

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No.842/2003

Date of Decision: 21st December, 2009

RAJESH TYAGI & ORS. Appellants

Through : None.

versus

JAIBIR SINGH & ORS. Respondents

Through : 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, Adv. for United

India Insurance Co. Ltd.

Mr. Sameer Nandwani, Adv. 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

JUDGMENT (Oral)

1. 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), to which all the Insurance Companies have consented, has been accepted by this Court vide order dated 16th

December, 2009. The Delhi Police has given their consent to implement the Claims Tribunal Agreed Procedure on a trial basis as a pilot project for a period of six months. However, certain clarifications to the scheme have been made by this Court vide order dated 16th December, 2009 which have been incorporated in the Claims Tribunal Agreed Procedure.

2. Mr. Atul Nanda, the learned Standing Counsel for Union of India raised two concerns with respect to the order dated 16th December, 2009 which are as under:-

- (i) In para 7 of the order dated 16th December, 2009, the learned Tribunals have been directed to compute the compensation payable in death cases according to the principles laid down by the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129, (2009) 6 SCC 121, 2009 ACJ 1298**. Mr. Atul Nanda submits that there are other judgments in which different view has been taken and, therefore, the learned Tribunals may be left

free to follow the law laid down in other judgments as well.

- (ii) The direction in para 5(xii) of the order dated 16th December, 2009 to the Claim Tribunals to ensure that the claimants are awarded just compensation in accordance with law, be deleted.

3. With respect to the first contention, it is hereby clarified that the order dated 16th December, 2009 is an interim order based on the Claims Tribunal Agreed Procedure accepted by all the seventeen Insurance Companies and Delhi Police for expeditious settlement of accident cases for a limited period of six months from 15th January, 2010 to 14th July, 2010. This is a pilot project on trial basis with a object that the claimants get the compensation within a period of 120 days from the date of the accident. Unless the scheme is clear and definite in all respects, the settlement of death cases within a fixed time frame may not be possible. It is noted that on average, there are about 20 accident cases in a month in Delhi and, therefore, this scheme would cover approximately 120 cases over a period of six months. The clarification given in para 7 of the order

dated 16th December, 2009 is to make the scheme definite and clear and not to leave any confusion in the applicability of the scheme. It is also noted that all the nationalized Insurance Companies had in the meeting held in May, 2009 recorded in the Minutes of the Meeting dated 29th May, 2009 agreed to settle all the pending death cases in Delhi according to the principles laid down by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra). Similar proposal had also been accepted by the Insurance Companies before the Hon'ble Supreme Court in the meeting of the Arrears Committee. Para 7 of the order dated 16th December, 2009 is in line with the accepted stand of the Insurance Companies. However, if still there is any difficulty for the Insurance Companies to settle the cases in terms of the order dated 16th December, 2009, the liberty is given to them to approach this Court in terms of para 12 of the order dated 16th December, 2009 appropriate directions.

4. With respect to the second objection that the Tribunals should not examine whether the amount offered by the Insurance Companies is in accordance with law or not, it is clarified that the

purpose of the scheme is to expedite the payment of compensation to the victims of the road accidents in accordance with law without compromising the quality of justice and, therefore, the directions given to the learned Tribunals in this regard are necessary to uphold the rule of law.

5. It is also to be noted that the purpose of procedure is to help dispense justice. Considering the situation in the past and the fair approach adopted by the parties before this Court, the common goal being quicker adjudication, we have to find a way forward to rid the inefficiencies of the past.

6. The orders dated 8th June, 2009 and 5th November, 2009 stand modified by the order dated 16th December, 2009 in so far as the Insurance Companies had been directed to deposit the admitted amount.

7. List on 8th January, 2010 for compliance of directions given in para 18 of the order dated 16th December, 2009 and on 23rd March, 2010 for consideration of the first report of the Committee.

8. The approved Claims Tribunal Agreed Procedure has been appended to this order (which will be uploaded on the internet) so

as to enable access by all concerned.

