

DEVELOPMENT OF LAW RELATING TO MOTOR ACCIDENT CLAIMS AND IMPORTANT JUDGMENTS/ORDERS PASSED BY DELHI HIGH COURT

India has largest number of road accidents in the world. More than one lakh people die in road accidents in a year and the average number of deaths per day are more than 300, meaning thereby that more than ten persons die every hour. Total number of accidents in Delhi in last 22 months had been more than 15,000 resulting in 3647 deaths.

Most of the victims of the road accidents are poor people walking on the road or riding on bicycles/scooters. 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 wait for a case to be filed before 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. This is a matter of serious concern.

The reasons for delay in disposal of claim cases are as under:-

- (i) Delay in service of the driver and owner.
- (ii) Non-appearance of the driver and owner despite service.
- (iii) Non-production of the driving licence by the driver and the owner.
- (iv) Non-production of the insurance policy, registration cover, fitness certificate and permit by the owner.
- (v) The plea of the owner that he has sold the vehicle before the accident.
- (vi) Avoidance of liability by the insurance company on the ground that the driver and owner are not producing the relevant documents.
- (vii) In the case of uninsured vehicles, claimants are unable to enforce the award against the owner.

I. ENFORCEMENT OF SECTION 158(6) OF MOTOR VEHICLES ACT, 1988.

1. Section 158(6) of the Motor Vehicles Act was incorporated in 1994 and it provides that the 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 is the first agency to take cognizance of the accident and it has the entire evidence required for initiating the proceedings for compensation.

2. During the course of hearing of FAO No.842/2003 on 21st April, 2009, it was noticed that Delhi Police was not implementing Section 158(6) of the Motor Vehicles Act despite directions passed by the Hon'ble Supreme Court in **General Insurance Council vs. State of Andhra Pradesh, IV(2007) ACC 385 (SC)**. Notice was, therefore, issued to the Commissioner of Police to place on record the status on implementation of Section 158(6) of the Motor Vehicles Act along with the data of compliance for the last 22 months from the date of the judgment of the Hon'ble Supreme Court. Directions were also given to the Claims Tribunals to place on record the compliance of Section 166(4) which provides that the Claims Tribunals shall treat the report forwarded to it under Section 158(6) as an application for compensation.

3. On 18th May, 2009, the DCP (Hqrs.) of Delhi Police filed an affidavit stating that 15,370 accidents took place during July, 2007 to April, 2009 and the information in the prescribed proforma under Section 158(6) of the Motor Vehicles Act, 1988 has been sent to the Motor Accident Claims Tribunals. The Registrar (Appellate) of the High Court also filed a report received from the Motor Accident Claims Tribunals in which it was stated that no report has been received by the Claims Tribunals from Delhi Police under Section 158(6) of the Motor Vehicles Act, 1988. In view of the contradictory stand taken by the Delhi Police and the Claims Tribunals, the Delhi Police was directed to produce the documents relating to the compliance of Section 158(6) of the Motor Vehicles Act with respect to eleven Police Stations on 28th May, 2009.

4. On 28th May, 2009, Dy. Commissioner of Police (Hqrs.) of Delhi Police admitted non-compliance of Section 158(6) and filing of incorrect affidavit before the High Court whereupon proceedings for contempt of Court were initiated against DCP (Hqrs.). DCP (Hqrs.) tendered unconditional apology and sought permission to withdraw

the incorrect affidavit. Delhi Police agreed to strictly follow the law in future and consider the suggestions for streamlining the motor accident cases.

