

(v) *Bhagwan Singh Meena v. Jai Kishan Tiwari, 1999 ACJ 1200*

In said case, the injured sustained severe and serious injuries on account of the road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded a compensation of Rs.3,00,000/- under the head non-pecuniary damages.

(vi) *Dr. Gop Ramchandani v. Onkar Singh & Ors., 1993 ACJ 577*

In said case, in an accident which had occurred on 17.12.1985, injured sustained injuries because of which his left leg was amputated resulting in 50% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of Rs.3,00,000/- under the head 'non pecuniary damages'. Break-up of the compensation under the said head is as under:-

(i) Physical and mental agony	: Rs.1,00,000/-
(ii) Permanent disability	: Rs.1,00,000/-
(iii) Loss of social life and loss in profession:	Rs.1,00,000/-
Total : <u>Rs.3,00,000/-</u>	

(vii) *Jitendra Singh v. Islam, 1998 ACJ 1301*

In said case, in an accident which had occurred on 14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of Rs.3,00,000/- under the head 'non pecuniary damages'.

(viii) *Iranna v. Mohammadali Khadarsab Mulla & Anr. 2004 ACJ 1396*

In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages':-

(i) Pain and suffering	: Rs.50,000/-
(ii) Loss of amenities, happiness, frustration	Rs.1,00,000/-
(iii) Loss of marriage prospects	: Rs.50,000/-
(iv) Amputation of leg below knee and knee dis-articulation	Rs.1,50,000/-
	Total : <u>Rs.3,50,000/-</u>

From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about Rs.3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above.

To sum up, in accident claims relating to injuries, the victim is entitled to pecuniary as well as non-pecuniary damages. The pecuniary damages such as expenditure on treatment, special diet, conveyance, attendant, loss of income etc. are based on documentary evidence produced by the claimant. The non-pecuniary damages such as pain and suffering, loss of amenities of life, disfiguration and matrimonial prospects are conventional and depend upon the nature of injuries suffered and are based on comparable awards to maintain uniformity and predictability. In cases of permanent disablement, the claimant is also entitled to loss of earning capacity. The permanent disability is assessed on the basis of the certificate issued by the medical board. Every permanent disability does not result in loss of earning capacity. The loss of earning capacity is determined according to the principles laid down by the Hon'ble Supreme Court in the case of *Raj Kumar v. Ajay Kumar*

## CHAPTER-6

### **DELHI MOTOR ACCIDENT CLAIM TRIBUNAL RULES, 2008**

1. In *Sarika v. Narain Singh*,<sup>107</sup> it came to the notice of Delhi High Court that Delhi Motor Accident Claims Tribunal Rules were drafted in March, 1999 and the Draft Rules were published on 16<sup>th</sup> August, 2001 inviting objections from the public but despite a lapse of more than eight years, the Rules have not yet been notified. Notice was, therefore, issued to Government of NCT of Delhi on 19<sup>th</sup> May, 2009 in response to which it was informed to the High Court that the Draft Rules were again published in Delhi Gazette on 3<sup>rd</sup> September, 2008 and the same are pending for approval before the Cabinet of Government of NCT of Delhi. Vide order dated 22<sup>nd</sup> June, 2009, Government of NCT of Delhi was advised to expedite the consideration of the said Rules in pursuance to which Government of NCT of Delhi notified Delhi Motor Accidents Claims Tribunal Rules, 2008 on 13<sup>th</sup> July, 2009.
2. Delhi Motor Accident Claims Tribunal Rules, 2008 have very benevolent provisions. Some of the important provisions are that an uninsured vehicle cannot be released on superdari by any Court unless the owner of the offending vehicle gives sufficient security to satisfy the award that may be passed by the claims Tribunals. On the expiry of three months of the seizure, the Magistrate shall auction the offending vehicle and send the amount received in auction to the Claims Tribunal to be adjusted in the award amount. The Rules also define the duties of the Police Officers, Registering Authority. Under the new Rules awards of the Claims Tribunals can be adjudicated like a decree of the Civil Court and the Claims Tribunals are vested with all the powers of the Civil Courts. The reports submitted by the Investigating Officer, Registering Authority and the confirmation by the Insurance Companies are presumed to be correct and shall be read in evidence without formal proof till proved to the contrary.

#### **I. Salient Features of the Rules**

The salient features of the said Rules are as under:-

#### **Rule 3 - Duties of Investigating Police Officer in Motor Accident Cases**

- (i) To take photographs of the scene of the accident and prepare a site plan.
- (ii) Seizure of Insurance Policy and other documents as mentioned in Section 158(1) of the Motor Vehicles Act.
- (iii) Verification of genuineness of the aforesaid documents by obtaining confirmation from the concerned offices/authorities.
- (iv) Submission of Accident Information Report in Form 'A' within 30 days of receipt of the notice in Form 'B' accompanied by requisite documents including the Report under Section 173 Cr.P.C., medico legal certificate, post-mortem report, first information report, photographs, site plan, photocopies of relevant documents mentioned in Clause (c) and report regarding confirmation of genuineness of the documents.

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<sup>107</sup> MANU/DE/3613/2009.

- (v) Furnishing of Accident Information Report and particulars in Form 'A' within 30 days to the claimants.
- (vi) Impounding uninsured offending vehicles and not to release the same as well as vehicles in respect of which the owner fails to furnish the Insurance Policy.
- (vii) Prosecute the owner of the uninsured offending vehicles under Section 196 of the Motor Vehicles Act.