9. The copy of this order along with order dated 16th December, 2009 and Claims Tribunal Agreed Procedure, as finally modified and approved be sent to all Claim Tribunals and Delhi Legal Services Authority through the Registrar (Vigilance) of this Court. All the Claims Tribunals shall send a monthly report giving particulars of total number of cases received by them in a tabular form containing the particulars of age, occupation, income, number of dependents, amount offered by the Insurance Company and the amount awarded by the Claims Tribunals in death cases and relevant particulars in injury cases. The monthly report of the Claims Tribunals be sent to this Court through Registrar (Vigilance). The report with respect to the period between 15th January, 2010 to 14th February, 2010 be sent to this Court by 28th February, 2010. The same be placed before this Court along with the comments of Registrar (Vigilance) by 15th March, 2010, which shall be considered on 23rd March, 2010.

10. Copy of this order along with order dated 16th December, 2009 and approved Claims Tribunal Agreed Procedure be also sent

to the Principal Secretary (Law), Government of NCT of Delhi for issuing appropriate instructions to all authorities under Government of NCT of Delhi for compliance of the order dated 16th December, 2009.

11. The copy of this order be given Dasti to learned amicus curiae, Committee members, Standing Counsel for Union of FAO No.842/2003 India, Additional Standing Counsel for Delhi Police, Delhi Legal Services Authority and all the Insurance Companies.

12. Copy of this order along with the copy of the order dated 16th December, 2009 and the Agreed Claims Tribunal Procedure be also sent to Mr. S. Sundar, Chairman of the Expert Committee constituted by the Ministry of Road Transport and Highways.

J.R. MIDHA, J

DECEMBER 21, 2009

THE CLAIMS TRIBUNAL AGREED PROCEDURE

(As approved by Delhi High Court)

CHAPTER 1- SCOPE AND DEFINITIONS

1. **Scope:** This procedure shall be applicable for all claims filed before the Claims Tribunals in the NCT of Delhi.

2. **Definitions.** - (1) In this procedure, unless the context otherwise requires,-
 - (a) "Act" means the Motor Vehicles Act, 1988 (59 of 1988);
 - (b) "accident" means an accident involving use of motor vehicle at a public place;
 - (c) "Claims Tribunal" means a Motor Accidents Claims Tribunal constituted under section 165 of the Act;
 - (d) "Clause" shall refer to the Clauses of this Agreed procedure;
 - (e) "Form" means a form appended to The Delhi Motor Accident Claims Tribunal Rules, 2008;
 - (e) "insurance company" means the insurance company with which a motor vehicle involved in an accident was insured on the date of the accident;
 - (f) "investigating police officer" means the station house officer of a police station within whose jurisdiction an accident involving a motor vehicle occurs, and includes any police officer subordinate to him entrusted with the investigation of the case;
 - (g) "legal representative" shall have the same meaning assigned to it under clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).
 - (h) "Rule" or "2008 Rules" shall bear reference to The Delhi Motor Accident Claims Tribunal Rules, 2008.

(2) All other words and expressions used herein but not defined and defined in Motor Vehicles Act, 1988 or The Delhi Motor Accident Claims Tribunal Rules, 2008, shall have the meanings respectively assigned to them in that Act, or the Rules as the case may be.

CHAPTER 2- RECEIPT OF INFORMATION, VERIFICATION AND THE DETAILED ACCIDENT REPORT

3. **Receipt of information of an accident and duties of the investigating police officer** - (1) The Investigating Police Officer may receive information from one or more source including but not limited to:
 - (a) The driver/owner of the vehicle involved in the accident, by way of a report as contemplated under Section 134 of the Act;
 - (b) The Claimant;
 - (c) A witness to the accident or any other informant or source of information;
 - (d) The hospital or medical facility where the Deceased or Injured may have been taken to for medical attention.

(2) On receipt of the above information, it shall be the duty of the investigating police officer, as expeditiously as possible not later than 48 hours to –

 - (a) Intimate the factum of the accident to the Claims Tribunal within whose territorial jurisdiction the accident has occurred, which shall be entered in a register for such purpose ;
 - (b) 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.
 - (c) The factum of the accident shall also be uploaded by Delhi Police on its

website.