5. On 8th June, 2009, Delhi Police filed an undertaking to start the following initiatives to implement Section 158(6) of the Motor Vehicles Act:-

- (i) Delhi Police has started a website (www.dpaccicclaim.in) in which all relevant information/documents are placed which can be downloaded by the claimants, Insurance Companies as well as Tribunals.
- (ii) Registers to be maintained 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 shall also be maintained in the register.
- (iii) Delivery of FIR to the Claims Tribunals on the date of registration.
- (iv) Entries in red ink in FIR index about date of dispatch of Accident Information Report (hereinafter referred to as AIR).
- (v) Checking of AIR (Form 54) dispatch records mandatorily during six monthly inspections by Gazetted Officer.
- (vi) ACsP/SHOs shall forward final reports to the Magistrate only on production of dispatch of AIR (Form 54) 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 to be set up in each District to monitor delivery of AIR (Form 54) in time.
- (viii) Monthly meeting of ACsP, PG Cell, In-charge of MACT Monitoring Cells with the Claims Tribunals.
- (ix) Appointment of Naib Court (a police officer) by District DCsP with the Claims Tribunals.
- (x) Review of pendency of AIR (Forms 54) by District DCsP in weekly law and order meeting.
- (xi) Placement of AIR (Form 54) on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.
- (xii) Installation of checklist boards in SHOs rooms.

- (xiii) Establishment of District Cells as pilot project in three districts.

6. The Delhi High Court passed following directions to Delhi Police on 8th June, 2009:-

- “(i) 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.

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”.

- (ii) 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.

- (iii) 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.”

7. With respect to the accidents during the period 1994-2009, Delhi Police has been directed vide order dated 5th November, 2009 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 14th November, 1994.
- (ii) The Delhi Police shall collect the list of all pending cases filed after 14th 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 with 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 of 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 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 ACsP in terms of order dated 8th June, 2009.

II. ENFORCEMENT OF SECTION 166(4) OF THE MOTOR VEHICLES ACT, 1988.

1. Section 166 (4) of the Motor Vehicles Act was also incorporated 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 accident may be ignorant of their rights and, therefore, 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 to be filed by the claimant. However, this provision was not being enforced as the police was not filing the Accident Information Report with the Claims Tribunal. With the undertaking of the police and the directions of the High Court to the police to strictly enforce Section 158(6) of the Motor Vehicles Act, the Delhi High Court has given following directions to the Motor Accident Claim Tribunals on 8th June, 2009 for enforcement of Section 166(4) of the Motor Vehicles Act:-

- “(i) Maintenance of a register for recording of the FIR which shall 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.
- (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.”

2. All the Motor Accident Claims Tribunals have set up the aforesaid system for compliance of Section 166(4) of the Motor Vehicles Act, 1988.

3. The net effect of aforesaid directions is that 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. Simultaneously, the Investigating Officer is also producing the owner, driver, eye-witness and the claimants before the claims Tribunal. Insurance Companies are already represented through their retainers and the Claims Tribunals straight away proceed to record the statements of all concerned, verify the documents and pass an award. 25 cases of accident have been settled by the Claims Tribunals from 1st July, 2009 to 20th July, 2009 on the basis of the AIR filed by Delhi Police.

III. DIRECTIONS TO INSURANCE COMPANIES TO DEPOSIT THE ADMITTED AMOUNT WITH THE CLAIMS TRIBUNALS.

1. The Insurance Companies have not been settling the claims of the victims of the road accident on the ground that they have no notice/intimation of the road accident until the receipt of the notice from the Claims Tribunal. With the enforcement of Section 158(6) of the Motor Vehicles Act, the SHO of the Police Station is serving

the copy of the Accident Information Report along with all the relevant documents on the Insurance Company at the time of filing of the Accident Information Report with the Claims Tribunal. The Insurance Companies now have sufficient notice of the claim and they can verify the same and settle the claim.

2. Vide orders dated 8th June, 2009 and 5th November, 2009 in FAO No.842/2003, 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.

4. In order to streamline the system, it is directed that henceforth 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.

5. With respect to the pending cases relating to Motor Accident Claims in Delhi, all the Insurance Companies are 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 learned Tribunal within 20 days of the date of the order of the designated officer.

IV. SPECIAL SCHEME FOR SETTLEMENT OF MOTOR ACCIDENT CLAIMS WITHIN 120 DAYS IN RESPECT OF ACCIDENTS DURING 15.1.2010 TO 14.7.2010.

1. Vide order dated 5th November, 2009 in MAC.APP.236/2009 & 238/2009, 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. The Committee consulted all the 17 Insurance Companies and with their consent, prepared Claims Tribunal Agreed Procedure which was approved by Delhi High Court.

