

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

+ MAC.APP.609/2009

% Date of reserve : 3rd March, 2010
Date of decision: 12th April, 2010

MAYUR ARORA Appellant

Through : Mr. S.P. Jain and
Mr. Sumit Gupta, Advs.

versus

AMIT @PANGE & ORS. ...Respondents

Through : Dr. Arun Mohan, amicus curiae.
Mr. Kanwal Choudhary, Adv. for
R-3.

CORAM :-

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

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT

1. The appellant has challenged the award of the learned Tribunal whereby his claim petition has been dismissed.

2. FACTS OF THE CASE

2.1. The accident dated 21st June, 2008 resulted in grievous injuries to the appellant. The appellant was driving his two wheeler scooter No.DL-6SP-1632 while coming from Keshav Puram towards Sarai Basti. The appellant met with an accident with Maruti Van No.DL-2C-R-6342 near Mochi Chowk, Keshav Puram.

2.2. The appellant suffered fracture on his right wrist, fracture on his right shoulder and peeled off skin of his left

leg due to the accident. The appellant was treated at Parmarth Mission Hospital, Hindu Rao Hospital and Aggarwal Nursing Home.

2.3. The appellant appeared in the witness box as PW-2 and deposed with respect to accident having been caused due to rash and negligent driving of Maruti Van No.DL-2C-R-6342. The appellant also deposed with respect to the injuries suffered by him, treatment taken and the expenditure occurred by him. The appellant was cross-examined at length by counsel for respondent No.3. The appellant deposed in cross-examination that the road was about 10 feet wide and there was not much traffic. The appellant was coming from the service lane approaching towards the main road and had to take right turn on the main road. There was no red light signal and the appellant stopped the scooter at the corner upon seeing the van when he was hit by the van coming at the very fast speed.

2.4. S.I. Narender Singh, P.S. Keshav Puram appeared as PW-1 and proved the FIR No.134/2008 under Sections 279/337 as Ex.PW-1/1 and the MLC as Ex.PW-2/1. The FIR was registered against the driver of the Van for rash and negligent driving.

2.5. No evidence was led by the respondents to rebut the evidence lead by the appellant.

3. FINDINGS OF THE CLAIMS TRIBUNAL

3.1. The learned Tribunal dismissed the claim petition holding that the appellant has failed to prove the rash and negligent driving by the driver of the Maruti Van. The learned Tribunal has given following reasons in para 9 of the award:-

3.2. The petitioner has not filed certified copy of criminal record such as site plan and mechanical inspection report of both the vehicles.

3.3. Had the certified copies of site plan being filed, the Tribunal would have considered as to how the accident had taken place.

3.4. Inspection report of both the vehicles would have also shown as to whether scooter of the petitioner was hit or not.

3.5. The petitioner was approaching the main road from service lane and there was no red light signal there. It was the duty of the petitioner while approaching the main road to ascertain whether any vehicle was going on the main road. Had he done so, accident should not have happened and, therefore, it was his fault due to which accident had taken place.

3.6. When petitioner had approached the corner of service lane, he had already seen the van which was about 15 feet away and, therefore, it was his duty to stop the scooter and should have allowed the van to pass away since the van was going on the main road and petitioner was coming from service lane, for going on the main road.

3.7. The petitioner has failed to prove the fact that accident had taken place due to rash and negligent driving of the maruti van DL-2C-R-6342.

4. CONTENTIONS IN THIS APPEAL

4.1 The learned counsel for the appellant submits that the findings of the Claims Tribunal are contrary to the evidence on record. The learned counsel submits that appellant appeared in the witness box as PW-2 and deposed that the accident occurred due to the rash and negligent driving of the driver of the Maruti Van who was driving at a very fast speed. The appellant further deposed that he had seen the Maruti Van at a distance of 15 feet and had stopped the scooter and the Maruti Van hit the stationary scooter because of negligent driving. No evidence was led by the respondent to rebut the evidence led by the appellant. The FIR recorded by the police against the driver of the Maruti Van also supported the appellant's case.

4.2. The learned counsel for the appellant next submits that the learned Tribunal has not conducted any inquiry as contemplated under Sections 168 and 169 of the Motor Vehicles Act, 1988. The learned counsel submits that if the Tribunal had any doubt about the rash and negligent driving of the Maruti Van, the learned Tribunal should have summoned the record of the criminal case to ascertain the truth instead of drawing an adverse inference against the appellant.