- (d) The intimation of the accident shall contain all relevant particulars

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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.

- (e) In terms of Rule 3(1)(a) have the scene of accident photographed from such angles as to clearly depict, the lay-out and width, etc. of the road(s) or place, as the case may be, the position of vehicle(s), or person(s), involved, and such other facts as may be relevant so as to preserve the evidence in this regard, inter-alia for purposes of proceedings before the Claims Tribunal;
- (f) Gather full particulars, and seek the following documents from the parties as under:

- (A) From the owner/driver, in terms of Section 133/134 and 158 of the Act and Rule 3 of the Rules:

- i. The circumstances of the occurrence, including the circumstances if any for not taking reasonable steps to secure medical attention to the injured person in terms of Section 134(a) of the Act;
- ii. the date, time and place of the accident;
- iii. particulars of the persons injured or deceased in the accident;
- iv. name and address of the driver and the owner, and the driving license of the driver and that of the conductor in the case of a stage carriage, passenger or goods vehicle;
- v. the Insurance Policy or in the alternative a valid cover note provided that such cover note should not be more than sixty days old;
- vi. the certificate of insurance;
- vii. the certificate of registration;
- viii. in the case of a transport vehicle, the fitness certificate referred to in Section 56 of the Act and the permit.

- (B) From the Claimant(s), victims of an accident or their legal representatives, as the case may be:

- (i) In case of death;

- (a) Proof of age and a photo- ID of the deceased at the time of accident;
- (b) Death certificate and post mortem report;
- (c) Proof of income of the deceased at the time of the accident,
 - a. in the form of pay slip/salary certificate in the case of a government/semi-government employee,
 - b. certificate of the employer and bank statements of the last six months of the deceased reflecting payment of salary in the case of a private employee,
 - c. I.T. returns in the case of a self-employed person;
- (d) Details of the dependents, i.e. their age, occupation and marital status and proof of dependency in the form of affidavits, address and other contact details;
- (e) Details and copies of medical bills and expenses;
- (f) A brief statement of the facts surrounding and quantum of compensation intended to be claimed;
- (g) Details of the claims tribunal, where the Claimants have preferred an application under Section 163A or Section 166, if any, as on the date of such verification or investigation by the investigating police officer;

- (ii) In case of an injury case

- (a) Proof of age and a Photo- Insured, address and other contact details of the injured at the time of accident;
- (b) Proof of income of the Injured at the time of the accident,
 - a. in the form of pay slip/salary certificate in the case of a government/semi-government employee,
 - b. certificate of the employer and bank statements of

the last six months of the injured reflecting payment of salary in the case of a private employee,

- c. I.T. returns in the case of a self-employed person;
- (c) Disability certificate issued by a Government Hospital or a recognized private hospital;
- (d) MLC/accident register extract of the hospital and MLR
- (e) Details and copies of medical bills and expenses; in case of long term treatment the Investigating Police officer shall record the details of the same and the Claimant may furnish such bills before the Claims Tribunal;
- (f) Proof of absence from work [where loss of income on account of injury is being claimed] i.e. certificate from the employer and extracts from the attendance register or log record or like records;
- (g) A brief statement of the facts surrounding and quantum of compensation intended to be claimed;
- (h) Details of the claims tribunal, where the Claimants have preferred an application under Section 163A or Section 166, if any, as on the date of such verification or investigation by the investigating police officer;

and thereupon the police investigating officer shall either to the above documents in possession against receipt, or retain the photocopies of the same, after attestation thereof by the person producing the same;

- (3) The investigating police officer shall verify the genuineness of the documents mentioned in Clause 3(2) 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 necessary for arriving at a conclusion of genuineness of the document or information in question, including but not limited to verifying the license of the driver and permit of the vehicle, where applicable, from the registering authority;
- (4) The investigating police officer shall not release and shall impound the vehicle involved in the accident, when:
 - a. it is found that it is not covered by policy of insurance of third party risks, taken in the name of the registered owner, or
 - b. when the registered owner fails to furnish copy of such insurance policy, or where the driver fails to furnish the driving license

and shall bring this to the notice of the Magistrate having jurisdiction over the area, where the accident occurred. He shall further report to the Magistrate, as to why the registered owner has not been prosecuted for offence punishable under section 196 of the Act, where such prosecution has not been preferred, despite existence of facts constituting such an offence.

