



JUDICIAL ACADEMY JHARKHAND



READING MATERIAL

(For private circulation only)

ON

MOTOR ACCIDENTS CLAIMS TRIBUNAL

FOR

STATE LEVEL WORKSHOP

ON

MACT

AT

JUDICIAL ACADEMY JHARKHAND

Prepared by :-

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IMPACT OF ROAD ACCIDENTS

Today, road traffic injuries are one of the leading causes of death, disabilities and hospitalization in the country. Road traffic injuries constitute the 8th leading causes of death in India in 2016, and are the leading cause of health loss among young men of age 15-49 years. The severity of Road accidents can be ascertained from the fact that a total of 4,64,910 road accidents have been reported by States and Union Territories (UTs) in the calendar year 2017, claiming 1,47,913 lives and causing injuries to 4,70,975 persons which is higher than the total number of accidents reported. Fatal road accident victims largely constitute young people in the productive age groups. Young adults in the age group of 18 - 45 years accounted for 72.1 per cent of victims during 2017. People in working age group of 18 - 60 years accounted for a share of 87.2 per cent in the total road accident fatalities.¹ The loss of life of the sole earning member of the family may bring penury to the dependants.

HISTORICAL BACKGROUND OF THE MOTOR VEHICLE ACT

Prior to 1956, the dependants or the victim used to file the claim for compensation from the person who caused the harm before the ordinary civil court having the jurisdiction in that area, which were treated as claims of routine nature and were dragged on interminably. Compensation was assessed based on the injury suffered by the victim or the loss caused to the dependants of the deceased. In the event of death the approach has been to assess the earning capacity of the deceased after deducting the amount to be spent by him on himself, ascertaining the balance amount that would be spent on the dependants and then restore the same by way of compensation. In simple terms the purpose is to restore the victim or dependants to their original position in economic terms before the harm occurred. The fact that compensation should be awarded in an expeditious manner cannot be emphasized more in the cases of motor vehicle accidents as the death of the sole earning member

¹ Road Accidents in India 2017 available at https://morth.nic.in/sites/default/files/Road_Accidents_in_India_2017.pdf

may cause severe financial hardships to the dependants. However, ordinary civil courts function on their own pace which may result in a long delay in awarding compensation. Therefore, a need was felt to set up Claims Tribunals for the adjudication of claims for compensation in the cases of death or grievous bodily injury caused in the motor vehicle accidents by the Amendment Act of 1956.

Under the common law a person injured by reason of another person's wrongdoing had no right of action against insurers who undertook to indemnify the wrongdoer. The first invasion of this principle took place by reason of the Third Parties (Rights against Insurers) Act, 1930. The British Parliament in the light of the aforementioned Act enacted the Road Traffic Act, 1930 which has since been replaced by the Road Traffic Act, 1988.

The Third Parties (Rights against Insurers) Act, 1930 was enacted with a view to correct injustice effecting a statutory assignment of the rights of the assured to the injured person as prior thereto the right of a person to be indemnified under a contract of insurance against claims made against him by persons whom he might have injured was one personal to himself, and there was no privity of any sort between the injured person and the insurers. The injured person had no interest either at law or in equity in the insurance money, either before or after it was paid by the insurers to the assured. In a case where the assured became bankrupt and if the injured person had not already obtained judgment and levied execution of his claim for damages, his only right was to move in the bankruptcy or the winding-up proceedings. The beneficial provisions of the aforementioned English statutes were incorporated by the Parliament of India while enacting the Motor Vehicles Act, 1939 which has also since been repealed and replaced by the Motor Vehicles Act, 1988.²

Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someone's

² *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297

negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident.³

The Indian Law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the 1939 Act . These provisions almost wholly adopted the provisions of the English law. The relevant sections found in the three English Acts Road Traffic Act, 1930, the Third Parties (Rights against Insurance) Act, 1930 and the Road Traffic Act, 1934 were incorporated in Chapter VIII. Before a person can be made liable to pay compensation for any injuries and damage which have been caused by his action it is necessary that the person damaged or injured should be able to establish that he has some cause of action against the party responsible. Causes of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff, and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it in common law the master is not liable for as it is often said that owner of a motor car does not become liable because of his owning a motor car.⁴

The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by

³ *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21

⁴ *Minu B. Mehta v. Balkrishna Ramchandra Nayan*, (1977) 2 SCC 441

applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the *Law of Torts* (15th Edn.) at p. 306 states: "The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In *Halsbury's Laws of England*, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a; negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care.⁵

By 1980, the expanding notions of social security and social justice envisaged that the liability under the motor vehicles Act to pay compensation should be a "no fault liability". This led to introduction of No fault liability under the Motor Vehicles Act.

⁵ *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.*, (1977) 2 SCC 745 at page 750

THE MOTOR VEHICLES (AMENDMENT) ACT, 2019

IMPORTANT HIGHLIGHTS:

- The Amendment Act of 2019 came into force on 1st of September, 2019 vide Notification dated 30th August, 2019 of the Ministry of Road Transport and Highways
- The Bill was introduced to provide for road safety.
- Section 161 - Enhancement of Compensation in cases of hit and run Motor Accidents
- The Central Government to constitute a Motor Vehicle Accident Fund (Section 164B) - It will be utilised for:
 - treatment of persons injured
 - Compensation in hit and run accidents
 - Compensation to any other persons as prescribed by the Central Government.
- Protection of Good Samaritans (Section 134A)
- Scheme for “Golden Hour” introduced in the Act
 - The Importance of medical aid during Golden Hour can be inferred from the facts of- *Pravat Kumar Mukherjee v. Ruby General Hospital*, (2005) 2 CPJ 35 (NC)

The case involves unfortunate death of a young boy, Shri Sumanta Mukherjee, a student of second year B.Tech., Electrical Engineering, at Netaji Subhash Chandra Bose Engineering College, on 14.1.2001 who was injured in an accident at about 8.00 a.m. in which a bus of the Calcutta Tramway Corporation dashed with the motor cycle driven by the deceased. The deceased was brought to the Ruby General Hospital, Kolkata, which was close to the place of accident.