4.3. The learned counsel for the appellant further submits that the Claims Tribunal has disregarded the series of judgments passed by this Court in which this Court has time and again held that an inquiry under Section 168 of the Motor Vehicles Act is not same as a trial under the Code of Civil Procedure. The learned counsel submits that the scope of inquiry under Sections 168 and 169 of the Motor Vehicles Act should be elucidated for guidance of the Claims Tribunal.

5. THE NEED TO GO INTO DEPTH

5.1. There is a need to go deeper into the matter and clarify the legal position and more so after the adoption of a new stance by the police, and the Insurance Companies, as also the various pronouncements of this Court. It becomes necessary to do so, so that there is no confusion, there is consistency and the practice and procedures in this field find development and application that serves the goal. Considering all this, vide order dated 23rd December, 2009, this Court appointed Dr. Arun Mohan, Senior Advocate and author of “Justice, Courts and Delays” as amicus curiae to assist this Court. Thereafter, the amicus curiae was heard at length, several other counsels also informally heard, and this judgment is being rendered.

6. SECTION 168 OF THE MOTOR VEHICLES ACT, 1988

6.1. The objective of this legislation being well known, does not require detailing and we can proceed straight with the statutory provision. Section 168 of the Motor Vehicles Act,

1988 provides that the Claims Tribunal shall hold an inquiry into the claim. Section 168 of the Motor Vehicles Act is reproduced hereunder:-

“Section 168. Award of the Claims Tribunal-

On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

7. SECTION 169 OF THE MOTOR VEHICLES ACT, 1988

7.1. Section 169 of the Motor Vehicles Act, 1988 provides that in holding the inquiry under Section 168, the Claims

Tribunal may follow such summary procedure as it thinks fit.
Section 169 of the Motor Vehicles Act is reproduced hereunder:-

“Section 169. Procedure and powers of Claims Tribunals-

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.”

8. DELHI MOTOR ACCIDENTS CLAIMS TRIBUNAL RULES, 2008

8.1. The Delhi Motor Accidents Claims Tribunal Rules, 2008, notified by Government of NCT of Delhi on 13th July, 2009, provide the procedure to be followed by the Claims Tribunal.

Some of the relevant Rules are as under:-

“Rule 3 - Duties of investigating police officer in motor accident cases.-

(1) Notwithstanding anything contained to the contrary in any other rules in force, it shall be the duty of the investigating police officer, as expeditiously as possible to-

(a) get the scene of accident photographed from such angles as to clearly depict, and in case

of inability to do so, prepare a site plan, drawn to scale, as to indicate 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, interalia for purposes of proceedings before the Claims Tribunal;

(b) gather full particulars of the insurance certificate /policy in respect of the motor vehicle involved in the accident and to require the production of documents mentioned in sub-section (1) of section 158 of the Act, and thereupon either to take the same in possession against receipt, or to retain the photocopies of the same, after attestation thereof by the person producing the same;

(c) verify the genuineness of the documents mentioned in clause (b) by obtaining confirmation in writing from the office /authority purporting to have issued the same;

(d) submit detailed report regarding an accident to the Claim Tribunals, in Form "A" by not later than thirty days of the receipt of notice in Form "B", accompanied by requisite documents which shall include copy of 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, photocopies of documents mentioned in clause (c), report regarding confirmation of genuineness thereof, if received, or otherwise action taken;

(e) furnish to the applicant information and particulars about the accident in Form "A" within thirty days, on receiving the application in Form "C" by the person who wishes to make an application for compensation and who is involved in an accident, or his next of kin, or the legal representative of the deceased, or the insurance company, as the case may be.

Provided that such information shall be given to the insurance company on payment of a fees of rupees ten only per page;

(f) not to release and impound the vehicle involved in the accident, when 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 when the registered owner fails to furnish copy of such insurance policy, and bring this to the notice of the Magistrate having jurisdiction over the area, where the accident occurred.

(g) report to the Magistrate mentioned in clause (f), 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.

(2) The duties enumerated in sub rule (1) shall 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.

Rule 4 - 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.