- (5) In all cases where no driving license has been furnished by the driver, or permit and insurance policy by the owner the investigating police officer shall take a statement in the form of an affidavit from the driver and or the owner, as the case may be as to the details of such driving license including the class and type of vehicle he is licensed to drive, permit and or Insurance Policy in case of the owner and the validity thereof as on the date of the accident. In such cases the investigating police officer shall proceed to investigate into the properties and assets of the owner of the vehicle and append the same to his report.

- 4 Preparation and forwarding of the Detailed Accident Report (DAR):** (1) After completion of the above collection and verification of the documents and investigation as may be required, the investigating police officer shall complete the preparation of a detailed accident report [hereinafter referred to as **DAR**] in Form "A" not later than thirty days from the date of the accident. In terms of Rule 3 (1)(c) such DAR shall be accompanied by requisite documents which shall include copy of the report under

section 173 of the Code of Criminal Procedure, 1973(2 of 1974), medico legal certificate, post-mortem report (in case of death), first information report, photographs, site plan, mechanical inspection report, seizure memo, photocopies of documents mentioned in Clause 3(2) above, as also a report regarding confirmation of genuineness thereof, if received, or otherwise action taken.

(2) Immediately on completion of the above DAR, the investigating police officer shall forward a copy of the DAR, under its seal, duly receipted:

(i) To the Claims Tribunal, under a duly attested affidavit of the investigating police officer-

-where a claim has already been preferred by the Claimant to such Claims Tribunal or

- where no such claim has been preferred, then before the Claims Tribunal in whose territorial jurisdiction the accident has occurred.

(ii) To the Claimant (s) or victims of the accident or their legal representative(s), as the case may be at the address supplied by the Claimant to the investigating police officer, free of charge;

(iii) To the owner/driver at the address supplied by the owner / driver to the police investigating officer, at a cost of Rs. Five per page;

(iv) To the nodal officer of the concerned Insurance Company at a cost of Rs. ten per page.

(3) 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.

(4) 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.

(5) 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.

(6) The duties enumerated in Clause (3) and (4) above shall, as per Rule 3(2) of the 2008 Rules be construed as if they are included in Section 60 of the Delhi Police Act 1978 (34 of 1978) and any breach thereof shall entail consequences envisaged in that law, as provided for under Rule 3(2).

5. Duties of the registering authority.- It shall be the duty of the concerned registering authority to-

(a) submit a detailed report in Form "D" to the Claims Tribunal regarding a motor vehicle involved in an accident or licence of the driver thereof within fifteen days of the receipt of direction in Form "E";

(b) furnish within fifteen days, the requisite information in Form "D" on receiving the application in Form "F", by the person who wishes to make an application for compensation or who is involved in an accident arising out of use or his next of kin, or to the legal representative of the deceased or to the insurance company, as the case may be; Provided that information shall be given to the insurance company on payment of rupees ten only per page.

(c) assist the police in verification process set out in Procedure Clause 3 and 4 above and furnish to the investigating police officer a report in Form 'D' within 15 days of a request from the police investigating officer regarding verification or genuineness of any document regarding a motor vehicle involved in an accident or the license of the driver thereof.

*CHAPTER 3 -CLAIMS INSTITUTED ON THE BASIS OF DETAILED ACCIDENT
REPORT*

6. Procedure on receipt of the detailed accident report: (1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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 in accordance with law within a period of 30 days thereafter.