**Rule 4 - Duties of Registering Authority**

- (i) To submit the detailed report in Form 'D' to the Claims Tribunals regarding the offending vehicle involved in the accident or the licence of the driver within 15 days of the receipt of the application in Form 'E'
- (ii) Furnishing of the requisite information in Form 'D' within 15 days of receiving the application in Form 'F' from the claimant and the insurance company.

**Rule 5 - Duties of Insurance Company**

The Divisional Manager of the Insurance Company shall be responsible for the following duties:-

- (i) Apply for relevant information in Form 'C' to the Investigating Officer of Police after receiving the accident information.
- (ii) Verification of the insurance of the offending vehicle and to confirm the same to the Claims Tribunal within 30 days on receiving the notice of the claim case.
- (iii) Apply for relevant information in Form 'F' to the registering authority.
- (iv) Deposit the amount of 'no fault liability' under Section 140 of the Motor Vehicles Act with the Claims Tribunal along with the written statement.

**Rule 6 - Prohibition against Release of Motor Vehicle Involved in Accident**

The uninsured motor vehicles involved in the accident and the vehicles in respect of which registered owner fails to furnish copy of the insurance policy despite demand by the investigating officer not to be released by any Court unless the registered owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in the motor accident claims.

On the expiry of three months of the seizure of the aforesaid vehicle, the motor vehicle shall be sold in public auction by the Magistrate and the proceeds thereof shall be deposited with the Claims Tribunal within 15 days to be adjusted against the award.

**Rule 7 - Presumptions about Report**

The contents of the report submitted by Investigating Officer of the Police in Form 'A' and 'D' and the registering authority and the confirmation by Insurance Company under Rule 5(b) shall be presumed to be correct and shall be read in evidence without formal proof till proved to the contrary.

**Rule 8 - Applications to the Claims Tribunal**

- (i) Every application to be in Form 'G'.

- (ii) The claim application to be accompanied by an affidavit of the claimant.
- (iii) To disclose in affidavit whether the applicant had earlier preferred any claim petition with respect to the same cause of action
- (iv) The claim application shall be accompanied by the following:-
  - (a) All relevant documents
  - (b) Proof of identity of the applicant(s)
  - (c) Passport size photograph(s) of the applicant(s) duly attested by the Advocate on record
  - (d) Reports from the Police and the registering authority in Forms 'C' and 'D'
  - (e) Medical Certificate of injuries.
- (v) The Claims Tribunal may also require the applicant to furnish the following information:-
  - (a) Full particulars of all earlier accidents
  - (b) Amount of compensation paid in earlier accidents
  - (c) Name and particulars of the victim and of the person who paid the damages
  - (d) connection of the aforesaid persons with the claimant

**Rule 9 - Police Reports under Section 158(6) of the Motor Vehicles Act**

- (i) Accident Information Report to be in Form 'A'.
- (ii) Claims Tribunal may call for further information from the Police.
- (iii) Claims Tribunals shall register the case on receipt of the Accident Information Report and issue notice of appearance to all parties concerned including claimant, owner, driver and insurer of the offending vehicle in Form 'H'.
- (iv) If the claimant fails to appear in response to the notice, the Tribunal shall close the case.
- (v) If the claimant has filed an independent claim, the Accident Information Report shall be tagged with the same. If no independent claim has been preferred, the Tribunal shall call upon the claimant to submit statement of facts regarding compensation in Form 'G'.

**Rule 10 - Examination of Applicant**

On receipt of application under Rule 8, the Claims Tribunal may examine the applicant on oath. The object of this examination is to elucidate the material information required for effective adjudication of the claim, which might include confirmation of the identity of the party, confirmation about the fact that all legal heirs have been made party.

**Rule 14 - Proceedings after Appearance of Respondents**

- (i) The respondents to file written statement(s) along with all the documents and

also affidavit in support of all facts.

- (ii) If no written statement is filed, the Claims Tribunal must mandatorily examine the respondent and record the substance of the said examination in writing.

**Rule 15 - Local Inspection**

The Claims Tribunal is empowered to visit the site of accident for local inspection but in such event, must prepare a brief memorandum of facts observed, making it part of the record.

**Rule 16 - Inspection of Vehicle**

The Claims Tribunal may require production of the vehicle involved in the accident for inspection.

**Rule 18 - Power to Direct Medical Examination**

- (i) The Claims Tribunal may issue a direction in Form “J” to any Medical Officer or any Board of Medical Officers of a government or municipal hospital to examine the injured and give opinion indicating the degree and extent of disability, if any suffered.
- (iii) The rule renders it a duty on the part of such Medical Officer or Board to submit the report within 15 days of receipt of direction.

**Rule 20 - Procedure for Adjudication of Claim on the Basis of “No Fault Liability”**

- (i) Application for claim based on “No Fault Liability” to be in Form “G”.
- (ii) Such application cannot be rejected on account of technical flaws and is to be decided through summary procedure.
- (iii) If the application is not accompanied by report of investigating police officer (in Form “A”) and report of the registering authority (in Form “D”), the Claims Tribunal shall obtain the requisite information from concerned authorities.
- (iv) It is further the duty of the Claims Tribunal to expeditiously decide such application, if necessary by insisting on early certification about degree and extent of disability, if any, by recourse to Rule 18.
- (v) Claims Tribunal is required to issue directions for apportionment and securing the interest of the claimants in the interim award.