Rule 5 - Duties of the insurance company.-
It shall be the duty of the divisional manager of the insurance company, as expeditiously as possible, to-

(a) move an application in Form "C" before the investigating police officer with prescribed fees and gather full information about the accident, at the earliest, after receiving information about it,

or on receipt of notice from the Claims Tribunals under rule 13;

(b) ascertain and verify facts about insurance of motor vehicle(s) involved in the accident and confirm the same to the Claims Tribunal within thirty days of receiving notice of the claim case;

(c) move application before the concerned registering authority in Form "F" and gather information about the motor vehicle(s) involved, and the driving licence(s) held by the driver(s) thereof as per details mentioned in Form "D";

(d) deposit with the written statement in the Claims Tribunal, the amount equivalent to the compensation, awardable on the principle of no fault liability under section 140 of the Act in such cases where the information received in Form "A" and Form "D" confirms death or permanent disability to have been caused as a result of the use of the motor vehicle covered by the insurance certificate/policy issued by it.

Rule 6 - 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 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.

(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 subrule(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.

Rule 7 - 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.

Rule 8 - Applications.-

(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.

(2) There shall be appended to every such application:-

(a) an affidavit of the applicant 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, and further if the applicant(s) has/have earlier preferred any claim petition with regard to the same cause of action, 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;

(d) passport size photograph(s) of the applicant(s) duly attested by the advocate on record.

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

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

(c) connection of persons mentioned in clause (b), if any with the applicant.

(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.

(5) Every application for compensation shall be registered separately in appropriate register prescribed as per rule 36.

Rule 9 - Police Reports under sub-section (6) of section 158 of the Act and action thereon.-

(1) The report in terms of sub-section (6) of section 158 of the Act by the police shall mutatis mutandis be in Form "A".

(2) On receipt of report mentioned in sub-rule (1) , the Claims Tribunal shall go through the

same and may call for such further information or material as considered necessary for proper and effective action in accordance with subsection (4) of section 166 of the Act.

(3) The Claims Tribunal after examination of the report, further information/material, if called for, shall register the claim case thereon and, then, issue notice for appearance to all parties concerned, which would include the victim(s) of the accident, or his/her legal representative(s), as the case may be, driver, owner and insurer of the vehicle(s) involved, in Form "H".

(4) On receipt of notice, the parties mentioned in the forgoing provision would be required to appear and declare through affidavit, if any claim case had either been preferred, or was being preferred in respect of the same cause of action, and if so, the police report treated as claim case would be tagged to such claim case preferred independently by the parties.

(5) If the person(s) injured, or legal representative(s) of the person(s) deceased do not appear in response to the notice aforementioned in the manner indicated above, the Claims Tribunal may presume that the said parties were not interested in pursuing the claim for any compensation in such proceedings, and on such presumption it shall close the case.

(6) Unless the police report treated as claim case stands tagged to independent claim case preferred by the parties themselves, the Claims Tribunal shall call upon the person(s) injured or legal representative(s) of the person(s) deceased, as the case may be, and who may have appeared in response to the notice, to submit statement of facts regarding compensation, if any claimed by them, which statement of facts shall be along the lines required to be furnished in application in Form "G".

(7) If statement of facts about compensation claimed and basis thereof are furnished by the parties in the manner indicated in sub-rule(6), the case shall be further proceeded with in the same manner as required to deal with

applications moved by the parties for compensation directly before the Claims Tribunal.

(8) If after statement of facts about compensation claimed has been furnished by the party, which subsequently commits default in appearance, the provisions of Order IX of the Code of Civil Procedure, 1908(5 of 1908) would apply:

Provided that in case accident in question involves more than one vehicle and persons connected to all such vehicles stake claim for compensation, the police report treated as claim case shall be presumed to be a claim case preferred by each of them and absence by any one or more of such parties shall not prejudice or affect the claim of the party which continues to appear.

Rule 10 - 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.

Rule 11 - 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.

Rule 13 - Notice to parties involved.- If the application for claim is not dismissed under rule 11, the Claims Tribunal shall send to the opposite parties 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:

Provided that, if documents filed by the applicant are voluminous, and insistence on providing copies thereof would be unnecessarily expensive or cumbersome, the Claims Tribunal may dispense with the requirement to send copies thereof to the opposite parties.

Rule 14 - Appearance and examination of the parties.-

(1) The person against whom the applicant claims relief (hereinafter referred to as 'opposite party') shall at or before the first hearing, or within such further time as the Claims Tribunal may allow, file a written statement dealing with the claim raised in the application, and any such written statement shall form part of the record.

(2) The opposite party shall file with his written statement, all the documents and affidavits for the proof thereof and also affidavits in support of all facts on which he relies in context of his defence of the application, duly entered in a properly prepared list of documents and affidavits and shall give to the applicant copies of the written statement, documents and affidavits, provided that the Claims Tribunal may not allow the opposite party to rely in support of his defence on any document or affidavit not filed along with the written statement unless it is satisfied that, for good or sufficient cause, he was prevented from filing such document or affidavit earlier.