(7) Where the Claims Tribunal finds that the D.A.R. and in particular the report under Section 173, The Criminal Procedure Code, 1974 annexed to such D.A.R. has brought a charge of rash and negligent driving, or the causing of hurt or grievous hurt the Claims Tribunal shall register the claim case under Section 166 of The Motor Vehicles Act, 1988. In cases where the DAR does not bring a charge of negligence or despite the charge of negligence the Claimant(s) before the court chose to claim on a no-fault basis, the Claims Tribunal shall register a claim case under Section 163A, The Motor Vehicles Act, 1988;

(8) Provided that in cases where the accident in question involves more than one vehicle and persons connected to all such vehicles stake a claim for compensation, the D.A.R. shall be treated as an application for compensation claim case shall be presumed to be a claim case preferred by each of them.

*CHAPTER 4 -CLAIMS INSTITUTED BY WAY OF AN APPLICATION BY THE
CLAIMANT*

7. Applications for compensation.- (1) Every application for payment of compensation shall be made in Form "G" and shall be accompanied by as many copies, as may be required, to the Claims Tribunal having jurisdiction to adjudicate upon it, in terms of Section 165 of the Act.

(2) In terms of Rule 8, there shall be appended to every such application:-

(a) an affidavit of the applicant(s) to the effect that the statement of facts contained in the application is true to the best of his/her knowledge/belief, as the case may be, details of previous claims preferred by the applicant(s) with regard to the same cause of action, or any other accident and if so, what was the result thereof;

(b) all the documents and affidavits for the proof thereof, and affidavits in support of all facts on which the applicant relies in context of his/her claim, entered in a properly prepared list of documents and affidavits:

Provided that the Claims Tribunal may not allow the applicant to rely in support of his/her claim, on any document or affidavit not filed with the application, unless it is satisfied that for good or sufficient cause, he/she was prevented from filing such document or affidavit earlier;

(c) proof of identity of the applicant (s) to the satisfaction of the Claims Tribunal, unless exempted from doing so for reasons to be recorded in writing by it;

(C) passport size photograph(s) of the applicant(s) duly attested;

(D) reports obtained in Form "C" and Form "D" from investigating police officer, and registering authority; and if no such report(s) have been obtained, the reasons thereof;

(E) medical certificate of injuries, or the effect thereof, other than those included in Form "C".

(3) The Claims Tribunal may also require the applicant to furnish the following information to satisfy itself that spurious or a collusive claim has not been preferred:-

(a) full particulars of all earlier accidents in which the applicant or the person deceased, as the case may be, has been involved;

(b) nature of injuries suffered and treatment taken;

(c) the amount of compensation paid in such earlier accidents, name and particulars of the victim, and of the person who paid the damages; and

(d) Relationship of the applicant(s), if any, with the persons mentioned in clause (b), and the owner and the driver of the vehicle.

(4) Any application which is found defective on scrutiny may be returned by the Claims Tribunal for being re-submitted after removing the defects within a specified period not exceeding two weeks. Every application for compensation shall be registered separately in appropriate register prescribed as per rule 36.

8. Examination of applicant.- On receipt of an application under Rule 8, the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing.

9. Summary disposal of application.- The Claims Tribunal may, after consideration of the application and statement, if any, of the applicant recorded under Rule 10, dismiss the application summarily, if for reasons to be recorded, it is of the opinion that there are no sufficient grounds for proceeding therewith.

10. Notice to parties involved- If the application for claim is found admissible in terms of Clause 6(4) and Clause 9 above, the Claims Tribunal shall send to the opposite parties accompanied by a copy of the application along with all the documents and affidavits filed by applicant under Rule 8 together, with a notice in Form "I" of the

date on which it will hear the application, and may call them upon to file on that date a written statement as per Rule 14 in answer to the application.

*CHAPTER 5- DUTY OF THE INSURANCE COMPANY ON RECEIPT OF NOTICE AND
PRE-TRIAL SETTLEMENT PROCESS AND COSTS*

- 11. Duties of the insurance company:** (1) 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.
- (2) Without prejudice to its rights and contentions, where in the opinion of the Insurance Company, a claim is payable it shall confirm the same to the Claims Tribunal within thirty days of the receipt of complete Detailed Accident Report, by way of an offer of settlement of claim, with a supporting computation/calculation, under a duly attested affidavit of the Divisional Officer/ Officer appointed for such purpose.
- (3) When on the date of hearing of such application and on receipt of such offer from the Insurance Company, the Claimant(s) agree to the offer of settlement of the Insurance Company, the Claims Tribunal shall record such settlement by way of a consent decree and payment shall be made by the Insurance Company within a maximum period of thirty days from the date of receipt of a copy of the consent decree which shall be made available to the parties by the Claims Tribunal within a maximum period of seven working days from the passing of such decree.
- (4) The Insurance Company shall be at liberty to file an application under Section 170, The Motor Vehicles Act, 1988 at any stage of the proceedings and shall be considered and adjudicated upon by the Claims Tribunal on its own merits.