Sumanta who was conscious after the accident was taken to the respondent No. 1 Hospital, which was around 1km. from the site of accident by a crowd of people which had gathered there after the accident, one of them being Mr. Sunil Saha, P.W. 3 in the present case. The deceased was insured under the Mediclaim policy issued by the New India Assurance Company Ltd. for a sum of Rs. 65,000/-. At the time of reaching the Hospital, deceased was conscious and showed the mediclaim certificate which he was carrying in his wallet to respondent No. 3 to 5. He promised them that the charges for the treatment would be paid and that they should start the treatment. Acting on the promise the respondents Hospital started the treatment in its Emergency Room by giving moist oxygen, starting suction and by administering injection deryphyllime, injection lycotin and tetnus toxoid. The respondent No. 3 to 5 however after starting the treatment began to insist upon the immediate payment of Rs. 15,000/- and threatened to discontinue the same if it was not immediately deposited. Mr. Sunil Saha, (P.W. 3) various other persons present in the crowd as well as Mr. Bhabatosh Roy (P.W. 4) requested the respondent Nos. 3 to 5 to continue treating Sumanta and assured them that the payment would be made as soon as they were able to get in touch with the parents of Sumanta. The crowd present there also offered to pay Rs. 2,000/- and to hand over the motorcycle to the respondent No. 3 to 5. The mediclaim certificate issued by the Insurance Company was also showed again and again to the respondents by the members of the crowd and Mr. Sunil Saha. The respondents, however remained adamant about the immediate deposit of Rs. 15,000/- and showing the gross deficiency in service in utter violation of medical ethics. They discontinued the treatment after continuing it for around 45 minutes. Mr. Sunil Saha and other persons from the crowd present there were then forced to take late Sumanta to National Calcutta Medical College and Hospital which is about 7 to 8 Kms. from the Ruby General Hospital. Sumanta, however, died on the way and was declared brought dead at the said hospital at 9.10 a.m.

VICTIMS OF MOTOR VEHICLE ACCIDENTS

- (a) Victims of motor accidents involving insured vehicles
- (b) Victims of Hit-and-run accidents involving vehicles which remain unidentified.
- (c) Victims of accidents involving Vehicles which do not have any insurance cover.
- (d) Victims of Vehicles with third-party insurance, carrying persons such as gratuitous passengers in a goods vehicle or a car, and pillion-riders on two-wheelers, etc.

VICTIMS OF ACCIDENTS INVOLVING INSURED VEHICLES

As per Section 149 of the Motor Vehicles Act 1988 (as amended by the Act of 2019), upon receiving the information of the accident from the claimant or through the Accident information report or otherwise, the Insurance Company shall designate an Officer to settle the claims relating to such accident.⁶ The Designated Officer shall then make a settlement offer to the claimant before the claims tribunal as per the provision under section 164 of the Motor Vehicles Act within thirty days. Section 164 provides for Rs five lakhs compensation in case of death or two and a half lakh rupees in case of grievous hurt. If the settlement offer is accepted by the claimant it will be deemed to be settled by consent. However if the offer is rejected by the claimant, a date is to be fixed for adjudication by the Claims Tribunal. Thereafter, the procedure under section 166 is to be followed. As per section 150 of the Motor Vehicles Act, the insurer is duty bound to satisfy the judgments and awards against

⁶ 149. (1) The insurance company shall, upon receiving information of the accident, either from claimant or through accident information report or otherwise, designate an officer to settle the claims relating to such accident.

(2) An officer designated by the insurance company for processing the settlement of claim of compensation may make an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days and after following such procedure as may be prescribed by the Central Government.

(3) If, the claimant to whom the offer is made under sub-section (2),—

(a) accepts such offer,—

(i) the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and

(ii) the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;

(b) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits.

person insured in respect of third party risks. However, according to section 150(2) the insurer can defend the action on any of the following grounds:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:--

(i) a condition excluding the use of the vehicle –

(A) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward; or

(B) for organised racing and speed testing; or

(C) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle; or

(D) without side-car being attached where the vehicle is a two-wheeled vehicle; or

(ii) a condition excluding driving by a named person or by any person who is not duly licenced or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification or driving under the influence of alcohol or drugs as laid down in section 185; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by nondisclosure of any material fact or by representation of any fact which was false in some material particular; or

(c) that there is non-receipt of premium as required under section 64VB of the Insurance Act, 1938.

Rule of Pay and Recover

National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297

110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases

where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

Mode of Recovery by the Insurance Companies

National Insurance Co.Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. *For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured.* In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

(emphasis supplied)

As per the provisions of Section 169 (4), as amended in 2019, for the purpose of enforcement of its award, the Claims Tribunal shall also have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit.

VICTIMS OF HIT-AND-RUN ACCIDENTS INVOLVING VEHICLES WHICH REMAIN UNIDENTIFIED

Section 161 of the Motor Vehicles Act,1988 provides for compensation to be given in hit and run cases . In case of death, the compensation amount is 2 lakh rupees or a higher sum as may be prescribed by the Government and in case of grievous hurt a fixed sum of fifty thousand rupees or a higher sum as may be prescribed by the Government.