(3) If the opposite party contests the claim, the Claims Tribunal may, and if no written statement has been filed, it shall, proceed to examine him upon the claim and shall reduce the substance of the examination to writing.

(4) The Claims Tribunal may also require the opposite parties to furnish the following information:-

(a) full particulars of all earlier accidents in which such party may have been involved, and in which the claims have been awarded at least in part.

(b) the amount of compensation paid in such earlier accidents, the name(s) and address(es) of the victims and of the persons who paid the damages; and

(c) relation of persons mentioned in clause (b), if any, with the opposite party.

Rule 15 - Local Inspection.-

(1) The Claims Tribunal may, at any time during the course of a proceeding before it, visit the site at which the accident occurred for the purpose of making local inspection or examining any persons likely to be able to give information relevant to the proceedings.

(2) Any party to a proceeding or representative of any such party, may accompany the Claims Tribunal for a local inspection.

(3) The Claims Tribunal after making a local inspection shall note briefly in a memorandum any facts observed, and such memorandum shall form part of the record of proceeding.

(4) The memorandum referred to in sub-rule (3) may be shown to any party to the proceedings who desires to see it and a copy thereof may, on application, be supplied to any such party.

(5) The Claims Tribunal may, if any journey is undertaken for the purpose specified in this rule at the instance of a party, require the party, to deposit beforehand an amount equivalent to the actual expenses likely to be incurred by it and its staff for the purpose, and draw only the amount so deposited by the parties to meet all the incidental expenditure in connection with such journey.

Rule 16 - 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.

Rule 17 - 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.

Rule 18 - 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.

Rule 19 - Co-opting of persons during inquiry.-

(1) The Claims Tribunal may if it thinks fit, co-opt one or more persons possessing special knowledge with respect to any matter relevant to the inquiry, to assist in holding the inquiry.

(2) The remuneration, if any, to be paid to the person(s) co-opted shall in every case be determined by the Claims Tribunal."

Rule 25 - 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.

Rule 29 - 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.

Rule 31 - 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.

Rule 32 - 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).”

9. RELEVANT JUDGMENTS

The relevant judgments of the Hon’ble Supreme Court, this Court and other High Courts on the scope of inquiry and other related matters under the Motor Vehicles Act, 1988 with a few excerpts are as under:-

9.1. Jai Prakash Vs. National Insurance Company, 1(2010) ACC 1 (SC) –

The Hon’ble Supreme Court has held as under:-

“Directions to Police Authorities

8. The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules, 1989 ('AIR' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal: (i) The age of the victims at the time of accident; (ii) The income of the victim; (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the

deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim {in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing.”

“Directions to the Claims Tribunals

12. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary Registers, forms and other support is extended to the Tribunal to give effect to Section 166(4) of the Act.

13. For complying with Section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant/s appear, the miscellaneous application shall be converted to claim petition. Where a claimant/s file the claim petition even before the receipt of the AIR by the Tribunal, the

AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any 'Police Officer - Advocate - Doctor' nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary inquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categorize the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary inquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the claims tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in Fixed deposit and disbursed as per the directions contained in General Manager, KSRTC v. Susamma Thomas MANU/SC/0389/1994 : 1994 (2) SCC 176.

(h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.

14. The aforesaid directions to the Tribunals

are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.

Suggestions for Insurance Companies

15. In cases of death, where the liability of the insurer is not disputed, the insurance companies should, without waiting for the decision of the Motor Accidents Claims Tribunal or a settlement before the Lok Adalat, endeavour to pay to the family (Legal representatives) of the deceased, compensation as per the standard formula determined by the decisions of this court.

16. In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer treatment at its cost to the injured, without waiting for an award of the Tribunal. If insurance companies can meet the bills for treatment of those who have taken a medical insurance policy, we see no reason why they should not extend a similar treatment to the accident victims of vehicles insured with them.