*CHAPTER 6- APPLICATIONS UNDER SECTION 140 OF THE MOTOR VEHICLES
ACT, 1988*

- 12. Application for claim on principle of no fault liability:-** (1) Every application in case of claim under Chapter X of the Act, shall be made in part II of Form "G". The Claims Tribunal shall, for the purpose of adjudication of the application mentioned in this rule shall follow such summary procedure as it thinks fit.
- (2) The Claims Tribunal shall not reject any application made as per the provisions of Chapter X of the Act on ground of any technical flaw, but shall give notice to the applicant and get the defect rectified.
- (3) Where the application is not accompanied by reports in Form "A" and Form "D", the Claims Tribunal shall obtain whatever information is necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date.
- (4) Subject to the rights of the Insurance Company to prove breach of the Insurance Policy in terms of Section 149, The Motor Vehicles Act, 1988 the Claims Tribunal shall expeditiously proceed to award the claims on the basis of reports in Form "A" and Form "D" and further documents relating to injuries or treatment, if any filed with affidavit, and report or certificate, if any, issued in compliance with directions under rule 18 The Claims Tribunal in passing an award on such application, shall also issue directions for apportionment, if required and for securing the interests of the claimants, following the provisions of rules 26 and 27.

CHAPTER 7- TRIAL AND AWARD

- 13. Framing of issues.-** After considering the application, the written statements, the examination of the parties, if any, and the result of any local inspection, if made, the Claims Tribunal shall proceed to frame and record the issues upon which the decision of the case appears to it to depend.
- 14. Determination of issues.-**(1) After framing the issues the Claims Tribunal shall proceed to decide them after allowing both parties to cross examine each other and the deponents, whose affidavits have been filed by the parties, on such affidavits filed with the application and the written statement and in doing so, it shall follow provision of

Order XIX of the Code of Civil Procedure, 1908 (5 of 1908). (2) The Claims Tribunal may, if it appears to it to be necessary for just decision of the case, allow the parties to adduce such further evidence as each of them may desire to produce:

Provided that no such further opportunity shall be permitted unless it is shown that the affidavit of the witness sought to be examined at such stage could not be obtained and filed earlier, despite exercise of due diligence by, or that such evidence was not within the knowledge of the party relying on it.

- 15. Summoning of witnesses.-** Subject to the provisions of rule 22, if an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witness unless it considers that their appearance is not necessary for a just decision of the case:

Provided that if, in the opinion of the Claims Tribunals, the party is financially poor, it may not insist on the payment of the expenses involved and the same shall be borne by the Government:

Provided further that in case where the party succeeds in whole or in part, the expenses so incurred by the Government shall be directed to be paid to the Government by the judgment debtor and so directed at time of passing of the final award..

- 16. Method of recording evidence.-** The Claims Tribunals shall, as examination of witnesses proceeds, make brief memorandum of the substance of the evidence of each witness and such memorandum shall be written and signed by the Presiding Judge of the Claims Tribunal and shall form part of the evidence. Provided that evidence of any expert witness shall be taken down, as nearly as may be, word for word.
- 17. Obtaining of supplementary information and documents.-** The Claims Tribunal shall obtain whatever supplementary information and documents, which may be found necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date.
- 18. Judgment and award of compensation.-** (1) The Claims Tribunal in passing orders shall record concisely in a judgment, the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the opposite party or parties and also the person or persons to whom compensation shall be paid.