VICTIMS OF ACCIDENTS INVOLVING VEHICLES WHICH DO NOT HAVE ANY INSURANCE COVER

According to the Modified Claims Tribunal Agreed Procedure as adopted by the Hon'ble Supreme Court in *Jaiprakash v. National Insurance Company Limited*⁷, if the offending vehicle is not covered by the policy of insurance against third party risks or the driver was not holding a valid driving licence or if the registered owner fails to furnish copy of the insurance policy or the driving licence of the driver, the vehicle involved in the accident resulting in death or bodily injury or damage to property shall not be released, unless and until the registered owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in a claim case arising out of such accident. On expiry of three months of the vehicle being taken in possession by the Investigating Officer, such vehicle shall be sold off in public auction by the Magistrate having jurisdiction over the area where accident occurred and proceeds thereof shall be deposited with the concerned Claims Tribunal within 15 days for the purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

VICTIMS OF ACCIDENTS INVOLVING INSURED VEHICLES CARRYING GRATUITOUS PASSENGERS OR PILLION RIDERS

On 18.03.1978 and 02.06.1986, the Tariff Advisory Committee issued circulars directing all the insurance companies to cover the occupants in a private car or pillion riders on a two wheeler respectively under the comprehensive policy. On 16.11.2009, the IRDA issued a circular to all CEOs of all the insurance companies

⁷ (2010) 2 SCC 607, vide its order dated 13.05.2016 and 06.11. 2017

reiterating the liability in respect of a pillion rider or occupants of a private car under “comprehensive policy”.

However, according to section 147 of the Motor Vehicles Act a policy of insurance must be a policy which insures the person to the extent specified in subsection (2) against the death of or bodily injury to any passenger of a transport vehicle, **except gratuitous passengers of a goods vehicle**, caused by or arising out of the use of the motor vehicle in a public place.

ASSESSMENT OF COMPENSATION UNDER THE MOTOR VEHICLES ACT

Three facts need to be established by the claimants for assessing compensation in the case of death:⁸

- (a) age of the deceased;
- (b) income of the deceased; and
- (c) the number of dependants.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

- (i) additions/deductions to be made for arriving at the income;
- (ii) the deduction to be made towards the personal living expenses of the deceased; and
- (iii) the multiplier to be applied with reference to the age of the deceased.

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined.

- As laid down in National Insurance Company Limited v. Pranay Sethi⁹, while determining the income an addition of the following percentage of the actual salary to the income of the deceased towards future prospects should be made. The actual salary should be read as actual salary less tax.

Age Group (in years)	If in Permanent Employment	Self-Employed
Less than 40	50%	40%
40-50	30%	25%
50-60	15%	10%

⁸ *Sarla Verma v. DTC*, (2009) 6 SCC 121
⁹ (2017) 16 SCC 680

Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses.

Deductions	Conditions
1/2	Bachelor
1/3	Bachelor having large no. of dependants
1/3	Deceased was married having family of 2-3 members
1/4	Family of 4-6 members
1/5	Family exceeding 6 members

The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The

multiplier should be chosen from the said table with reference to the age of the deceased.

Age of the Deceased (in years)	Multiplier Scale
Upto 15	-
15-20	18
21-25	18
26-30	17
31-35	16
36-40	15
41-45	14
46-50	13
51-55	11
56-60	9
61-65	7
Above 65	5

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the “loss of dependency” to the family.

- According to *National Insurance Company Limited v. Pranay Sethi*,¹⁰ reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.
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¹⁰ (2017) 16 SCC 680

DETERMINATION OF COMPENSATION PAYABLE TO DEPENDANTS OF A HOUSEWIFE

ARUN KUMAR AGRAWAL AND ANOTHER V. NATIONAL INSURANCE CO. LTD. ¹¹⁻

“35. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have a 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 the 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, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation.

36. Though Section 163-A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependants of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in Clause 6 of the Second Schedule and then apply an appropriate multiplier keeping in view the judgments of this Court in *Kerala SRTC v. Susamma Thomas* [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , *U.P. SRTC v. Trilok Chandra* [(1996) 4 SCC 362] , *Sarla Verma v. DTC* [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002] and also take guidance from the judgment in *Lata Wadhwa case* [(2001) 8 SCC 197] . The approach adopted by different Benches of the Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with the work of a skilled worker.”

Since the Second Schedule has been omitted after the Amendment Act of 2019, reliance can be placed on the following case for assessing the income of a housewife to be as Rs. 3000/- per month.

JITENDRA KHIMSHANKAR TRIVEDI V. KASAM DAUD KUMBHAR, (2015) 4 SCC 237 –

10. Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a

¹¹ (2010) 9 SCC 218

housewife and a homemaker. It is hard to monetise the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the homemaker, it is reasonable to fix her income at Rs 3000 per month.

DETERMINATION OF COMPENSATION IN INJURY CASES

JAGDISH V. MOHAN, (2018) 4 SCC 571

8. [...] A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;
- (ii) Loss of income including future income;
- (iii) The inability of the victim to lead a normal life together with its amenities;
- (iv) Medical expenses including those that the victim may be required to undertake in future; and
- (v) Loss of expectation of life.

13. In the judgment of the Constitution Bench in *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680] , this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of Rs 2400 towards loss of future prospects.

