

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 842/2003

Date of Decision: 16th December, 2009

RAJESH TYAGI & ORS. Appellants

Through : None.

versus

JAIBIR SINGH & ORS. Respondents

Through : Mr. Gopal Subramaniam,
Solicitor General of India with
Mr. Atul Nanda Standing.
Counsel for Union of India.
Mr. Vikas Pahwa, Additional
Standing Counsel for Delhi Police.
Mr. V.P. Chaudhary, Sr. Adv. and
Mr. Anoop Bhambhani, amicus
curiae. Mr. Arun Mohan, Sr. Adv.
and Ms. Rajdeepa Behura, Adv. as
Members of the Committee
appointed by the Court.
Mr. Manoj Ranjan Sinha, Adv.
for R – 3. 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 Sompo General
Insurance Co. Ltd. Mr. Sunil
Kapoor and Mr. Anurag Sharma,
Advs. for HDFC Ergo General
Insurance Co. Ltd. Ms. Suman
Bagga, Adv. for Cholamandalam.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Mr. Vikas Pahwa, the learned Additional Standing Counsel for Delhi Police submits that the Delhi Police has issued a circular dated 22nd July, 2009 to all Deputy Commissioners of Police instructing them to strictly implement the duties of the police under Section 158(6) of the Motor Vehicles Act, 1988 and Delhi Motor Accident Claims

Tribunal Rules, 2008. The learned Additional Standing Counsel submits that the Claims Tribunal Agreed Procedure formulated by the Committee appointed by this Court imposes additional duties on the police which are beyond the scope of the Motor Vehicles Act, 1988 as well as Delhi Motor Accident Claims Tribunal Rules, 2008. The learned Additional Standing Counsel, in particular, refers to Clauses 3(B)(i)(ii) and 3(3) of the Claims Tribunal Agreed Procedure under which the Police has to collect the proof of age and income of the deceased in the case of death, proof of the medical bills and expenses in the case of injuries and has also to verify the genuineness of the said documents. The learned Additional Standing Counsel submits that it is not the legal duty of the Police to collect the said evidence and to verify the genuineness of the same. The learned Additional Standing Counsel further submits that in case of hit and run accidents, it may not be possible to complete the investigation within a period of 30 days as provided in Clause 4 of the Claim Tribunal Agreed Procedure. It is further submitted that at times, the MLC and post-mortem report are not made available to them within 30 days of the accident.

2. Mr. Atul Nanda, the learned Standing Counsel for Union of India submits that all the seventeen Insurance Companies have agreed to settle the accident cases as per the Claims Tribunal Agreed Procedure. It is further submitted that the Insurance Companies instead of relying on the report of their Investigator, would prefer to rely on the report of a police officer who is a public servant and is accountable for his report. It is submitted that the Insurance Companies have taken a big step forward by agreeing to a new mechanism for payment of compensation to the victims of the road accident within a fixed time frame and the police should also show the grace to agree to perform an additional duty to serve the society. It is further pointed out that the additional duties to be performed by the police are not such that it will increase the burden on the police. The Police while conducting the investigation, can easily collect some more documents and information.

3. Mr. Arun Mohan, Senior Advocate and member of the Committee appointed by this Court vide order dated 3.12.2009 in MAC.APP.No.236/2009 and MAC.APP.238/2009 submits that pending

examination of the contentions raised by the Delhi Police as to their duties under the Motor Vehicles Act, 1988, the Delhi Motor Accident Claims Tribunal Rules, 2008 and otherwise in law, the Claims Tribunal Agreed Procedure may be implemented by the Insurance Companies and Delhi Police for a period of six months on trial basis as a pilot project.

4. The learned Additional Standing Counsel for Delhi Police on instructions from Mr. Manjesh Kashyap, DCP (Hqrs.), Delhi Police who is present in the Court and has taken instructions from the Commissioner of Police during the hearing of this case, submits that Delhi Police is agreeable to implement the Claims Tribunal Agreed Procedure on a trial basis as a pilot project for a period of six months without prejudice to the contentions raised before this Court today.