(2) The procedure of adjudicating the liability and award of compensation may be set apart from the procedure of disbursement of compensation to the legal heirs in a case of death, and where the Claims Tribunal feels that the actual payment to the claimant is likely to take some time because of the identification and determination of legal heirs of the deceased, the Claims Tribunal may call for the amount of compensation awarded to be deposited with it, and, then, proceed with the identification of the legal heirs for disbursing payment of compensation to each of the legal heirs equitably.

(3) Where the Claims Tribunal finds that false or fabricated documents have been filed by or relied upon by the Claimant(s) to support its claim for compensation, the Claims Tribunal shall award costs of Rs.10,000 for every such false or fraudulent document filed and further direct the police to launch a prosecution against such Claimant(s) in accordance with the provisions of law.

CHAPTER 8- OTHER PROVISIONS

- 19. Prohibition against release of motor vehicle involved in accident.-**(1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy, at the time of seizure, despite demand by investigating police officer, 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. Where the owner does not furnish such a copy of the Insurance Policy at the time of seizure, but agrees to furnish it or so furnishes it at a reasonable time thereafter, the release of the vehicle shall be subject to and only after due verification of the said Insurance Policy/cover note by the Insurance Company

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule (1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

20. Presumption about reports.- The contents of reports submitted to the Claims Tribunal in Form "A" and Form "D" by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary.

21. Transfer of claim cases.- (1) Where two or more claims, arising out of the same cause of action, fall within the jurisdiction of the District Judge, he shall have the power to transfer an application for claim from the file of one Claims Tribunal, before whom the application is pending, to any other Claims Tribunal, if-

(a) the Claims Tribunal before whom the application is pending makes such a request on grounds, personal or otherwise; or

(b) upon consideration of the application for transfer by any party to the application, the District Judge is satisfied, for reasons to be recorded in writing, that there are sufficient grounds to do so.

(2) Where two or more claims arising out of the same cause of action, are pending before different Claims Tribunal in the same State, the High Court of such State may transfer the application from the file of one Claims Tribunal to the other Claims Tribunal for any sufficient reasons, on the application of any party to such proceedings..

(3) Where two or more claims arise before different Claims Tribunals in different States then an application will lie to either of the High Courts of the two states and such High Court may transfer the application from the file of one Claims Tribunal to the other Claims Tribunal for any sufficient reasons.

(4) While considering an application for transfer of a claim, the Claims Tribunal which has first issued notice in point of time shall be deemed to be the appropriate Claims Tribunal for the purpose of such transfer. .

22. Inspection of the vehicle.- The Claims Tribunal may, if it thinks fit, require the motor vehicle involved in the accident to be produced by the owner for inspection at a particular time and place to be mentioned by it, in consultation with the owner.

23. Power of summary examination.- The Claims Tribunal during the local inspection or at any other time at a formal hearing of a case pending before, it may, examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not and whether any or all of the parties are present or not.

24. Power to direct medical examination.- The Claims Tribunal may, if it considers necessary, direct, in Form "J", any medical officer or any board of medical officers in a government or municipal hospital to examine the injured and issue certificate indicating the degree and extent of the disability, if any, suffered as a result of the accident, and it shall be the duty of such medical officer or board to submit the report within fifteen days of receipt of direction.

25. Securing the interest of claimants.- (1) Where any lump-sum amount deposited with the Claims Tribunal is payable to a woman or a person under legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman or such person during this disability in such manner as the Claims Tribunal may direct to be

paid to any dependent of the injured or heirs of the deceased or to any other person whom the Claims Tribunal thinks best fitted to provide for the welfare of the injured or the heir of the deceased.

(2) Where on application made to the Claims Tribunal in this behalf or otherwise, the Claims Tribunal is satisfied that on account of neglect of the children on the part of the parents, or on account of the variation of the circumstances of any dependent, or for any other sufficient cause, an order of the Claims Tribunal as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested applied or otherwise dealt with, ought to be varied, the Claims Tribunal may make such further orders for the variation of the former order as it thinks just in the circumstances of the case.