2. The Delhi Police agreed to implement the said procedure on trial basis as a pilot project for a period of six months.

3. 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.
- (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.

4. Vide order dated 15th January, 2010, the High Court has directed that the Pilot Project shall to commence from 2nd April, 2010. In the meantime, the Committee appointed by the Court has been directed to examine cashless treatment of the victims of the road accidents by incorporating Clause 3(3) in the Claims Tribunal Agreed Procedure which is reproduced hereunder:-

“3(3). In case of grievous injuries suffered by a victim of the road accident who may require some surgery or shifting to some other hospital for better treatment, the Investigating Officer of the Police shall verify the existence of the Insurance policy in the first instance and shall submit the verification report and the copy of the Insurance policy along with the Report under Clause 3(2) to the Claims Tribunal within 48 hours of the accident whereupon the Claims Tribunal shall, after hearing the Insurance company and satisfying itself about the existence of the Insurance policy, direct the Insurance company to directly pay the hospitalization charges to the concerned hospital. However, this payment by the Insurance company shall be subject to the final outcome of the claim and in the event of Insurance company having legal defence available to it to avoid the liability, recovery rights in respect of such amount paid by the Insurance company shall be given by the Claims Tribunal to the Insurance company to recover the same from the driver and owner of the offending vehicle. The Claims Tribunal shall send the said order to the concerned hospital. If the Tribunal

finds that the victim of the road accident needs shifting to some other hospital for better treatment then the Tribunal shall also pass appropriate order in this regard.”

5. The Committee appointed by the Court has to submit its report to the High Court on 15th February, 2010.

V. SUGGESTIONS FOR AMENDMENT OF MOTOR VEHICLES ACT, 1988.

1. On 14th 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. This was reported in the newspaper on 22nd September, 2009.
2. Vide order dated 25th September, 2009 in FAO No.842/2003, 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.
3. 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.
4. 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://transport.gov.za/library/docs/raf/index.htm>.

5. Vide order dated 18th November, 2009 in MAC.A.287/2008, Delhi High Court has given the following suggestions to the Government:-

- (i) Strict rules regarding issuance of driving licence.
- (ii) Computerized data of the driving licences issued all over the country.
- (iii) Severe punishment for fake licence. (At present, no action is taken for the offenders involved in the racket of issuing fake licences. Rather the victims of the road accidents suffer because the Insurance Company avoids the liability on the ground of 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 condition.
- (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.

VI. PROTECTION OF THE AWARD AMOUNT

1. 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. It was noted that 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. To protect the award money from being wasted, vide order dated 21st April, 2009 in the case of **Oriental Insurance Co. Ltd. vs. Man Singh**, MAC.APP.No.130/2009, Delhi High Court has 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.

2. 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 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.

- (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.

3. The scheme formulated by the High Court shall protect the money of the victims of the road accident.

VII. DELHI MOTOR ACCIDENT CLAIMS TRIBUNAL RULES, 2008

1. In the case of **Sarika Vs. Narain Singh, FAO 492/1999**, 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 16th 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 19th May, 2009 in response to which it was informed to the High Court that the Draft Rules were again published in Delhi Gazette on 3rd September, 2008 and the same are pending for approval before the Cabinet of Government of NCT of Delhi.

2. Vide order dated 22nd June, 2009, Government of NCT of Delhi was advised to expedite the consideration of the said Rules and some suggestions were given by the High Court to be incorporated in the Draft Rules.

3. On 13th July, 2009, Government of NCT of Delhi has notified Delhi Motor Accidents Claims Tribunal Rules, 2008.

4. 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.

5. The new Rules shall cut down the delays in the trial of Motor Accident Claim cases.

6. Vide order dated 5th November, 2009, the High Court has given suggestion to 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.

VIII. SCOPE OF SECTIONS 168 AND 169 OF THE MOTOR VEHICLES ACT, 1988.

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 not been conducting any inquiry but were conducting a normal civil trial due to which the disposal of the claim petition was getting unduly delayed. Vide order dated 22nd May, 2009 in the case of **Somari Devi Vs. Ragwar Singh, FAO No.884/2003**, the directions have been issued by Delhi High Court to the Tribunals to conduct an inquiry into the claim petition instead of a protected civil trial.