5. The Claims Tribunal Agreed Procedure formulated by the Committee of the Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law, Justice and Company Affairs; and Joint Commissioner of Police (Northern Range) is accepted subject to the following:-

- (i) The Investigating Officer of the Police shall intimate the factum of the accident to the Claims Tribunals within 48 hours of the accident. If the insurance particulars are available by that time, the Investigating Officer shall also send the intimation to the concerned Insurance Company by e-mail. The factum of the accident shall also be uploaded by Delhi Police on its website. The intimation of the accident shall contain all relevant particulars including the date, time and place of accident, registration number of the offending vehicle, policy particulars, names and addresses of the owner and driver of the offending vehicle and the name and mobile number of the Investigating Officer.
- (ii) Immediately upon receipt of intimation, the Insurance Company shall appoint a Designated Officer for each case. The Designated Officer shall be responsible for dealing/processing of that case and for taking decision for the amount of compensation payable in accordance with law after the Detailed Accident Report by the police.
- (iii) The Investigating Officer of Police shall collect the relevant evidence relating to the accident as well as the computation of compensation. The Investigating Officer shall take photographs of the scene of the accident from all angles. In the case of death, the Investigating Officer shall collect the proof of age, occupation, income of the deceased and number of legal representatives of the deceased. In the case of injuries, the Investigating Officer shall collect proof of injuries suffered and expenses incurred by the injured. The Investigating Officer shall also collect the relevant documents including driving licence, registration certificate, fitness and permit of the offending vehicle, death certificate, post mortem report, birth certificate, salary slip, certificate of the employer, Income-

tax returns, MLC, prescription slips, bills for medical expenses and shall also verify the genuineness of the said documents.

- (iv) The Investigating Officer shall file a Detailed Accident Report (DAR) with the Claims Tribunal within 30 days of the accident. The Detailed Accident Report shall be accompanied by the report under Section 173 Cr.P.C., FIR, MLC, Post Mortem Report, photographs, site plan, mechanical inspection report, seizure memo, death certificate, proof of age, occupation and income of the deceased and age of the legal representatives of the deceased in the case of death, proof of injuries and expenses in the case of injuries along with affidavit about the verification of the said documents. Copy of the Detailed Accident Report shall simultaneously be furnished to the Insurance company as well as to the claimants.

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

- (vi) Where the Investigating Officer is unable to complete the investigation of the case within 30 days for reasons beyond his control, such as cases of hit and run accidents, cases where the parties reside outside the jurisdiction of the Court cases, where the driving licence is issued outside the jurisdiction of the Court, or where the victim has

suffered grievous injuries and is undergoing treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time whereupon the Claims Tribunal shall suitably extend the time in the facts of each case.

- (vii) The Investigating Officer shall produce the driver, owner, claimant and eye-witnesses before the Claims Tribunals along with the Detailed Accident Report. However, if the Police is unable to produce the owner, driver, claimant and eye-witnesses before the Claims Tribunal on the first date of hearing for the reasons beyond its control, the Claims Tribunal shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. The Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the Detailed Accident Report before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Claims Tribunal.

- (viii) The concerned Registration Authority of the Government of NCT of Delhi shall furnish the report in Form-D of the Delhi Motor Accident Claims Tribunal Rules, 2008 to the Police and Claims Tribunal within 15 days of the receipt of the request from the police or the direction from the Tribunal in Form-E. The Registration Authority shall also assist the Police in verification of the documents.

- (ix) The Claims Tribunals shall examine whether the Detailed Accident Report is complete in all respects and shall pass appropriate order in this regard. If the Detailed Accident Report is not complete in any particular respect, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

- (x) The Claims Tribunals shall treat the Detailed Accident Report filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act. However, where the Police is unable to produce the claimants on the first date of hearing, the Claims Tribunal shall initially register the Detailed Accident Report as a miscellaneous application which shall be registered as a main claim petition after the appearance of the claimants.

- (xi) The Claims Tribunal shall grant 30 days time to the Insurance Company to examine the Detailed Accident Report and to take a decision as to the quantum of compensation payable to the claimants in accordance with law. The decision shall be taken by the Designated Officer of the Insurance Company in writing and it shall be a reasoned decision. The Designated Officer of the Insurance Company shall place the written reasoned decision before the Claims Tribunal within 30 days of the date of complete Detailed Accident Report.