**Rules 21 to 24- Inquiry into the Claim**

- (i) The Claims Tribunal is required to frame issues arising out of pleadings.
- (ii) The Claims Tribunal is required to expedite the inquiry for determination of issues by allowing:
  - (a) Cross examination of each party by the opposite party on the affidavits filed with the pleadings.
  - (b) Cross examination of the witnesses whose affidavits were filed by the parties with the pleadings.
  - (c) Permitting additional evidence in the form of affidavits only of such witnesses whose affidavits could not be filed earlier despite exercise of due diligence or on account of ignorance.

- (iii) Record the statement of each witness in the form of a brief memorandum of the substance of statement given.

**Rule 27 - Securing the Interest of Claimants**

- (i) The Claims Tribunal is required to issue directions about securing the interest of the claimants in whose favour lump sum amount has been awarded but whose interest on account of disability etc. need to be protected.
- (ii) In issuing directions for securing the interest of the claimants, the Claims Tribunal shall have regard for the welfare of the injured or the heirs of the deceased.
- (iii) Rule 27 elaborately deals with the cases of minors, illiterate claimants, semi-literate claimants, and even literate claimants.

**Rule 31 - Enforcement of the Award**

The Claims Tribunal has been vested with all the powers of a Civil Court in execution of decree for enforcement of the award.

**Rule 32 - Powers of Civil Court**

The Claims Tribunal has been vested with all the powers of the Civil Court for discharging its functions.

## CHAPTER-7

### DOCTRINE OF SOVEREIGN IMMUNITY

1. In *Head of Department, Air Force Station, Amla v. Ram Kumar Giri*,<sup>108</sup> - an Air Force Truck killed a person in a motor accident on 22nd May, 2009. The Tribunal awarded a sum of ₹ 4,74,488/- against which the Air Force filed the appeal before the High Court raising the plea of sovereign immunity.
2. The law with respect to sovereign immunity is well-settled by the Hon'ble Supreme Court in various judgments. The rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble Supreme Court has further held that Article 300 of the Constitution has saved the right of Parliament to enact such law but no law has been enacted till now. The maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof. The Hon'ble Supreme Court in the case of *Pushpa Thakur v. Union*,<sup>109</sup> has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court also amounts to contempt of Court.
3. Vide order dated 12th November, 2009, Delhi High Court directed the learned Attorney General to look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. The learned Attorney General was also directed to ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and to consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future.
4. On 30<sup>th</sup> July, 2010, Union of India placed on record copy of office memorandum dated 30th June, 2010 issued by the Ministry of Road Transport and Highways to the Chief Secretaries of all the States and the Administrators of all the Union Territories, stating that the defence of sovereign immunity should not be pleaded by the Departments of Government in cases claiming compensation arising out of motor vehicle accidents involving the use of Government Vehicles on Government duty. The Ministry of Road Transport and Highways has also called for detailed information about the number of pending Motor Vehicle Claim cases wherein the plea of sovereign immunity has been raised.
5. The memorandum dated 30<sup>th</sup> June, 2010 issued by Union of India at the instance of Delhi High Court has put an end to the litigation involving the plea of sovereign immunity raised by the Union of India in motor accident cases.

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<sup>108</sup> MANU/DE/3609/2009; III (2010) ACC 279.

<sup>109</sup> 1984 ACJ 559.

## CHAPTER-8

### **SUGGESTIONS FOR AMENDMENT OF LAW RELATING TO MOTOR ACCIDENTS IN INDIA**

#### **I. Suggestions of Hon'ble Supreme Court**

In *Jai Prakash v. National Insurance Company*,<sup>110</sup> the Hon'ble Supreme Court has held as under:-

22. To ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third party insurance. For example, in South Africa and some other African countries, Road Accident Funds have been created, managed by Road Accident Fund Commissions, thereby eliminating the need for third party insurance. A fuel levy/surcharge is collected on the sale of petrol and diesel and credited to such fund. All accident victims, without exception, are paid compensation from out of the said fund by the Commission. But the feedback from operational statistics relating to such funds is that the scheme, while successful in smaller countries, may encounter difficulties and financial deficits in larger countries like South Africa or developing countries with infrastructural deficiencies.
23. An alternative scheme involves the collection of a one time (life time) third party insurance premium by a Central Insurance Agency in respect of every vehicle sold (in a manner similar to the collection of life time road tax). The fund created by collection of such third party insurance can be augmented/supplemented by an appropriate road accident cess/surcharge on the price of petrol/diesel sold across the country. Such a hybrid model which involves collection of a fixed life time premium in regard to each vehicle plus imposition of a road accident cess may provide a more satisfactory solution in a vast country like India. This will also address a major grievance of insurance companies that their outgoings by way of compensation in motor accident claims is four times the amount received as motor insurance premia. The general insurance companies may however continue with optional insurance to provide cover against damage to the vehicle and injury to the owner.
24. A more realistic and easier alternative is to continue with the present system of third party insurance with two changes:
  - (i) Define 'third party' - to cover any accident victim (that is any third party, other than the owner) and increasing the premia, if necessary.
  - (ii) Increase the quantum of compensation payable under Section 161 of the Act in case of hit and run motor accidents.
25. India has the dubious distinction of being one of the countries with the highest number of road accidents and the longest response time in securing first aid and medical treatment. There is therefore an urgent need for laying down and enforcing

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<sup>110</sup> *Supra* note 12.