IX. ENFORCEMENT OF SECTION 196 OF THE MOTOR VEHICLES ACT, 1988 FOR PROSECUTION OF OWNER/DRIVER OF UNINSURED VEHICLES.

Section 196 of the Motor Vehicles Act provides for imprisonment upto three months or fine upto Rs.5,000/- or both for the driver and owner of the uninsured vehicles. 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 MAC.APP.347/2009 in pursuance to which the Delhi Police

has regretted the lapse in not implementing Section 196 of the Motor Vehicles Act and 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. By invoking Section 196 of the Motor Vehicles Act, the owners of many uninsured vehicles have paid the claim amount to the claimants.

X. PROSECUTION OF OFFENDERS HOLDING FAKE DRIVING LICENCE AS WELL AS PERSONS INVOLVED IN FABRICATING/FORGING FAKE DRIVING LICENCE.

1. 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 licence 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 but they drive freely on road. The fake driving licence holders should not be permitted to drive on the road.

2. Vide judgment dated 3rd December, 2009 in MAC.APP.236/2009, Delhi High Court has 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.

3. The Committee constituted by Delhi High Court held its meeting on 14th December, 2009 and submitted its report before the High Court on 23rd December, 2009.

4. Based upon the report of the Committee, the High Court passed the following directions on 23rd December, 2009:-

- (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 1st 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 3rd 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 action 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 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.

5. Delhi Police shall launch a special drive to book the persons who fake the driving licences.

6. 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.

XI. JUDGMENT ON THE DOCTRINE OF SOVEREIGN IMMUNITY

Air Force Truck killed a person in a motor accident on 22nd May, 2009. The Tribunal awarded a sum of Rs.4,74,488/- against which the Air Force filed the appeal before the High Court raising the plea of sovereign immunity.

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, 1984 ACJ 559, 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 shall also amount to contempt of Court.

Vide order dated 12th November, 2009 in MAC.APP.284/2008, Delhi High Court has directed the learned Attorney General to personally 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 shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also 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.

XII. LIABILITY OF THE INSURANCE COMPANY IN RESPECT OF A PILLION RIDER ON A TWO-WHEELER AND OCCUPANTS IN A PRIVATE CAR UNDER COMPREHENSIVE/PACKAGE POLICY.

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 cover the occupants in a private car and a pillion rider on a two-wheeler under comprehensive/package policy.

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.

In MAC.APP.176/2009, 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. All the officers admitted the liability of the Insurance Companies in such matters. The Court also issued notice to all other insurance companies. On 16.11.2009, IRDA issued fresh circular reiterating the factual position. IRDA

thereafter convened a meeting dated 26th 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 16th November, 2009 issued by IRDA restating 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 weeks and the withdrawal to be done within four weeks thereafter.

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.

It is also hoped that large number of pending cases all over the country shall come to an end, and the claimants who have been denied compensation on this ground, shall ultimately get the compensation legitimately due to them.

XIII. RIGHT OF LEGAL REPRESENTATIVES TO CLAIM COMPENSATION AFTER THE DEATH OF THE INJURED

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.

The Law Commission in its 178th Report has 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 Vs. 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 vs. 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.

Since the Government has now appointed a Committee to review the entire Motor Vehicles Act, vide order dated 4th November, 2009 in MAC APP.432/2009, the copy of this order has been directed to be sent to the Secretary, Ministry of Road Transport and Highways and to Mr. S. Sunder, Chairman of the Expert Committee appointed by

Ministry of Road Transport and Highways to consider the recommendations of the Law Commission.

XIV. INSURANCE COMPANIES CANNOT DEDUCT TDS UNDER SECTION 194-A OF THE INCOME TAX ACT FROM THE INTEREST ON THE AWARD AMOUNT DEPOSITED UNDER AN INTERIM ORDER OF THE COURT.

It came to the notice of Delhi High Court that 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.

