

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO 842/2003

DATE OF DECISION : NOVEMBER 05, 2009

RAJESH TYAGI & ORS. .... Appellants  
Through : None.

versus

JAIBIR SINGH & ORS. .... Respondents  
Through : Mr. Atul Nanda Standing  
Counsel for Union of India.  
Ms. Meera Bhatia and  
Ms. Amita Arora, Advs.  
for Delhi Police.  
Mr. Manoj Ranjan Sinha, Adv.  
for R – 3.  
Mr. V.P. Chaudhary, Sr. Adv. and  
Mr. Anoop Bhambhani, amicus  
curiae. Mr. Kanwal Chaudhary, Adv.  
for New India Assurance Co. Ltd.  
Mr. Pradeep Gaur, Adv. for  
National Insurance Co. Ltd.  
Ms. Manjusha Wadhwa and  
Ms. Harsh Lata, Advs.  
for Oriental Insurance Co. Ltd.  
Mr. K.L. Nandwani and  
Mr. Sameer Nandwani, Advs. for  
Reliance General Insurance Co. Ltd.  
Mr. Atul Nanda, Adv. for  
Bajaj Reliance General Insurance  
CO. Ltd., Future Generali India

Insurance Co. Ltd. and ICICI  
Lombard General Insurance Co.  
Ltd. Ms. Shantha Devi Raman, Adv.  
for IFFCO Tokyo General Insurance  
Co. Ltd. Ms. Anjali Bansal, Adv. for  
Tata AIG General Insurance Co.  
Ltd. Mr. Pankaj Seth, Adv. for  
Royal Sundaram Alliance Insurance  
Co. Ltd. and Universal Sampo  
General Insurance Co. Ltd.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

1. Over one lakh people are killed and nearly half a million are injured every year in road accidents in India. There is one accident per minute and one fatal accident every five minutes. According to survey of Central Road Research Institute, more than 90% pedestrians feel unsafe while crossing roads and they comprise more than 50% of the road victims. WHO Report predicts that by the year 2020, a major killer in India will be road accidents and will account for almost 5,46,000 deaths alone. The accident rate in India is 35 per thousand vehicles, which is the highest in the world.

2. The road users have a fundamental right to life and liberty which includes the right to safety and immediate payment of compensation

in the event of unavoidable accidents. It is 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 users arising out of the use of motor vehicles on the roads.

3. Sections 158(6) and 166(4) of the Motor Vehicles Act were incorporated in Motor Vehicles Act, 1988 on 14<sup>th</sup> November, 1994 by an Act 54 of 1994. The object of Section 158(6) and Section 166(4) of the Motor Vehicles Act is to set the law relating to the payment of compensation into motion upon the report of the police as the poor and helpless victims of the road accident are ignorant of their rights. The cognizance of the claim for compensation is 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.

4. The Delhi Police has started compliance of Section 158(6) of the Motor Vehicles Act w.e.f. 8<sup>th</sup> June, 2009 after the order of this Court. However, there has been no compliance during the period 14<sup>th</sup>

November 1994 up to 7<sup>th</sup> June, 2009 which has caused grave prejudice to the victims of the road accident. Many of the victims of the road accidents during the period 1994-2009 have filed the cases before the Claims Tribunals which have already been decided and no action is required in respect of those cases. There is second category of victims of the road accidents who being ignorant of their rights have not filed the claim petitions before the Claims Tribunals. It is very difficult to trace out such victims and no action is proposed in respect of the second category of cases at this stage. There is third category of cases where the victims of the road accidents during the period 1994-2009 have filed cases before the Claims Tribunals but the cases are pending for services of the owner, driver and/or eye-witnesses and non-production of relevant documents. This Court is of the opinion that Delhi Police should effect the service of summons on unserved owner, driver and eye-witnesses, produce the relevant documents and also file report under Section 158(6) of the Motor Vehicles Act in such pending cases. The Delhi Police is, therefore, directed to carry out the following actions relating to the pending cases:-

- (i) The Delhi Police shall file Accident Information Reports under Section 158(6) of the Motor Vehicles Act in respect of all the pending cases filed before the Claims Tribunals after 14<sup>th</sup> November, 1994.
- (ii) The Delhi Police shall collect the list of all pending cases filed after 14<sup>th</sup> November, 1994 from the Claim Tribunals and shall file the Accident Information Reports at the time of the hearing of the claim cases before the learned Tribunal.
- (iii) The service of summons on the driver, owner and eye-witness in all pending cases, if not effected, shall be effected through the Delhi Police who shall ensure their service and production before the concerned Claims Tribunal.
- (iv) The Delhi Police shall also place on record the relevant documents before the Claims Tribunal including FIR, MLC/post mortem report, site plan, driving licence, registration cover, Insurance policy, fitness, permit, etc. at

the time of hearing of the cases before the Claims Tribunal.