REKHA JAIN V. NATIONAL INSURANCE CO. LTD., (2013) 8 SCC 389

53. For a film actress, the physical appearance particularly the facial features are very important to act in the films and in TV serials. It is in her evidence that on account of the accident her face was disfigured, she has put on weight and has become fat and therefore she is unable to perform the role as an actress in films in future. Having regard to the nature of vocation she has been carrying on and wishes to carry on with in future, the opportunity is lost on account of the disfigurement of her face, to act in the films as an actress either as a heroine or actress in supporting role or any other role to be played in TV serials, albums and also as a model. It is in the evidence of the appellant that as per the District Medical Board of Sambalpur, her permanent disability is 30%. Having regard to the nature of injuries and observations made by this Court and the Karnataka High Court in the cases referred to supra, we have to record a finding of fact that the appellant's permanent disability should be treated as 100% functional disablement as she cannot act in the films and in TV serials in future at all. Therefore, on account of the aforesaid reasons, she has suffered functional disability.

54. In this regard, it is relevant to refer to the judgment of this Court in *National Insurance Co. Ltd. v. Mubasir Ahmed* [(2007) 2 SCC 349 : (2007) 1 SCC (L&S) 643] . This Court has held that loss of earning capacity is not a substitute for percentage of physical disablement. It is simply one of the factors taken into account to award just and reasonable compensation. Even though the claimant does not suffer from 100% physical permanent disability, he suffers from 100% functional disability if he loses the capacity to pursue his work as a result of the accident. It is worthwhile to extract para 8 from the aforesaid judgment which reads as under: (SCC p. 354)

“8. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning.”

65. Before parting with the judgment, it would be just and necessary for this Court to make observation that the Motor Accidents Claims Tribunals and the appellate courts should keep in view the rights of the claimants under the provisions of the Motor Vehicles Act to determine the compensation claims of the claimants by considering the facts of each case and the legal position laid down by this Court on relevant aspects.

ROLE OF VARIOUS STAKEHOLDERS AS STATED IN THE MODIFIED CLAIMS TRIBUNAL AGREED PROCEDURE

In Jaiprakash v. National Insurance Company Limited, (2010) 2 SCC 607 vide Order dated 13.05.2016 and 06.11.2017 the Hon'ble Supreme Court adopted the Modified Claims Tribunal Agreed Procedure formulated by the Delhi High Court in *Rajesh Tyagi v. Jaibir Singh, 2018 SCC OnLine Del 13316*

ROLE OF POLICE

1. Investigation of road accident cases by the Police

Immediately on receipt of the information of a road accident, the Investigating Officer of Police shall inspect the site of accident, take photographs of scene of the accident and the vehicle(s) involved in the accident and prepare a site plan, drawn to scale, as to indicate the layout and width, etc., of the road(s) or place (s), as the case may be, the position of vehicle(s), and person(s) involved, and such other facts as may be relevant. In injury cases, the Investigating Officer shall also take the photographs of the injured in the hospital. The Investigating Officer shall conduct spot enquiry by examining the eyewitnesses/bystanders.

2. Intimation of accident to the Claims Tribunal and Insurance Company within 48 hours

The Investigating Officer shall intimate the accident to the Claims Tribunal within 48 hours of the accident. If the particulars of insurance policy are available, the intimation of the accident shall also be given to the Nodal Officer of the concerned Insurance Company of the offending vehicle. The particulars of the accident shall also be uploaded on the website.

3. Documents to be collected by the Investigating Officer

The Investigating Officer of Police shall collect the relevant evidence relating to the accident as well as for computation of compensation. The list of documents to be collected by the Investigating Officer are as under:

- (i) First Information Report
- (ii) Site plan

- (iii) Photographs of the scene of accident from all angles.
- (iv) Photographs of all the vehicles involved in the accident from all angles
- (v) Photograph and specimen signature of the driver(s) of the offending vehicle(s)
- (vi) Photograph and specimen signature of the owner(s) of the offending vehicle(s)
- (vii) Mechanical Inspection Report in terms of Annexure-A
- (viii) Driving license of the driver of the offending vehicle(s)
- (ix) Proof of employment of the driver of offending vehicle(s) such as appointment letter, salary slips, duty register etc.
- (x) Registration certificate of the offending vehicle(s)
- (xi) In case of transfer of offending vehicle, sale documents, possession letter or any other document relating to transfer, if any
- (xii) Insurance Policy of the offending vehicle(s)
- (xiii) Permit (for commercial vehicle)
- (xiv) Fitness Certificate (for commercial vehicle)
- (xv) Report under Section 173 Cr.P.C.
- (xvi) Statements of the witnesses recorded by the police
- (xvii) Scientific report, if the driver(s) of the offending vehicle(s) was under the influence of alcohol/ drugs
- (xviii) In case of Death:
 - (a) Post Mortem Report
 - (b) Death certificate
 - (c) Photograph and proof of the identity of the deceased
 - (d) Proof of age of the deceased which may be in form of:

- Birth certificate
- School certificate
- Certificate from Gram Panchayat (in case of illiterate)
 - (e) Proof of Occupation and income of the deceased which may be in form of:
 - Pay slip/salary certificate for salaried employees.
 - Bank statements of the last six months.
 - Income Tax Returns
 - Balance Sheets
 - (f) Proof of the legal representatives of the deceased
 - Names
 - Age
 - Address
 - Relationship
 - (g) Aadhaar card, PAN Card, Photographs and specimen signatures attested by the bank
 - (h) Bank Account details along with its IFSC Code of the legal representatives of the deceased near the place of their permanent residence with name and address of the bank
 - (i) Medical treatment record, medical bills and other expenditure
 - (j) Any other relevant document(s)
- (xix) In case of Injury:
 - (a) MLC
 - (b) Multi angle photographs of the injured