Road safety measures and establishment of large number of Trauma Centres and first aid centres. It is also necessary to consider the establishment of a Road Safety Bureau to lay down Road Safety Standards and norms, enforce Road safety measures, establish and run Trauma Centres, establish First Aid Centres in Petrol Stations, and carry out research/data collection for accident prevention.

26. Several countries have comprehensive enactments dealing exclusively with accidents. In place of the provisions relating to Accident tribunals and award of compensation in the Motor Vehicles Act, 1988, and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered.

## II **Suggestions of Delhi High Court**

### A. **South African Model (Road Accident Fund by way of Cess on fuel)**

In *Rajesh Tyagi v. Jaibir Singh*,<sup>111</sup> the Delhi High Court advised the Government to examine law relating to Motor Accident Claims in South Africa which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission. The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety. The South African model system shall also save the cost of manpower used by Insurance Companies to issue policies.<sup>112</sup>

### B. **Canadian Model (Road Accident Fund from three sources)**

In *Master Sewa Ram v. Vijay*,<sup>113</sup> the Delhi High Court suggested the Expert Committee to also consider the Canadian system where the fund for payment of compensation to the victims of road accidents is collected from the following three sources:-

- (i) Insurance contribution payable by the owner of vehicle upon registration of a road vehicle for the right to operate the vehicle.
- (ii) Annual Insurance contribution payable by the owner of the vehicle to retain the right to operate the road vehicle.
- (iii) Annual Insurance contribution payable by a driving licence holder.<sup>114</sup>

<sup>111</sup> MANU/3598/2009 ; II (2010) ACC 864.

<sup>112</sup> The report of Road Accident Fund Commission in South Africa is available on the website, <http://transport.gov.za/library/docs/raf/index.htm>.

<sup>113</sup> MANU/DE/1063/2010 ; III (2010) ACC 608.

<sup>114</sup> <http://www2publicationsduquebec.gouv.gc.ca/dynamicSearch/telecharge.php?type=3&file=/A>

**C. Right of Legal Representatives to claim compensation after the death of the injured**

1. In *Bajaj Allianz General Insurance Co. Ltd. v. Kamla Bist*,<sup>115</sup> the accident dated 27th May, 2002 resulted in grievous injuries to the claimant, who filed the claim petition before the Tribunal. The claimant died during the pendency of the petition whereupon his legal representatives were substituted and an award was passed. The Insurance company challenged the award on the ground that the claim petition abated on death of the claimant and the right to sue did not survive in favour of the legal representatives.
2. The Law Commission in its 178th Report recommended the amendment to Section 306 of the Indian Succession Act, 1925 as well as Section 166 of the Motor Vehicles Act, 1988 to provide for initiation/continuation of proceedings by the legal representatives of the injured person upon his death. The Law Commission has referred to Full Bench judgment of Karnataka High Court in the case of *Kannamma v. Dy. General Manager*, *ILR 1990 Karn. 4300 (FB)* in which the Full Bench recommended that the provisions of Section 306 of the Indian Succession Act, 1925 and of Section 110A of the Motor Vehicles Act, 1939 be amended so as to permit the survival of the right of the injured person to seek compensation to his legal representatives, irrespective of whether the cause of death was relatable to the accident or not. In the subsequent, Single Bench judgment of Karnataka High Court in the case of *Baburao Sataba Manabutaker v. Doreswamy (MFA 4072/1998 dated 4.9.2001)* lamented delay in amending the law and pointed out that the delay in amendment is causing grave injustice. The Government is still to act on the recommendation of 178th Report of Law Commission and the position continues as it is which is causing grave injustice to the victims of the road accident.

**D. Other Suggestions of Hon'ble Delhi High Court**

1. In *Zamindar Motor Transport Co. Pvt. Ltd. v. New India Assurance Co. Ltd.*,<sup>116</sup> the Delhi High Court gave following suggestions for consideration by the Expert Committee constituted by the Ministry of Road Transport and Highways:-
  - (i) Strict rules regarding issuance of driving licence.
  - (ii) Computation of data of the driving licences issued all over the country.
  - (iii) Severe punishment for fake licence.
  - (iv) Higher punishment for drunken driving.
  - (v) Severe punishment for the accused who runs away from the spot after causing the accident.
  - (vi) Severe punishment for removing the vehicle from the spot of the accident and prohibition/punishment for the workshop who repairs the vehicle without clearance by the police.
  - (vii) Improvement of road conditions.

<sup>115</sup> MANU/DE/3608/2009; III (2010) ACC 55.

<sup>116</sup> MANU/DE/3617/2009; III (2010) ACC 690.

- (viii) Removal of unsafe vehicles from the road.
- (ix) Special cell of the police to enforce the law as well as for investigation/inquiry into the accident cases.
- (x) The computerization of the records of registration and insurance of the vehicles. The Insurance Policy number of all the vehicles should be duly recorded with the registration authorities so that immediately after the accident, the police can find out the Insurance Policy number and send an intimation to the Insurance Company.

2. In *Rajesh Tyagi v. Jaibir Singh*,<sup>117</sup> vide order dated 5<sup>th</sup> November, 2009, the Delhi High Court has suggested the Expert Committee appointed by the Ministry of Road Transport and Highways to consider inclusion of provisions of Delhi Motor Accidents Claims Tribunal Rules, 2008 in the Central Rules.