(v) The Delhi Police has already deputed a Naib Court 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 8<sup>th</sup> June, 2009.

5. The learned counsels for the Insurance Companies submit that the Delhi Police is not fully complying with the requirements of Section 158(6) of the Motor Vehicles Act and in most of the cases, the requisite documents are not being furnished to the Insurance Companies. The learned counsels for the Insurance Companies further submit that wherever the documents are being furnished along with the AIR, they do not bear the seal of the Delhi Police and Delhi Police may be directed to put the seal on the said documents for the purpose of authenticity. On the other hand, the DCP (Hqrs.) of Delhi Police present in the Court submits that the Delhi Police is complying with all the requirements of Section 158(6) of the Motor Vehicles Act.

The learned counsels for the Insurance Companies further submit that the password of the website of Delhi Police has not been provided to them and, therefore, they are not able to assess the information available on the website.

6. The learned Addl. Standing Counsel for Delhi Police submits that all the Insurance companies had agreed to provide their official email addresses to the learned Standing Counsel within two weeks on 4<sup>th</sup> September, 2009 which is recorded in the order dated 4<sup>th</sup> September, 2009. The learned Addl. Standing Counsel submits that only New India Assurance Company Ltd. has communicated their official email address to Delhi Police, whereas the other Insurance companies have not provided their official email addresses to Delhi Police. The learned Addl. Standing Counsel further submits that the Accident Information Reports are being sent to New India Assurance Company Ltd. by email and the password to access the website of Delhi Police has also been furnished to New India Assurance Company Ltd. It is further submitted that the other Insurance companies be directed to furnish their official email addresses. So far as password is concerned, it is submitted that the same shall be provided to the Nodal Officers of all the Insurance companies within one week. It is further submitted that the password is required only for viewing the bulk data of that particular insurance company. It is further submitted that the Accident Information Report

is being regularly uploaded on the website and shortly all the documents relating to the Accident Information Reports shall also be uploaded on the website and the same can be downloaded by the claimants, insurance companies as well as the Claims Tribunals. It is submitted that the Insurance companies should view/open the website everyday for downloading the Accident Information Reports in respect of the vehicles insured with them.

7. Considering the facts and circumstances of this case, it is directed that the Joint Commissioner of Northern Range, Delhi Police shall convene a monthly meeting with the representatives of the insurance companies. All the Insurance companies shall submit their grievances relating to non-compliance of Section 158(6) of the Motor Vehicles Act in the said meeting and Delhi Police shall redress the same within a fortnight. The first meeting shall be held in the Conference Hall of Delhi Police Headquarters, IP Estate, New Delhi on 13<sup>th</sup> November, 2009 at 4.30 PM. Each Insurance Company shall send its official representative along with one legal representative to attend the said meeting. All the insurance companies shall provide their

official email address to the Joint Commissioner of Police at the time of the hearing and shall also collect their passwords. The Joint Commissioner of Police shall also provide the demonstration of the website to the representatives of the insurance companies at the time of the meeting. The date of the subsequent meetings shall be communicated by the Joint Commissioner of Police to the representatives of all the insurance companies. The insurance companies as well as Delhi Police shall submit the status report before this Court on the next date of hearing. Minutes of the monthly meeting between the Joint Commissioner of Police and the Insurance Companies be placed on record by Delhi Police and the same shall be considered by this Court.

8. Mr. Atul Nanda, Standing Counsel for Union of India submits that the copy of the order dated 25<sup>th</sup> September, 2009 has been sent to the Secretary, Ministry of Road Transport and Highways who has forwarded the same to the Expert Committee constituted by Ministry of Road Transport and Highways to review the Motor Vehicles Act, 1988 and to suggest the changes therein. Mr. Nanda submits that the

Committee is considering the suggestions given by this Court relating to the amendment of law relating to motor accident claims.

9. There are seventeen non-life Insurance Companies including four nationalized Insurance Companies out of which fourteen Insurance Companies are represented by their counsels today. There is no appearance on behalf of Sri Ram General Insurance Co. Ltd., Bharti AXA General Insurance Co. Ltd. and Raheja QBE General Insurance Co. Ltd. Court notice be, therefore, sent to the said companies for the next date of hearing. The addresses of the said companies are available in the list taken on record. Court notice be sent by ordinary process, email as well as fax.