Vide judgment dated 26th March, 2009 in MAC.APP.596/2008, 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, therefore, Section 194-A of the Income Tax Act does not apply and no TDS can be deducted.

XV. SCOPE OF SECTION 165 OF THE INDIAN EVIDENCE ACT, 1872.

Section 165 of the Indian Evidence Act 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 willfully avoided.

Vide order dated 22nd May, 2009 in the case of **Somari Devi Vs. Ragwar Singh, FAO No.884/2003**, the Delhi High Court has laid down the scope of Section 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.

XVI. SCOPE OF SECTION 167 OF THE INDIAN EVIDENCE ACT, 1872.

Improper admission or rejection of evidence is not by itself a ground for reversal of a decision, if there is other evidence to support it. Where admissible evidence has been improperly rejected or inadmissible evidence has been admitted by the Judge, such improper reception or rejection of evidence shall not of itself be a ground for new trial or reversal of any decision in any case, unless substantial wrong or miscarriage of justice has been thereby occasioned; or, in other words, if the Court considers that after leaving aside the evidence that has been improperly admitted, there was enough evidence on the record to justify the decision of the lower court, or that if the rejected evidence were admitted the decision ought not have been affected thereby, no Court of appeal should set it aside.

The Appellate Court can effectively decide the appeal following Section 167 of the Indian Evidence Act. Scope of Section 167 of the Indian Evidence Act has been laid down in judgment dated 21st May, 2009 in the case of **New India Assurance Co. Ltd. vs. Col. Surinder Pal, MAC APP. NO.158/2007.**

XVII. STEPS TO CURB DELAY AND REPEATED ADJOURNMENTS FOR SERVICE OF RESPONDENTS

1. In the appeals filed by the Insurance Companies, the stay is granted subject to deposit the entire award amount along with interest within 30 days and notice is issued to the claimants and date is fixed after about 45 days so that the appropriate order for disbursement of the award can be passed on the next date. However, invariably the appellants fail to file the process fee and, therefore, the case gets adjourned. At times, there are repeated failures on the part of the Insurance Companies to file the process fee as a result of which the claimants do not become aware of the deposit made in the High Court and grave injustice is caused to them.

2. Delhi High Court has passed an order in MAC.APP. No.405/2009 to the effect that if the appellant fails to take steps for service of the respondents within one week or the process fee is filed but returned under objections and objections are not removed within three days, the Registry shall issue court notice to the respondents by ordinary process as well as registered AD and in that event, Rs.5,000/- shall be deposited as cost by the appellant before the next date and upon failure to deposit the cost before the next date, same shall be deducted out of the statutory amount of Rs.25,000/- deposited by the appellant with the appeal under Section 173 of the Motor Vehicles Act.

3. The aforesaid order shall serve the following purposes:-

- (i) The date of service shall not be wasted because of the default of the appellant to take steps for service.
- (ii) The Judicial time wasted to attend the default hearings shall be saved.
- (iii) There are some cases where the appellant deliberately does not take steps to delay the proceedings. The appellant cannot now succeed in delaying the case.
- (iv) Injustice to the claimants due to failure of the appellant to take steps and delay of the appeal would be avoided.
- (v) The pre-emptory order of imposing cost would act as a deterrent to the counsels and the discipline would improve.
- (vi) The funds collected by way of cost for default can be put to a benevolent use.

XVIII. SETTLEMENT OF PENDING DEATH CASES ACCORDING TO THE SCHEDULE ACCEPTED BY THE INSURANCE COMPANIES

1. On 29th 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 Vs. Delhi Transport Corporation, 2009 (6) Scale 129** decided on 15th April, 2009 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.

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

1. **MULTIPLIER**

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

2. **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. : 1/3rd (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.

3. **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.

4. NON-PECUNIARY DAMAGES

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

5. RATE OF INTEREST

Rate of interest : 5.0%

XIX. PROPOSED ACTION PLAN FOR EXPEDITIOUS DISPOSAL OF MOTOR ACCIDENT 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 Conference on “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 are 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 Rs.400 towards claim against Rs.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 25th September, 2009 advising the Government to examine the South African Law.”

JUSTICE J.R. MIDHA

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