III. On 14 September, 2009, Ministry of Road Transport and Highways, Government of India constituted an Expert Committee to review the Motor Vehicles Act, 1988 in a comprehensive manner, study the corresponding law in leading Asian countries, and make appropriate recommendations for the amendment in the Act. The expert committee appointed by Ministry of Road Transport and Highways has submitted its report dated 31st January, 2011 to the government in which it has recommended that separate Act be enacted with respect to the motor accident claims compensation. The Committee has also recommended the adoption of the procedure for settlement of accident cases as laid down by the Hon'ble Supreme Court and the Delhi High Court. The committee has also recommended the cashless treatment to the victims of the road accident during first 72 hours of the accident.

The relevant text of the recommendations of the Committee is as under:-

**"Chapter X (Liability without fault in certain cases), Chapter XI (Insurance of Motor Vehicles against third party risks) & Chapter XII (Claims Tribunal)**

The Committee recommends that the above chapters be taken out of the Motor Vehicle Act and the provisions relating to vehicle insurance in the MVA be restricted to the following. Other matters relating to insurance of Motor Vehicles, payment of compensation to the accident victims and the procedure in this regard etc. should be incorporated into a separate Act more appropriately drawn up by the Ministry of Finance.

Matters to be dealt with by the Motor Vehicle Act :-

- i) Third Party Insurance for a motor vehicle shall be mandatory. "Third Party" should be adequately defined.
- ii) The Certificate of Insurance should be con-terminus with the validity of Certificate of Registration of the motor vehicle.
- iii) The motor vehicle owner/driver shall produce the Certificate of Insurance for inspection to the police officer/enforcement authorities on demand.
- iv) Cash less medical treatment to the road accident victims during first 72 hours will be provided by the Insurance Companies.

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<sup>117</sup> *Supra* note 15.

**These recommendations could be formulated as under:-**

**Necessity for insurance against third party risk** - A motor vehicle shall be insured as per a policy of insurance complying with the requirements of this Chapter.

Provided that the certificate of insurance shall be valid till the validity of registration of the motor vehicle as may be prescribed by the Government from time to time.

Provided further that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991.

Explanation:- A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

**Definition of Third Party:-**

"Third Party" means any person other than the insured and the insurer, and includes the Government, the driver of the vehicle and the passengers traveling in it.

**Production of certificate of registration:-**

The driver or conductor of a motor vehicle shall produce certificate of insurance on demand by any police officer in uniform or any other officer authorized by the State Government in this behalf, and if the certificate is not in his possession, he shall produce in person an extract or extracts of the documents duly attested by any police officer or by any other officer or send it to the officer who demanded the document by registered post within 15 days from the date of demand.

**Cashless treatment to road accident victims:-**

The Government may frame a scheme to provide cashless medical treatment to the road accident victims during first 72 hours by the insurance company. **The committee makes the following recommendations which could be considered for incorporation in the proposed new Motor Vehicle Insurance Act:-**

- a) Definition of authorized insurer be modified to include all private player also, duly licensed by Insurance Regulatory Development Authority. **Section 145 (a)**
- b) The amount of compensation under "hit & run" cases and under the Structured Compensation Formula should be enhanced. Further there should be a provision to increase the amount of compensation based on the rising cost of living. **Section 161 (3) (a), Section 163A**
- c) Provision should be made for an insurance policy to become void on the grounds of non-disclosure or misrepresentation or non-receipt of premium. **Section 149 (1)**
- d) The insurer may be relieved from the liability in case the vehicle is driven by a person not having an effective driving licence or in case of non-receipt of premium. **Section 149 (2)**
- e) The insurer may be allowed to contest the claim on any relevant ground including the quantum. **New Provision**
- f) There should be a cap on the liability of insurers to pay compensation under the Structured Compensation Formula on "no fault principles", of Rs. 10 lakhs and on fault principle of Rs. 20 lakhs. There should be a similar cap on the compensation to be awarded by the MACTs. Claims beyond this amount should be adjudicated by Civil Courts. **New Provision**

- g) The Motor Accident Claims Tribunal (MACT) or Civil Courts shall endeavor to dispose of a case within two years from the date of its filing, not to ordinarily grant adjournment unless sufficient cause and reasons of adjournment have been recorded in writing by the MACT or civil court. **New provision**
- h) There should be a time limit, say, 3 years for filing application from the occurrence of accident subject to general principles provided in the Limitations Act, 1963. **New Provision**
- i) To enable the insurer to make an endeavour to settle the claims out of Court/Tribunal directly with the claimant by mutual consent. **New Provision**
- j) The rate of interest on the amount of compensation be linked to 200 basis points above the bank rate as notified by the Reserve Bank of India to introduce certainty and uniformity regarding the interest on amount payable as compensation. **New Provision**
- k) Provision for interim compensation of Rs. 1,00,000/- in case of death or permanent total disablement and Rs. 50,000/- in case of permanent partial disablement, resulting from loss of a limb or sight of either eye or grievous hurt leading to such disablement to the victim within three months from the date of filing of application. **New Provision**
- i) The Act may suitably provide for the adoption of the procedure for settlement of accident cases by MACT, as laid down by the Hon'ble High Court of Delhi and Hon'ble Supreme Court of India in the respective MACT Rules of the States. **New Provision**