10. Oriental Insurance Co. Ltd. and New India Assurance Co. Ltd. have filed their status report containing the information in terms of the order dated 20<sup>th</sup> October, 2009. Tata AIG General Insurance Co. Ltd., IFFCO Tokio General Insurance Co. Ltd. and National Insurance Co. Ltd. have also handed over the status reports which are taken on record. Other Insurance companies seek some more time to place their status report on record. Let the same be filed within two weeks.

11. Mr. Atul Nanda, Advocate is also representing Bajaj Reliance General Insurance Co. Ltd., Future Generali India Insurance Co. Ltd. and ICICI Lombard General Insurance Co. Ltd. and he submits that neither he nor the Companies which he represents intends to treat the present proceedings as an adversarial proceedings. Instead, it is being seen by the Insurance industry as an effort by this Court to bring about the progressive reform in the manner in which the Motor Vehicles Act is applied to make it truly beneficial and social legislation which the law-makers intended it to be. The counsel further submits that the insurance companies have certain concerns and there are practical difficulties in the implementation of the order dated 8<sup>th</sup> June, 2009 whereby 30 days time has been fixed by this Court to process the claim. It is submitted that there are cases relating to outside Delhi as well as the driving licences issued by outside Delhi where it is not possible to complete the investigation within 30 days. Mr. Nanda suggests that the insurance Companies be permitted to deliberate upon the mechanism which shall be submitted to this Court for consideration which will ensure that the official mechanism put in

place by this Court is a product of consensus rather than judicial direction and would lead to speedy implementation without there being any further delays.

13. Considering the submissions made by the learned Standing Counsel for Union of India and the Counsel for Insurance Companies, a Committee is constituted to deliberate upon the mechanism for a time bound settlement of motor accident claims. Considering that it is duty of the State to ensure that a due process of law including a mechanism and time frame should be evolved, the Committee shall comprise of Secretaries or their nominees from Ministry of Road Transport and Highways, Ministry of Finance (Department of Insurance) and Ministry of Law and Justice, Mr. S. Sunder, Chairman of the Expert Committee appointed by Ministry of Road Transport and Highways to review the provisions of the Motor Vehicles Act, 1988 and Joint Commissioner of Northern Range, Delhi Police. Mr. Atul Nanda, the Standing Counsel of Union of India shall be the convener of the Committee. The Insurance Companies shall depute one senior officer each, preferably the General Manager or high rank officer to attend

the meeting. The committee may also invite the representatives from IRDA and Tariff Advisory Committee, if some assistance is required from them. The Committee shall complete the deliberations within a period of two weeks and submit a report to this Court with advance copy to the learned amicus curiae who may submit their response to this Court on the next date of hearing. The first sitting of the Committee shall be taken place on 11<sup>th</sup> November, 2009 at 5:00pm at the venue to be fixed by the Convener.

14. All the Insurance Companies agree to the constitution of the Committee to evolve the mechanism and time frame to settle the accident claims and submit to the jurisdiction of this Court to pass an appropriate order after the report of the Committee.

15. The period of 30 days fixed in the order dated order 8<sup>th</sup> June, 2009 for processing the motor accident claims for the time being is extended up to 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. However, final order in this regard shall be passed after the report of the Committee.

16. The Insurance Companies have not been settling the claims of the victims of the road accidents on the ground that there is no notice/intimation of the road accidents to them until the receipt of notice from the Claims Tribunal. However, with the enforcement of Section 158(6) of the Motor Vehicles Act by Delhi Police in terms of the order dated 8<sup>th</sup> June, 2009, the Insurance Companies now have sufficient notice of the claim and they can verify the facts to settle the claims. As per the Procedural Manual of Motor Accident Claims of the Insurance Companies, they are required to appoint an Investigator immediately upon the receipt of intimation of the claim and verify all relevant facts relating to the accident and computation of compensation such as age, income and number of dependants in death cases and age, income and nature of injuries and expected expenditure in injury cases. It is further provided that upon verification of all the facts, the Insurance Company must determine the amount of compensation payable in accordance with law and offer the same to the claimants for settlement of the claim. 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. 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. Where no defence is available to the Insurance Company, the admitted amount so determined shall be deposited by the Insurance Company with the learned Tribunal along with the aforesaid order by means of a fixed deposit receipt in the name of the Insurance Company with instructions to the bank to release the interest to the claimants as per the order of the learned Tribunal.