- (xii) The compensation assessed by the Designated Officer of the Insurance Company in his written reasoned decision shall constitute a legal offer to the claimants and if the claimants accept the said offer, 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 claimants are awarded just compensation in accordance with law. The Claims Tribunal shall also pass an order with respect to the shares of the claimants and the mode of disbursement.

- (xiii) If the claimants are not in a position to immediately respond to the offer of the Insurance Company, the Claims

Tribunals shall grant them time not later than 30 days to respond to the said offer.

(xiv) If the offer of the Insurance Company is not acceptable to the claimants 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 and shall pass an award within a period of 30 days thereafter.

6. Mr. Atul Nanda, Convener of the Committee appointed by this Court vide order 5th November, 2009 is directed to incorporate the aforesaid Clauses in Claims Tribunal Agreed Procedure and place the same before this Court on 21st December, 2009.

7. While computing the compensation in respect of death cases, the learned Tribunals shall, so far as possible, compute the compensation payable to the legal representatives of the deceased victim according to the principles laid down by the Hon'ble Supreme Court in the case **Sarla Verma Vs. DTC, 2009 (6) SCALE 129** which are reproduced hereunder:-

I. MULTIPLIER

<u>Age of the deceased</u> <u>(in years)</u>	<u>Multiplier</u>
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	09
61 - 65	07
Above 65	05

(Where the deceased was unmarried, the multiplier to be adopted according to the age of the parents)

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased – unmarried

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

Deceased – married

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

III. FUTURE PROSPECTS

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

IV. NON-PECUNIARY DAMAGES

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

8. Where the legal representatives of the deceased victim do not have documentary evidence of the income of the deceased, the Claims Tribunal shall take the minimum wages into consideration and shall

take judicial note of the increase in minimum wages due to inflation and rise in price index and compute the income of the deceased by taking the average of the minimum wages and its double following the judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182; Lekh Raj vs Suram Singh, 2007 ACJ 2165; and National Insurance Company Limited vs. Renu Devi III (2008) ACC 134.**

9. In the case of death of a child, the Claims Tribunal shall consider the principles laid down by this Court in the case of National Insurance Co. Ltd. Vs. Farzana, MAC.APP.13/2007 decided on 14.7.2009 following the judgments of the Hon'ble Supreme Court in the cases of **Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257 and R.K. Malik Vs. Kiran Pal, III (2006) ACC 261**, according to which the following compensation is payable:-

Compensation for loss of dependency	Rs.2,25,000/-
Compensation for loss of future prospects	Rs. 75,000/-
Non-pecuniary compensation	Rs. 75,000/-
Total	<hr/> Rs.3,25,000/- <hr/>

10. The Delhi Police shall require some time for implementation of the Claims Tribunal Agreed Procedure. The Delhi Police shall have to

create the paraphernalia, select the officers and provide them training and mobile phones to take photographs of the site of the accident.

11. It is agreed by the Delhi Police that the implementation of Claims Tribunal Agreed Procedure shall commence from 15th January, 2010 and the same shall tentatively remain in force for a period of six months up to 14th July, 2010. The Claims Tribunal Agreed Procedure shall apply to all accidents which occur after 15th January, 2010 and shall cover the accidents which occur up to 14th July, 2010.

12. The learned Additional Standing Counsel for Delhi Police submits that if some difficulties arise in the implementation of this scheme during this period of six months, this Court shall be approached for suitable modification. It would, therefore, be appropriate that the working of the Claims Tribunal Agreed Procedure be monitored by the Committee appointed by this Court vide order dated 5th November, 2009 which has formulated the Claims Tribunal Agreed Procedure. The monthly report be submitted by all the Insurance Companies as well as by the Police before the said Committee, which shall submit the same before this Court along with its comments within 15 days thereafter.

The first status report by the Insurance Companies and the Delhi Police for the period 15th January, 2010 to 14th February, 2010 shall be submitted to the Committee by 28th February, 2010 and the Committee shall examine the same and submit their report before this Court by 15th March, 2010 and the same shall be considered by this Court on 23rd March, 2010.

13. Mr. Arun Mohan, Senior Advocate has some suggestions for the Delhi Police for expeditious investigation of the accident cases. The suggestions of Mr. Arun Mohan are as under:-

First : "Today, there are more drivers on the road carrying a mobile phone than perhaps those carrying a (genuine) driving licence. This phenomenon can be utilised for the purposes of investigation of motor accidents.