### ANNOTATIONS OF CASES

<p>Accident Information Report under Section 158(6) and its Cognizance by the Claims Tribunal under Section 166(4) of the Motor Vehicles Act.</p>	<p><i>Jai Prakash v. National Insurance Co. Ltd.</i></p> <p><i>All India Lawyers Union v. GNCTD</i></p> <p><i>All India Lawyers Union v. Union of India</i> &amp; <i>All India Lawyers Union v. Govt. of National- Capital Territory Of Delhi</i></p> <p><i>General Insurance Counsel v. State of Andhra Pradesh</i></p> <p><i>Rajesh Tyagi v. Jaibir Singh</i></p>	<p>MANU/SC/1949/2009 2010ACJ455</p> <p>MANU/DE/1250/1997 MANU/DE/0379/1998</p> <p>MANU/DE/0280/2001</p> <p>IV(2007) ACC 385 (SC)</p> <p>MANU/DE/3604/2009 III (2010) ACC 685 MANU/DE/3603/2009 MANU/DE/3602/2009 III (2009) ACC 856 MANU/DE/3601/2009 II (2010) ACC 781 MANU/DE/3663/2009 MANU/DE/3600/2009</p>
<p>Doctrine of Sovereign Immunity.</p>	<p><i>Head of Department, Air Force Station</i> <i>Amla v. Ram Kumar Giri Thr. LRs</i></p> <p><i>Pushpa Thakur v. Union of India</i></p>	<p>MANU/DE/3609/2009 III (2010) ACC 279</p> <p>1984 ACJ 559</p>
<p>Assessment of Future Loss of Earnings due to Permanent Disability.</p>	<p><i>Raj Kumar v. Ajay Kumar &amp; Anr</i></p> <p><i>Arvind Kumar Mishra v. New India Assurance Co.Ltd.</i></p> <p><i>Yadava Kumar v. D.M., National Insurance Co. Ltd.</i></p>	<p>MANU/SC/1018/2010 Civil Appeal No.8981/2010 decided on 18th October, 2010 (SC) 2010(10) SCALE 298</p> <p>2010 (8) SCALE 567</p>

<p>Assessment of Permanent Disability</p>	<p><i>Balaiah (T.) v. Abdul Majeed</i></p> <p><i>Madan Lal Papneja v. State of Haryana &amp; Ors.</i></p> <p><i>Executive Engineer, PWD, Udaipur v. Narain Lal</i></p> <p><i>New India Insurance Company Ltd v. Rajauna</i></p> <p><i>Oriental Insurance Company Limited v. Koti Koti Reddy</i></p> <p><i>Oriental Insurance Co Ltd.v. Ram Prasad</i></p> <p><i>Orissa State Road Transport Corporation v. Bhanu Prakash Joshi</i></p> <p><i>Sadasihiv Krishan Adke v. M/s Time Traders</i></p> <p><i>Pratap Narain Singh Deo v. Srinvas Sabata</i></p>	<p>AIR 1994 AP 354</p> <p>FAO No.422/1993 (O&amp;M) decided on 12th November, 2010 (P&amp;H)</p> <p>(1977) 2 LLN 415 1977 LIC 1827 (Raj)</p> <p>(1996) 1 TAC 149 (Kant)</p> <p>2000(2) LLJ 552 (AP)</p> <p>(2009) 2 SCC 712</p> <p>(1994) 1 ACC 467 (Ori)</p> <p>1992(1) LLJ 877</p> <p>AIR 1976 SC 222</p>
<p>Assessment of General Damages in Injury Cases</p>	<p><i>Bhagwan Singh Meena v. Jai Kishan Tiwari</i></p> <p><i>B.N.Kumar v. D.T.C.</i></p> <p><i>Dr.Gop Ramchandani v. Onkar Singh &amp; Ors.</i></p> <p><i>Fakkirappa v. Yallawwa &amp; Anr.</i></p> <p><i>Iranna v. Mohammadali Khadarsab Mulla &amp; Anr.</i></p> <p><i>Jitendra Singh v. Islam</i></p> <p><i>K.Shankar v. Pallavan Transport Corporation</i></p> <p><i>M.Jaganathan v. Pallavan Transport Corporation</i></p>	<p>1999 ACJ 1200</p> <p>118 (2005) DLT 36</p> <p>1993 ACJ 577</p> <p>2004 ACJ 141</p> <p>2004 ACJ 1396</p> <p>1998 ACJ 1301</p> <p>2001 ACJ 488</p> <p>1999 ACJ 366</p>

	<i>Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal</i>  <i>Ward v. James</i>	2008 ACJ 1300  (1965) ALL.ER 563
Award of costs.	<i>Sat Prakash v. Jagdish</i>	MANU/DE/0977/2010 II (2010) ACC 914
Compensation for death of a non-dependent spouse.	<i>Keith Rowe v. Prashant Sagar</i>  <i>A. Manavalagan v. A. Krishnamurthy &amp; Ors.</i>	MANU/DE/1060/2010 II (2010) ACC 64  I(2005) ACC 304
Compensation for death of a house wife.	<i>Arun Kumar Aggarwal v. National Insurance Company</i>  <i>Lata Wadhwa v. State of Bihar</i>	JT2010 (7)SC304  AIR 2001 SC 3218
Compensation for death of a child.	<i>R.K. Malik v. Kiran Pal</i>  <i>R.K. Malik v. Kiran Pal</i>  <i>Managing Director TNSTC Ltd. v. K.T. Bindu</i>  <i>M.S. Grewal v. Deep Chand Sood</i>  <i>United India Co. Ltd. v. Patrica Jean</i>  <i>Taff Vale Rly. Co. v. Jenkins</i>  <i>National Insurance Co.Ltd v. Farzana</i>	III (2006) ACC 261  2009(8) Scale 451  IV (2005) ACC 350  II (2001) ACC 540  II (2002) ACC 460  MANU/QB/0452/1912  MANU/DE/1893/2009 II (2010) ACC 9
Compensation for death of a professional.	<i>Union Of India v. Dr. Rita Pant</i>  <i>DTC v. Sudarshan Yadav</i>  <i>Haji Zainullah Khan v. Nagar Mahapalika, Allahabad</i>	MANU/DE/3620/2009 IV (2009) ACC 696  1995 ACJ, 393  1994 ACJ 993
Compensation for death of a student pursuing professional course.	<i>New India Assurance Co. Ltd. v. Ganga Devi &amp; Ganga Devi v. New India Assurance Co. Ltd.</i>	MANU/DE/3623/2009 III (2010) ACC 6