(3) The Claims Tribunal shall, in the case of minor, order that amount of compensation awarded to such minor be invested in fixed deposits till such minor attains majority. The expenses incurred by the guardian or the next friend may be allowed to be withdrawn by such guardian or the next friend from such deposits before it is deposited.

(4) The Claims Tribunal shall, in the case of illiterate claimants, order that the amount of compensation awarded be invested in fixed deposits for a minimum period of three years, but if any amount is required for effecting purchase of any moveable or immovable property for improving the income of the claimant, the Claims Tribunal may consider such a request after being satisfied that the amount would be actually spent for the purpose and the demand is not a ruse to withdraw money.

(5) The Claims Tribunal shall, in the case of semi-literate person resort to the procedure for the deposit of award amounts set out in sub-rule(4) unless it is satisfied, for reasons to be recorded in writing that the whole or part of the amount is required for the expansion of any existing business or for the purchase of some property as specified and mentioned, in sub-rule (4) in which case the Claims Tribunal shall ensure that the amount is invested for the purpose for which it is prayed for and paid.

(6) The Claims Tribunal may in the case of literate persons also resort to the procedure for deposit of awarded amount specified in sub-rule (4) and (5) if having regard to the age, fiscal background and state of society to which the claimant belongs and such other consideration, the Claims Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded, thinks it necessary to order.

(7) The Claims Tribunal, may in personal injury cases, if further treatment is necessary, on being satisfied which shall be recorded in writing, permit the withdrawal of such amount as is necessary for the expenses of such treatment.

(8) The Claims Tribunal shall, in the matter of investment of money, have regard to a maximum return by ways of periodical income to the claimant and make it deposited with public sector undertakings of the State or Central Government which offers higher rate of interest. (9) The Claims Tribunal shall, in investing money, direct that the interest on the deposits be paid directly to the claimants or the guardian of the minor claimants by the institutions holding the deposits under intimation to the Claims Tribunal.

26. Adjournment of hearing.- If the Claims Tribunal finds that an application cannot be disposed of at one hearing, it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing.

27. Enforcement of award of the Claims Tribunal.- Subject to the provisions of section 174 of the Act, the Claims Tribunal shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908(5 of 1908), as if the award were a decree for the payment of money passed by such court in a civil suit.

28. Vesting of powers of Civil Court in the Claims Tribunal.- Without prejudice to the provisions of section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908).

29. Receipt of compensation paid upon payment.- The Claims Tribunal shall, obtain a receipt from the claimant in duplicate, one copy to be issued to the person who makes the payment and the other to be retained on the record while handing over the payment.

30. Registers.- (1) The Claims Tribunal shall maintain in addition to all registers required to be maintained by a court of Additional District Judge in Delhi, the following registers:-(i) Register of intimation of factum of accident (ii) Register for applications for interim award on principle of no fault liability; (iii) Register for deposit of payments in the Tribunal through cheques, etc.

(2) Claim petitions on the ground of death, permanent disability, injury and damage to property shall be entered in a separate register.

- 31. Custody and preservation of the records.-** The necessary documents and records relating to the cases shall be preserved in the record room for a period of six years of the satisfaction of the award, if any granted, or for a period of twelve years after the judgment and award become final, whichever is earlier.

CHAPTER 9 – APPEAL

- 32. Appeal against the judgment of the Claims Tribunal.-**(1) Subject to the provisions of Section 173, every appeal against the judgment of the Claims Tribunal shall be preferred in the form of a memorandum signed by the applicant or the advocate duly empowered by him in this behalf, and presented to the High Court and shall be accompanied by a copy of the judgment.

(2) The memorandum shall set forth concisely and under distinct heads, the grounds of objections to the judgment appealed from without any argument or narrative, and such grounds shall be numbered consecutively.

(3) Save as provided in sub-rules (1) and (2) , the provisions of Order XLI XXI in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall mutatis mutandis apply to appeals preferred to High Court under section 173 of the Act.

- 33. Certified copies.-** The rules relating to the issue of certified copy as in force in Delhi for the courts subordinate to the High court shall mutatis mutandis apply in the case of the Claims Tribunal.
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