The Police Control Room can set up a Cell for Accident Identification with a dedicated telephone number (having several lines) to which the Investigating Officer deputed to investigate an accident upon reaching the spot can make calls and it would register the number from which the calls are coming and the time as part of its call listing of received calls.

Upon reaching the spot, the Investigating Officer (or the PCR Van) should take possession of the mobile phones of all concerned – driver, occupant/s, victim/s. Thereupon the Investigating Officer should make calls to the aforesaid designated police telephone number in the following order:

1. from his own (Investigating Officer's) mobile phone;
2. from the driver's mobile (If the driver is carrying more than one mobile phone, such phone calls be made from each of the phones.);

3. from the mobile phones of the occupant/s of the car; and
4. from the victim's mobile phone.

After these calls, there be another call from the Investigating Officer's mobile phone to this number to signify the end of series. Appropriate system to bunch these calls can be easily engineered. The necessary information (call details) can then be transferred to the electronic case file which is opened for the particular accident.

To be doubly sure, the Investigating Officer may also call his own number from the driver's mobile phone. If no number is displayed, the Investigating Officer ought to seize the mobile phone.

Identification of the mobile phones in use at the time of the accident and accessibility through the service provider to driver's (and others') location and call listings for the preceding period will give law enforcement a much stronger hand. And more importantly, prevent false claims when there has not been any accident or injury.

Second:An Insurance Company must know about an accident immediately upon its occurrence so that it can make the necessary investigations. Presently, the insurance company comes in picture when the claim petition is filed and by that time the evidence can be created to convert a non-motor accident (or even a non-accident) into a motor accident. Evidence is also created of income levels so as to inflate the quantum.

As a solution to this, the Delhi Police needs to create a Website to which the Investigating Officer in the field can connect and so can insurance companies from their own computers.

The 'information' sent by the Investigating Officer to this Website – preferably on an electronic interactive form – will include details such as: motor vehicle registration number, chassis number, engine number, vehicle make, model, colour, type, etc; particulars of the owner such as his address, mobile telephone, occupation, etc.; driver's registered address and driving licence number; the police station within the jurisdiction of which the accident took place; description of the spot where the accident occurred; the other persons involved in the accident; brief cause of the accident; casualties occurred; insurance policy number; particulars of the insurance company, etc. Only as many as are available at that time

can be filled in.¹ The Investigating Officer's mobile number and e-mail will also be entered.

Once the police starts placing this information on the web (which it can do virtually automatically within one hour of the accident) along with the time and location, and name of the insurance company (even two or three names may be given), the insurance company/ies can download this data (every hour) and search through their own database. The moment there is any matching / flagging, it can revert to the concerned Police Station on e-mail and to the Central Office, and even to the Investigating Officer.

Most of this exercise can be done by the computers automatically which (in absence of exact match) will give out (display) even particulars of similar vehicles in respect of which policies have been issued. So done, there is no reason why within a few hours of the accident, the insurance file cannot be reached and contact with the Investigating Officer made. The insurance companies can then depute their own field-agent to join in the investigations.

The insurance companies will have to fine-tune their own database of the policies which they have issued so that the necessary search and correlation can be made almost instantaneously. The idea is that in this computer day and age, the insurance companies must perform their task with diligence, and in the shortest of time get in touch with the AIO. Thus, the insurer has no longer to wait for summons from the MACT to know of the accident.

Third : The Delhi Police needs to prepare and make available to all Investigating Officers:

- 1 Motor Accident Investigation Manual;
 - 2 Comprehensive set of questionnaire forms; and
 - 3 Instruction notes (as leaflets) for use of victims / witnesses,
- which the Investigating Officer can use for gathering information on the spot and even distributing (the forms and notes) to the victims / witnesses, and receiving information from them.

¹ Computer matching enables a few fields to be filled in and then it automatically shows up reasonably complete groups / fields (as suggestions / options) which include what was a possible error in the original keying-in.

More importantly, the Investigating Officer must also bestow some attention on what could have prevented the accident and prepare a note to that effect for being filed with the Central Office.

Lastly The police could consider making available web-connected
(Fourth) mobile phones with camera which can take photographs of the vehicle, number-plate, chassis-number-plate, driver, victim and electronically transmit these to the Central Police website / computer.