(c) Aadhaar card, PAN Card, Photographs and specimen signatures of the injured attested by the bank

(d) Bank Account details along with its IFSC Code of the injured near the place of his/her permanent residence with name and address of the bank

(e) Proof of age of the injured which may be in form of:

- Birth certificate
- School certificate
- Certificate from Gram Panchayat (in case of illiterate)

(f) Proof of occupational income of the injured at the time of the accident which may be in form of:

- Pay slip/salary certificate for salaried employees.
- Bank statements of the last six months of the injured.
- Income Tax Returns
- Balance Sheets

(g) Medical treatment record, medical bills and other expenditure - In case of continuous medical treatment, the SHO/IO shall also record the details so that the claimant may furnish documents before the Claims Tribunal.

(h) Disability Certificate

(i) Proof of absence from work where loss of income on account of injury is being claimed, which may be in the form of:

- Certificate from the employer
- Extracts from the attendance register

(j) Proof of reimbursement of medical expenses by employer or under a Mediclaim policy, if any

(k) Any other relevant document(s)

4. Verification of the documents by the Investigating Officer

The Investigating Officer shall verify the authenticity of the documents mentioned in Para 3 by obtaining confirmation in writing from the office or authority or person purporting to have issued the same or by such further investigation or verification as may be deemed necessary for arriving at a conclusion regarding the authenticity of the documents in question, including but not limited to verifying the license of the driver, permit and fitness of the offending vehicle(s), where applicable, from the registering authority.

5. In case of un-insured vehicle, driver and owner of the offending vehicle to be prosecuted under Section 196 of Motor Vehicles Act, 1988

In case of un-insured offending vehicle, the Investigating Officer shall prosecute the person(s) liable for violation under Section 196 of the Motor Vehicles Act, including the driver and the person who caused or allowed the un-insured vehicle to be driven.

6. In case of fake driving licence, the driver and other persons involved to be prosecuted for holding a fake driving licence

If the driving licence of the driver is found to be fake, the Investigating Officer shall prosecute the driver for holding a fake driving licence and/or other persons involved in forging a fake driving licence.

7. Duty of the police to complete the investigation of the criminal case and file the chargesheet (Report under Section 173 Cr.P.C.) before the Metropolitan Magistrate and to file DAR along with copy of the chargesheet before the Claims Tribunal within 30 days

The Investigating Officer shall complete the collection of the aforesaid documents and its verification as well as investigation of the criminal case within 30 days of the accident. The Investigating Officer shall file the report under Section 173 Cr.P.C. before the concerned Magistrate and Detailed Accidental Report (DAR) before the Claims Tribunal within 30 days of the accident. The DAR shall be properly indexed

and page numbered at the time of filing with the Claims Tribunal. The DAR shall be accompanied with the requisite documents mentioned in Para 3 above..

8. Copy of DAR to be furnished to claimant(s), owner/driver of the offending vehicle(s), Insurance Company and Legal Services Authority

The Investigating Officer shall furnish the copy of the DAR to victim(s)/claimant(s) of the accident, owner/driver of the offending vehicle and the Nodal Officer of the Insurance Company. Copy of the DAR sent to the Insurance Company and others shall be properly paginated and shall be accompanied by an index.

The Investigating Officer of the Police shall also furnish a copy of Detailed Accident Report (DAR) along with complete documents to Secretary, Delhi State Legal Services Authority, Central Office, Pre-Fab Building, Patiala House Courts, New Delhi. Delhi State Legal Services Authority shall examine each case and assist the Claims Tribunal in determination of the just compensation payable to the claimant(s) in accordance with law.

9. Duty of the Investigating Officer to produce the driver(s), owner(s), claimant(s) and eye witness(es) before the Claims Tribunal

The Investigating Officer shall produce the driver(s), owner(s), claimant(s) and the eye witness(es) before the Claims Tribunal, after the order of the Claims Tribunal that the DAR is complete in all respects. However, if the Investigating Officer is unable to produce the owner(s), driver(s), clamant(s) and eye-witness(es) before the Claims Tribunal on the date fixed by the Claims Tribunal 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 Nodal Officer of the concerned Insurance Company about the date of filing of the DAR 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.

ROLE OF DOCTORS

1. Duty of the hospital to issue MLC and Post-mortem Report within 15 days of the accident

The concerned hospital shall issue the MLC and Post-Mortem Report to the Investigating Officer within 15 days of the accident.

ROLE OF MACT

1. Un-insured vehicle not to be released to the owner

If the offending vehicle is not covered by the policy of insurance against third party risks or the driver was not holding a valid driving licence or if the registered owner fails to furnish copy of the insurance policy or the driving licence of the driver, the vehicle involved in the accident resulting in death or bodily injury or damage to property shall not be released, unless and until the registered owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in a claim case arising out of such accident. On expiry of three months of the vehicle being taken in possession by the Investigating Officer, such vehicle shall be sold off in public auction by the Magistrate having jurisdiction over the area where accident occurred and proceeds thereof shall be deposited with the concerned Claims Tribunal within 15 days for the purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident

2. Extension of time to file DAR and Report under Section 173, Cr.P.C.

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; where the driving licence is issued outside the jurisdiction of the Court, or where the victim(s) has suffered grievous injuries and is undergoing continuous treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time to file DAR/Report under Section 173 Cr.P.C. whereupon the Claims Tribunal shall extend the time as it considers appropriate in the facts and circumstances of each case.