Compensation for death of a business man.	<i>Sumitra v. UP State Roadways Tpt. Corpn</i>	MANU/DE/1155/2009 II (2010) ACC 586
Compensation for death of a person whose income is not proved.	<i>Kiran Devi v. Surjeet Yadav</i>  <i>Kanwar Devi v. Bansal Roadways</i>  <i>National Insurance Co. Ltd. v. Renu Devi</i>	MANU/DE/1059/2010 II (2010) ACC 289  2008 ACJ 2182  III(2008) ACC 134
Compensation for death arising out of bomb blast in a motor vehicle.	<i>D.T.C. v. Meena Kumari and Ramkishan v. D.T.C.</i>	MANU/DE/0502/2010 III (2010) ACC 72
Computation of compensation in injury cases-General Principles	<i>C. K. Subramonia Iyer v. T. Kunhikuttan Nair</i>  <i>Common Cause, A Registered Society v. Union of India</i>  <i>Baker v. Willoughby</i>  <i>Nagappa v. Gurudayal Singh and Ors.</i>  <i>R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.</i>	AIR 1970 SC 376  AIR 1999 SC 2979  1970 AC 467  AIR2003SC674 III(2002) ACC 766 (SC) 2003 ACJ 12  MANU/SC/0146/1995 (1995) 1 SCC 551 I (1995) ACC 281 (SC)
Delhi Motor Accident Claims Tribunal Rules, 2008.  Deposit of Award Amount under Order XXI Rule 1 CPC	<i>Sarika v. Narain Singh</i>  <i>Sobat Singh v. Ramesh Chandra Gupta</i>  <i>Sarmaniya Bai v. Madhya Pradesh Rajya Parivahan Nigam</i>  <i>Rajasthan State Road Transport Corporation, Jaipur v. Smt. Poonam Pahwa</i>	MANU/DE/3613/2009 III (2010) ACC 657  MANU/DE/1058/2010 MANU/DE/1057/2010 II (2010) ACC 818  AIR 1990 MP 306 (FB)  1997 ACJ 1049

<p>Deduction of TDS on the award amount. Directions to Insurance Companies</p>	<p><i>National Insurance Co. Ltd v. Kanika Saboo</i> <i>Ramakrishna Reddy v. Manager, Purchase, HMT Tools Ltd.</i></p> <p><i>Ramadevsing v. Chudasma v. Hanrajbhai v. Kodala</i></p>	<p>MANU/DE/3622/2009 III (2010) ACC 29 2003 ACJ 105</p> <p>1999 ACJ 1129</p>
<p>Frivolous defence raised by Insurance Company.</p>	<p><i>Oriental Insurance Co. Ltd v. Satpal</i></p>	<p>MANU/DE/3618/2009 III (2009) ACC 828</p>
<p>Liability of Insurance Company in respect of a pillion rider on a two-wheeler and occupants in a private car under comprehensive/package policy</p>	<p><i>Yashpal Luthra v. United India Insurance Co. Ltd.</i></p>	<p>MANU/DE/3174/2009 III (2010) ACC 130</p>
<p>Prosecution of Owners/Drivers of Un-insured Vehicles under Section 196 of the Motor Vehicles Act.</p>	<p><i>Rajiv Dhawan v. Phirtu</i></p>	<p>MANU/DE/3611/2009 II (2010) ACC 927 II (2010) ACC 929</p>
<p>Prosecution of holders/forgers of fake driving licences.</p>	<p><i>New India Assurance Co. Ltd. v. Rakesh Ahuja</i></p>	<p>MANU/DE/3616/2009 IV (2010) ACC 34 MANU/DE/3421/2009 IV (2010) ACC 40</p>
<p>Procedure for investigation of motor accident claim cases</p>	<p><i>Abdul Subhan v. State (NCT of Delhi)</i></p>	<p>133(2006)DLT562</p>
<p>Protection of award amount.</p>	<p><i>Oriental Insurance Co. Ltd. v. Smt. Man Singh</i></p> <p><i>New India Assurance Co. Ltd. v. Geeta Devi</i></p> <p><i>UOI v. Nanisiri</i></p> <p><i>New India Assurance Co. Ltd. v. Ganga Devi</i></p> <p><i>Resham v. Harish Kaushik</i></p> <p><i>Shobha Gulhar v. Ram Pal</i></p>	<p>MANU/DE/3615/2009</p> <p>MANU/DE/3614/2009 IV (2009) ACC 761</p> <p>MANU/DE/0218/2010 II (2010) ACC 101</p> <p>MANU/DE/1056/2010 IV (2010) ACC 28</p> <p>MANU/DE/1055/2010</p> <p>MANU/DE/1061/2010 MANU/DE/ 1062/2010</p>