17. The Delhi Government in pursuance to the directions of this Court have notified the Delhi Motor Accident Claims Tribunal Rules, 2008 on 13<sup>th</sup> July, 2009. The Delhi Motor Accident Claims Tribunal Rules, 2008 have very benevolent features. The salient features of the said Rules are under:-

"I. RULE 3 – DUTIES OF INVESTIGATING POLICE OFFICER  
IN MOTOR ACCIDENT CASES

- (i) To take photographs of the scene of the accident and prepare a site plan.

- (ii) Seizure of Insurance Policy and other documents as mentioned in Section 158(1) of the Motor Vehicles Act.
- (iii) Verification of genuineness of the aforesaid documents by obtaining confirmation from the concerned offices/authorities.
- (iv) Submission of Accident Information Report in Form 'A' within 30 days of receipt of the notice in Form 'B' accompanied by requisite documents including the Report under Section 173 Cr.P.C., medico legal certificate, post-mortem report, first information report, photographs, site plan, photocopies of relevant documents mentioned in Clause (c) and report regarding confirmation of genuineness of the documents.
- (v) Furnishing of Accident Information Report and particulars in Form 'A' within 30 days to the claimants.
- (vi) Impounding uninsured offending vehicles and not to release the same as well as vehicles in respect of which the owner fails to furnish the Insurance Policy.
- (vii) Prosecute the owner of the uninsured offending vehicles under Section 196 of the Motor Vehicles Act.

## II. RULE 4 – DUTIES OF REGISTERING AUTHORITY

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

### III. RULE 5 – DUTIES OF INSURANCE COMPANY

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

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

### IV. RULE 6 – PROHIBITION AGAINST RELEASE OF MOTOR VEHICLE INVOLVED IN ACCIDENT

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

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

V. RULE 7 – PRESUMPTIONS ABOUT REPORT

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

VI. RULE 8 – APPLICATIONS TO THE CLAIMS TRIBUNAL

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

(d) connection of the aforesaid persons with the claimant.

VII. RULE 9 – POLICE REPORTS UNDER SECTION 158(6) OF THE MOTOR VEHICLES ACT.

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

VIII. Rule 10 – Examination of applicant

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

IX. Rule 14 – Proceedings after appearance of respondents

- (i) The respondents to file written statement(s) along with all the documents and also affidavit in support of all facts.
- (ii) If no written statement is filed, the Claims Tribunal must mandatorily examine the respondent and record the substance of the said examination in writing.

X. Rule 15 – Local Inspection

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

XI. Rule 16 – Inspection of Vehicle

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

XII. Rule 18 – Power to direct medical examination

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

XIII. Rule 20 – Procedure for adjudication of claim on the basis of "No Fault Liability"

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

#### XIV. Rules 21 to 24 – Inquiry into the Claim

- (i) The Claims Tribunal is required to frame issues arising out of pleadings.
- (ii) The Claims Tribunal is required to expedite the inquiry for determination of issues by allowing:
  - (a) Cross examination of each party by the opposite party on the affidavits filed with the pleadings.

- (b) Cross examination of the witnesses whose affidavits were filed by the parties with the pleadings.
- (c) Permitting additional evidence in the form of affidavits only of such witnesses whose affidavits could not be filed earlier despite exercise of due diligence or on account of ignorance.
- (iii) Record the statement of each witness in the form of a brief memorandum of the substance of statement given.

XV. Rule 27 – Securing the interest of claimants

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

XVI. Rule 31 – Enforcement of the Award

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

XVII. Rule 32 – Powers of Civil Court

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

18. Copy of this order along with the Delhi Motor Accident Claims Tribunal Rules, 2008 be sent to the Secretary, Ministry of Road Transport and Highways as well as to the Chairman of the Expert Committee appointed by the Ministry to review the Motor Vehicles Act to consider the inclusion the appropriate provisions in the Central Rules. The copy be sent through Mr. Atul Nanda, Standing Counsel for Union of India.

19. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

20. Copy of this order be sent to Claims Tribunals for compliance. The compliance report in respect of the directions passed today regarding the enforcement of Section 158(6) of the Motor Vehicles Act, 1988 for the period 1994 to 2009 be filed by the Claims Tribunals through the Registrar (Appellate) before the next date of hearing.

21. Renotify for 10<sup>th</sup> December, 2009 at 2:30pm.

J.R. MIDHA, J

NOVEMBER 05, 2009