3. Examination of DAR by the Claims Tribunal

The Claims Tribunal shall examine whether the DAR is complete in all respects. If the DAR is complete in all respects, the Claims Tribunal shall fix a date for appearance of the driver(s), owner(s), claimant(s) and the eye witness(es) and the Investigating Officer shall produce them on the date so fixed. The Investigating Officer shall also intimate the date so fixed by the Claims Tribunal to the Nodal Officer of the Insurance Company and the Insurance Company shall enter appearance on the date so fixed. If the DAR is not complete, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

4. Claims Tribunal shall treat DAR as a claim petition for compensation under Section 166(4) of Motor Vehicles Act, 1988

The Claims Tribunal shall treat the DAR filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act, 1988. However, where the Investigating Officer is unable to produce the claimant(s) on the first date of hearing, the Claims Tribunal shall initially register the DAR as a Miscellaneous Application which shall be registered as a claim petition after the appearance of the claimant(s). Where the claimant(s) have filed a separate claim petition, the DAR shall be tagged along with the claim petition. In cases where the charge sheet has not been filed at the time of filing of the DAR, the Claims Tribunal shall either await the filing of the charge sheet or record the statement of the eye witness(es) to satisfy itself with respect to the negligence before passing the award.

5. Direction to the claimant(s) to open savings bank account near the place of their residence in a nationalized bank.

The Claims Tribunal shall direct the claimant(s), on the very first date of their appearance, to open a savings bank account in a nationalized bank near the place of their residence and the concerned bank be directed to not issue any cheque book(s) and/or debit card(s) to the claimant(s) and if the same have already been issued, the bank be directed to cancel the same and make an endorsement on the passbook of the claimant(s) to the effect that no cheque book and/or debit card shall be issued to

the claimant(s) without the permission of the Court. The claimant(s) be directed to produce the copy of the order passed by the Claims Tribunal before the concerned bank whereupon the bank be directed to make an endorsement on the passbook. The claimant(s) be directed to produce the passbook with the necessary endorsement as well as Aadhaar Card and PAN Card before the Claims Tribunal.

6. In cases of charge of rash and negligent driving, the Claims Tribunal shall register the case under Section 166 of Motor Vehicles Act, 1988

Where the Claims Tribunal finds that the DAR and in particular the report under Section 173 Cr.P.C. annexed to the DAR has brought a charge of rash and negligent driving, the Claims Tribunal shall register the claim case under Section 166 of the Motor Vehicles Act, 1988. However, in cases where the DAR does not bring a charge of negligence or the claimant(s) chose to claim compensation on No-fault basis despite the charge of negligence, the Claims Tribunal shall register the claim case under Section 163A of the Motor Vehicles Act, 1988.

7. Consent award to be passed where claimant(s) accepts the offer of Insurance Company

The compensation assessed by the Designated Officer of the Insurance Company shall constitute a legal offer to the claimant(s) and if the said amount is fair and acceptable to the claimant(s), the Claims Tribunal shall pass a consent award and shall provide 30 days time to the Insurance Company to make the payment of the award amount. However, before passing the consent award, the Claims Tribunal shall ensure that the claimant(s) are awarded just compensation in accordance with law. The Claims Tribunal shall also pass an order with respect to the disbursement of the shares of the claimant(s).

8. Guidelines for assessment of functional disability of the claimant in Injury Cases

All injuries or permanent disability arising from injuries do not result in loss of earning capacity.

The percentage of permanent disability with reference to the whole body of a person should not be mechanically assumed to be equal to the percentage of loss of earning

capacity. The percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in 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).

The doctor, who treated or examined the injured-claimant and subsequently assessed the permanent disability, can give evidence of his medical opinion with regard to the extent of permanent disability. However, the percentage of loss of earning capacity is to be assessed by the Claims Tribunal taking in consideration various other factors as mentioned below.

The same percentage of permanent disability may result in different percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other relevant factors.

Ascertainment of the effect of the percentage of permanent disability on the actual earning capacity (percentage of loss of earning capacity) involves three steps:

- (i) 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 disability (this is also relevant for awarding compensation under the head of loss of amenities of life).
- (ii) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age.
- (iii) The third step is to find out whether:
 - a) The claimant is totally disabled from earning any kind of livelihood, or
 - b) 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
 - c) 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.

The Claims Tribunal may consider co-opting or taking the opinion of a medical expert from any Government Hospital for taking assistance in assessing the functional disability. However, cases in which medical expert is co-opted, should be taken up by a Claims Tribunal at a designated time so that the doctor is not made to wait. The proceedings for assessment of the functional disability of the claimant with the assistance of a medical expert should preferably be conducted in camera and counsel for insurance company and authorised representative of the insurance company be permitted to remain present.

The photographs of the injured portion should be taken on record in every injury case and a reasoned finding should be recorded in respect of the functional disability in terms of the principles laid down by the Supreme Court in *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343.

The photographs of the injured portion of the claimant should be annexed to the award to enable the Appellate Court to peruse the same in the event of the award being challenged. However, the photographs should not be uploaded on the website of the Court.

In MAC. APP. 1134/2017, this Court formed a Committee to frame guidelines for fixing the cost of artificial limbs for the victims of motor accidents. On 07th September, 2018 a list of cost of prosthetic limbs was prepared by the Committee was submitted to this Court which has been circulated to the Claims Tribunals vide order dated 07th September, 2018. The Claims Tribunal shall consider the same while awarding the cost of prosthetic limbs.