	<i>New India Assurance Company Ltd. v. Kashmiri Lal United India Insurance Co. Ltd. v. Ram Kishan</i>	2007 ACJ 688 MAC.APP.No.247/2009
Principles for computation of compensation in death cases.	<p><i>Sarla Verma v. Delhi Transport Corporation</i></p> <p><i>Abati Bezbaruah v. Geological Survey of India</i></p> <p><i>Davies &amp; Anr. v. Powell Duffryn Associated Collieries Ltd.</i></p> <p><i>Fakeerappa &amp; Anr. v. Karnataka Cement Pipe Factory &amp; Ors.</i></p> <p><i>GM, KSRTC v. Susamma Thomas</i></p> <p><i>Nance v. British Columbia Electric Railway Co. Ltd.</i></p> <p><i>New India Assurance Co. Ltd. v. Charlie</i></p> <p><i>Oriental Insurance Co. Ltd. v. Meena Variyal &amp; Ors.</i></p> <p><i>Reshma Kumari v. Madan Mohan</i></p> <p><i>Sarla Dixit &amp; Ors. v Balwant Yadav &amp; Ors.</i></p> <p><i>T.N. State Transport Corpn. Ltd. v. S.Rajapriya &amp; Ors.</i></p> <p><i>U.P.State Road Transport Corpn. v Krishna Bala &amp; Ors.</i></p> <p><i>UPSRTC &amp; Ors. v Trilok Chandra</i></p> <p><i>Divisional Controller, KSRTC</i></p>	<p>MANU/SC/0606/2009 2009ACJ1298</p> <p>(2003) 2 SCC 148 I(2003) ACC 352 (SC) 2003 ACJ 680</p> <p>MANU/QB/0477/1942 (1942) 1 All ER 657 (1942) AC 601</p> <p>I( 2004 ) ACC 494 2004 ACJ 699</p> <p>AIR 1994 SC 1631 (1994) ACC 346 (SC) 1994 ACJ 1</p> <p>MANU/QB/0483/1951</p> <p>AIR2005SC2157 II (2005) ACC 74 (SC) 2005 ACJ 1131</p> <p>AIR 2007 SC 1609 IV (2007) ACC 335 (SC) : 2007 ACJ 1284</p> <p>MANU/SC/1303/2009</p> <p>(1996) 3 SCC 179 I (2004) ACC 396 (SC)</p> <p>AIR 2005 SC 2985 II (2005) ACC 476 (SC)</p> <p>AIR 2006 SC 2688 III(2006) ACC 361 (SC)</p> <p>(1996) 4 SCC 362 I (1996) ACC 592 (SC)</p> <p>2003 (7) SCC 197</p>

	<i>v. Mahadeva Shetty and Anr.</i> <i>Helen C. Rebello &amp; Ors. v. Maharashtra State Road Transport Corpn. &amp; Anr.</i>	III (2003) ACC 57 (SC) 2003 ACJ 1775 1999 ACJ 10
Right of legal representatives of the injured to claim compensation after the death of the injured.	<i>Bajaj Allianz General Insurance Co. Ltd v. Kamla Bist</i> <i>Kannamma v. Dy. General Manager</i>	MANU/DE/3608/2009 III (2010) ACC 55  ILR 1990 Karn. 4300 (FB)
Scope of inquiry by Claims Tribunal under Sections 168 & 169 of the Motor Vehicles Act.	<i>Mayur Arora v. Amit @Pange</i>	MANU/DE/1064/2010
Special Scheme for Settlement of Motor Accident Claim Cases within 120 days along with Claims Tribunal Agreed Procedure approved by Delhi High Court.	<i>Rajesh Tyagi v. Jaibir Singh</i>	MANU/DE/3374/2009 MANU/DE/3599/2009 MANU/DE/2519/2010
Suggestions of Delhi High Court for amendment of the Motor Vehicles Act.	<i>Rajesh Tyagi v. Jaibir Singh</i> <i>Zamindar Motor Transport Co. Pvt. Ltd. v. New India Assurance Co. Ltd.</i> <i>Master Sewa Ram v. Vijay</i>	MANU/DE/3598/2009 II (2010) ACC 864  MANU/DE/3617/2009 III (2010) ACC 690  MANU/DE/1063/2010 III (2010) ACC 608
Steps to curb delay and repeated adjournments for service of respondents.	<i>Reliance General Insurance Co. Ltd. v. Rachan Devi</i>	MANU/DE/3606/2009





## **MOTOR ACCIDENT CLAIMS REFERENCER**

This Referencer addresses a wide range of questions relating to accident claims from the role and responsibilities of the police to computation of damages, no sovereign immunity of the State against accident claims, to the obligations of the insurance companies, and duties and powers of the MACTs. This Referencer provides answer to all the questions that one may have regarding motor accident claims and can be used by judges, police, and insurance companies. The Referencer has been written in simple language that may be understood by all, including the victims of road accidents.

Delhi Judicial Academy is presenting this Referencer with the hope that it will be widely used by judges across the country whilst dealing with motor accident claims for their expeditious and just disposal. We are optimistic that the Agreed Procedure being implemented in Delhi will be adopted in many more States providing the long needed succour to accident victims.



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