Ideally, alongside recording the statement of the witnesses in the case diary (under Section 161 Cr.P.C., these can be video-recorded at the site, and the CD preserved as part of the case file.

In future, we can have palm tops to scan the licence and thumb impression of the driver as also the thumb impression of the victim/s together with high resolution photographs and automatic GPS based location marker and time print.²

14. The aforesaid four suggestions of Mr. Arun Mohan, Senior Advocate are very useful and there should be no difficulty in implementation of the first three suggestions; though the fourth suggestion may have to await action by the Government.

15. Mr. Arun Mohan has offered to provide the basic structure of the forms which can then be developed by the Delhi Police and be made part of the manual. The Delhi Police may also consult Mr. Arun Mohan and the other members of the Committee for drafting the manual.

² also stated as latitude and longitude as degrees, minutes and seconds
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16. The learned Additional Standing Counsel for Delhi Police submits that the Delhi Police shall favourably consider the above suggestions and shall incorporate them in their training to the Investigating Officers.

17. The Delhi Police shall prepare a Motor Accident Investigation Manual which shall incorporate the suggestions given by Mr.Arun Mohan and shall place the same before this Court.

18. It is hoped that the implementation of the Claims Tribunal Agreed Procedure will start a new era in road accident prevention, investigation and compensation. The successful implementation of the Claims Tribunal Agreed Procedure shall result in payment of compensation to the victims of the road accidents within 120 days of the date of the accident. However, the success of the Claims Tribunal Agreed Procedure shall depend upon the implementation of the scheme by the Delhi Police, Insurance Companies, Claims Tribunal and Delhi Legal Service Authority in its true letter and spirit. The Commissioner of Delhi Police shall personally look into the selection of good officers and proper training to them to ensure that there is no

exploitation of the victims of the road accidents. The list of the officers responsible for implementation of this Scheme be placed before this Court on 8th January, 2010. All Insurance Companies shall appoint a Nodal Officer with adequate knowledge of the principles for computation of compensation for successful implementation of this Scheme. The list of Nodal Officers be placed before this Court on 8th January, 2010. The Claims Tribunals and Delhi Legal Services Authority shall ensure that just compensation is paid to the victims of the road accidents within agreed time frame and the quality of justice is not compromised.

19. Union of India as well as Government of NCT of Delhi are directed to issue appropriate directions to their respective hospitals instructing them to issue MLC and Post Mortem Report within 15 days of the accident in respect of the accidents in Delhi between 15th January, 2010 and 14th July, 2010. Government of NCT of Delhi shall also issue directions to the registration authorities in terms of the para 5(viii) above.

20. Mr. Gopal Subramaniam, Solicitor General of India has, on being requested, assisted this Court in arriving at an amicable solution for implementation of a time bound procedure for settlement of Motor Accident Claim cases for a period of six months as a pilot project. The learned Solicitor General has also submitted that Central Government shall consider granting of funds to the Delhi Police for creating special cell and paraphernalia for handling of motor accident cases on request being made by Delhi Police to the Central Government in this regard.

21. The Ministry of Finance (Department of Insurance), Delhi Police and all the Insurance Companies shall also consider giving appropriate publicity to this scheme to bring awareness to the general public who can take the benefit of the same. The Director (Insurance) shall also consider nominating an officer for due compliance of this scheme by all concerned.

22. The Claims Tribunal Agreed Procedure along with the copy of this order be sent to all Claims Tribunals through the Registrar (Vigilance) of this Court.

23. Copy of this order be also sent to Delhi Legal Services Authority.

Delhi Legal Services Authority shall take steps to familiarize the public about this scheme.

24. Copy of this order be sent to the Secretary, Ministry of Road Transport and Highways as well as the Expert Committee appointed by the Ministry of Road Transport and Highways, through Mr. Atul Nanda, Standing Counsel for Union of India. The Expert Committee may consider incorporating this Scheme in their report to the Government.

25. Copy of this order be sent to the Secretary, Ministry of Health of the Central Government as well as Government of NCT of Delhi through their respective Standing Counsels for issuance of appropriate instructions to their respective hospitals.

26. Copy of this order be given Dasti to the learned amicus curiae, members of this Committee and the counsels for the Insurance Companies.

J.R. MIDHA, J.

DECEMBER 16, 2009