9. Duty of the Claims Tribunal to elicit the truth

Before passing the award on the basis of the DAR, the Claims Tribunal shall satisfy itself that the statements made in the DAR are true. DAR is merely an opinion of the Investigating Officer and is not to be treated as legal evidence. The DAR has to be considered like a charge sheet under Section 173 Cr.P.C. and the Claims Tribunal is

duty bound to examine the DAR and satisfy itself with respect to the genuineness of the claim as well as all the relevant facts. For example, in death case(s), the Claims Tribunal shall direct the claimant(s) to produce the original documents relating to age, occupation and income of the deceased from the legal representatives and an appropriate award shall be passed after the satisfaction of Claims Tribunal with respect to all the relevant facts. Similarly, in an injury case(s), the Claims Tribunal shall examine the injured and the relevant medical records to satisfy itself with respect to the nature of the injuries and percentage of the functional disability of the injured. The Claims Tribunal may also consider examining the parties under Section 165 of the Evidence Act. Reference be made to the judgement of this Court *Ved Prakash Kharbanda v. Vimal Bindal*, 198 (2013) DLT 555 for scope of Section 165 of the Evidence Act.

10. In case of non-settlement, the Claims Tribunal shall conduct an enquiry and pass an award within 30 days

If the offer of the Insurance Company is not fair or is not acceptable to the claimant(s) or if the Insurance Company has any defence available to it under law, the Claims Tribunal shall proceed to conduct an inquiry under Sections 168 and 169 of the Motor Vehicles Act, 1988 and shall pass an award within a period of 30 days thereafter. The Claims Tribunal shall follow the principles laid down in *Mayur Arora v. Amit*, 2011 (1) TAC 878.

11. Examination of the claimant(s) before passing of the award

- (i) The Claims Tribunal shall, before or at the time of passing of the award, examine the claimant(s) to ascertain their financial condition/needs, mode of disbursement and amount to be kept in fixed deposits.
- (ii) The Claims Tribunal shall take on record the following documents from the claimant(s):
 - (a) Aadhaar Card and PAN Card;
 - (b) Details of the Bank Account(s) of the Claimant(s) near the place of their residence; and

- (c) Two sets of photographs and specimen signatures of the claimant(s).
- (iii) Before disbursement of the award amount, the Claims Tribunal shall satisfy that the savings bank account(s) of the claimant(s) is near the place of their permanent residence and an endorsement has been made by the bank on the passbook of the claimant(s) to the effect that no cheque book(s) and/or debit card(s) shall be issued to the claimant(s) without prior permission of the Claims Tribunal. If the claimant(s) bank account is not near the place of their permanent residence, the Claims Tribunal shall defer the disbursement of award amount till passbook(s) of savings bank account(s) of the claimant(s) in a nationalized bank near the place of their permanent residence is not produced along with necessary endorsement.

12. Deposit of the award amount

In the award, the Claims Tribunal shall specifically direct the Insurance Company and/or the owner/driver, as the case may be, to deposit the award amount or transfer the same by RTGS/NEFT/IMPS directly to the bank account of the Claims Tribunal.

The respondent held liable to pay compensation by the Claims Tribunal shall give notice of deposit of the compensation amount to the claimant(s) and shall file a compliance report with the Claims Tribunal with respect to the deposit of the compensation amount within 15 days of the deposit with the interest upto the date of notice of deposit to the claimant(s) with a copy to their counsel within 30 days of the award. The names and addresses of the claimant(s) and their counsel for issuance of notice of deposit shall be mentioned in the award.

At the time of passing of the award, the Claims Tribunal shall examine whether the claimant(s) are entitled to exemption of deduction of TDS and if so, the claimant(s) shall submit Form 15G or Form 15H (for senior citizen) to the Insurance Company so that no TDS is deducted. The Claims Tribunal shall record a finding on this aspect at the time of passing of the award.

13. Disbursement of the award amount

The Claims Tribunal shall disburse the award amount through *Motor Accident Claims Tribunal Annuity Deposit (MACAD) Scheme* formulated by this Court vide order dated 01st May, 2018 in FAO 842/2003. Copy of the *Motor Accident Claims Tribunal Annuity Deposit (MACAD) Scheme* is *FORM - VIII*. The following 21 Banks are implementing the *MACAD Scheme*. The names of the Bank implementing MACAD Scheme are as under: –

1. State Bank of India
2. Punjab National Bank
3. UCO Bank
4. Bank of Baroda
5. Allahabad Bank
6. Oriental Bank of Commerce
7. IDBI Bank
8. Indian Overseas Bank
9. Andhra Bank
10. Bank of India
11. Punjab & Sind Bank
12. Bank of Maharashtra
13. Canara Bank
14. Central Bank of India
15. Syndicate Bank
16. Corporation Bank
17. Dena Bank
18. Union Bank of India

19. United Bank of India

20. Indian Bank

21. Vijaya Bank

List of Banks along with the name of their Nodal Officer and their email address shall be submitted by Indian Bank Association to the Registrar General of this Court within four weeks whereupon the Registrar General shall circulate the same to all the Claims Tribunals.

14. Protection of the award amount

The Claims Tribunal shall, depending upon the financial status and financial need of the claimant(s), release such amount as may be considered necessary and direct the remaining amount to be kept in fixed deposits in a phased manner (for example, if a sum of Rs. 5,50,000/- has been awarded to the claimant(s), Rs. 50,000/- may be released immediately and the remaining amount of Rs. 5,00,000/- may be kept in 50 fixed deposits of Rs. 10,000/- each, in the name of the claimant(s), for the period of one month to 50 months respectively, with cumulative interest). The Claims Tribunal shall impose the following conditions with respect to the fixed deposits: –

- (a) The Bank shall not permit any joint name(s) to be added in the savings bank account or fixed deposit accounts of the claimant(s) i.e. the savings bank account(s) of the claimant(s) shall be an individual savings bank account(s) and not a joint account(s).
- (b) The original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by bank to the claimant(s).
- (c) The monthly interest be credited by Electronic Clearing System (ECS) in the savings bank account of the claimant(s) near the place of their residence.

- (d) The maturity amounts of the FDR(s) be credited by Electronic Clearing System (ECS) in the savings bank account of the claimant(s) near the place of their residence.
- (e) No loan, advance, withdrawal or pre-mature discharge be allowed on the fixed deposits without permission of the Court.
- (f) The concerned bank shall not to issue any cheque book and/or debit card to claimant(s). However, in case the debit card and/or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount. The bank shall debit card(s) freeze the account of the claimant(s) so that no debit card be issued in respect of the account of the claimant(s) from any other branch of the bank.
- (g) The bank shall make an endorsement on the passbook of the claimant(s) to the effect that no cheque book and/or debit card have been issued and shall not be issued without the permission of the Court and claimant(s) shall produce the passbook with the necessary endorsement before the Court on the next date fixed for compliance.
- (h) It is clarified that the endorsement made by the bank along with the duly signed and stamped by the bank official on the passbook(s) of the claimant(s) is sufficient compliance of clause (g) above.

15. Claims Tribunal shall fix a date for reporting compliance

- (i) The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunal shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the compensation amount with upto date interest, the notice of deposit and the calculation of interest on the date so fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto the date of notice of deposit has been deposited by the party concerned.
- (ii) If the award amount is not deposited within the stipulated period, the Claims Tribunal shall attach the bank account of the Insurance Company

after 90 days of the award in terms of principles laid down in *New India Assurance Company Ltd. v. Kashmiri Lal*, (2005) 125 DLT 571.

- (iii) If the award of the Claims Tribunal is stayed by the High Court in appeal, the Claims Tribunal shall close the matter with liberty to the claimant(s) to revive it after the decision of the appeal.

16. Copy of the DAR as well as the Award to be sent to the concerned Metropolitan Magistrate

- (i) The Investigating Officer shall submit a copy of the DAR before the concerned Metropolitan Magistrate within one week of submitting the same before the Claims Tribunal. The Investigating Officer shall also submit the copy of the award passed by the Claims Tribunal before the concerned Metropolitan Magistrate within one week of the passing of the award.
- (ii) The Claims Tribunal shall also send a certified copy of the award passed by the Claims Tribunal to the concerned Metropolitan Magistrate.

17. No application for compensation shall be entertained unless it is made within 6 months of the occurrence of the accident (Section 166 (3))

ROLE OF INSURANCE COMPANIES

1. Duty of the Insurance Companies to appoint a Designated Officer within 10 days of the receipt of the copy of DAR

Upon receipt of copy of the DAR, the Insurance Company shall appoint a Designated Officer for that case within 10 days of the receipt of the copy of DAR. The Designated Officer shall be responsible for dealing/processing of that case and to pass a reasoned decision in writing with respect to the compensation payable to the claimant(s) in accordance with law.

2. Duty of the Insurance Companies to appoint a Nodal Officer and intimate the Delhi Police.

All the insurance companies shall appoint a Nodal Officer and intimate the name, address, phone numbers/mobile numbers and e-mail address of their Nodal Officer to DCP/CRO, Police Headquarters

3. Duty of the Insurance Companies to get DAR verified by their Surveyor/Investigator

The Insurance Companies are duty bound to verify the correctness/genuineness of every claim. The Insurance Companies shall direct their own officer(s) or appoint an investigator or surveyor to verify the accident within 20 days of the receipt of the copy of the DAR from the Investigating Officer. For example, in cases where the Insurance Companies receive the information of an accident relating to death within 48 hours, of the accident, a prompt visit by the officer/investigator/surveyor of the Insurance Company at the place of occurrence, cremation and residence of the deceased to verify the relevant facts and examine the documents at that time, would leave no scope for manipulation of the evidence at a later stage. Similarly, in the Injury Cases, the Insurance Company's officer/surveyor/investigator visit to the hospital at the initial stage would be helpful to verify the relevant documents.

The Designated Officer shall submit the report of the surveyor/investigator supported by an affidavit before the Claims Tribunal. If the statements made in the

DAR are found to be incorrect, the Designated Officer shall send the copy of the report of the surveyor/investigator to the DCP concerned.

4. Duty of Insurance Companies to process DAR and submit an offer for settlement within 30 days

The Insurance Company shall examine the DAR and take a decision as to the quantum of compensation payable to the claimant(s) in accordance with law within 30 days of the date of receipt of the copy of DAR from the Investigating Officer. The decision taken by the Designated Officer of the Insurance Company shall be in writing and it shall be a reasoned decision

ROLE OF LEGAL SERVICES AUTHORITY

1. Copy of DAR to be maintained in the Legal Services Authority for follow-up
 2. To examine each case and assist the Claims Tribunal in determination of the just compensation payable to the claimant(s) in accordance with law.
 3. In the event of delay in passing of the award caused due to delay or deficiency on the part of the Investigating Officer or the Designated Officer of the Insurance Company, the Legal Services Authority shall take up the matter with the Police and/or Insurance Company, as the case may be.
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