17. In countries like United Kingdom, the percentage of motor accident claims, with reference to the accidents is very low. This is because immediately after being notified of the accident, the insurer makes its own enquiries and satisfies itself about its liability and voluntarily assesses and pays the compensation to the victim. Only where the insurer denies the claim or where the victim is not satisfied with the quantum of compensation paid, the matter goes to court. There should not adopt such a procedure. In death cases, the calculation of compensation is now standardized by several decisions of this court [See for example: Sarla Verma Vs Delhi Transport Corporation – 2009 (6) SCC 121]. The insurers can either by relying upon the police report (AIR) or by enquiring with the family or the employer of the deceased,

ascertain the three inputs required for calculation of the compensation, the is, age of the deceased, income of the deceased and number of dependent family members. With these particulars, the insurers can easily calculate the compensation and offer a compensation, either a lump sum or an annuity. Similarly in cases of injuries, the insurers can offer treatment in hospitals approved by it and meet the expenses or pay the bills, or if the victim has already undergone the treatment, reimburse the cost of treatment. It can also reimburse other items of special damages, the damages for pain suffering, which is also standardized in several decisions of this court. By such voluntary payment there will be all round benefits. The insurers save interest and litigation cost and discharge their obligation to the society. The victims will be relieved from financial hardship and benefit from timely effective treatment. Burden on courts will be reduced and judicial man power can be diverted to more complex cases.

18. To protect and preserve the compensation amount awarded to the families of the deceased victim special schemes may be considered by the insurance companies in consultation with the life Insurance Corporation of India, State Bank of India or any other Nationalized Banks. One proposal is for formulation of a scheme in consultation with Nationalized Banks under which the compensation is kept in fixed deposit for an appropriate period and interest is paid by the Bank monthly to the claimants without any need for claimants having to approach either the court or their counsel or the Bank for that purpose. The scheme should ensure that the amount of compensation is utilized only for the benefit of the injured claimants or in case of death, for the benefit of the dependent family. We extract below the particulars of a special Scheme offered by a nationalized Bank at the instance of the Delhi High Court :

- I. The fixed deposit shall be automatically renewed till the period prescribed by the Court.
- II. The interest on the fixed deposit shall be paid monthly.
- III. The monthly interest shall be credited automatically in the saving account of the claimant.

- IV. Original fixed deposit receipt shall be retained by the Bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.
- V. The original fixed deposit receipt shall be hand over to the claimant at the end of the fixed deposit period.
- VI. Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.
- VII. No cheque book shall be issued to the claimant without permission of the court.
- VIII. No loan, advance or withdrawal shall be allowed on the fixed deposit without permission of the court.
- IX. The claimant can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimant; the bank shall provide the said facility.

19. The Insurance companies may also consider offering an annuity instead of lump sum compensation. They may prepare an annuity scheme with the involvement of Life Insurance Corporation of India or its own actuaries, under which they can pay a monthly annuity to the widow (for life) and to minor children (till they attain majority) and in addition a lump sum at the end of 20 or 25 years to the widow. The benefit of such annuity scheme may also be extended to victims who are permanently disabled in accidents. Once such schemes are in place, the victims and the tribunal will have some choice in the manner of payment of compensation.

20. Whenever the insurance companies find that the driver of the insured vehicle possessed fake/forged driving license, they should lodge a complaint with the concerned police for prosecution. This will reduce the incidence of fake licenses and increase the road travel safety."

9.2. New India Assurance Company Limited vs. Anita, order dated 6th January, 2010 in SLP (Civil) No.35537/2009–

The Hon'ble Supreme Court has held that the summary procedure under Sections 168 and 169 of the Motor Vehicles

Act, 1988 should be consistent with the rules of natural justice but the Claims Tribunal is not bound by the technical rules of evidence. The findings of the Hon'ble Supreme Court are reproduced hereunder:-

“We may also observe that a Tribunal constituted under the Act is not a regular Court and it is required to decide applications filed for compensation by adopting a summary procedure consistent with the rules of nature justice (Section 168 and 169(1) of the Act). By virtue of Section 169(2), the Tribunal is clothed with the powers of Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses and compelling the discovery and production of documents and material objects but there is nothing in the Act from which it can be inferred that the Tribunal is bound by the technical rules of evidence. Therefore, the Tribunal cannot be faulted for having allowed the parties to lead secondary evidence. Rather, that was the only course available to the Tribunal for doing justice to the parties because the original file was lost in 1994 and the case had to be decided on the basis of reconstructed file.”

9.3. Rajesh Tyagi vs. Jaibir Singh, FAO.No.842/2003–

This Court has given various directions to the Insurance Companies on 8th June, 2009 and 5th November, 2009. These may be summarised as under:-

- 9.3.1. With the enforcement of Section 158(6) of the Motor Vehicles Act, the SHO of the Police Station is serving the copy of the Accident Information Report along with all the relevant documents on the Insurance Company at the time of filing of the Accident Information Report with the Claims Tribunal. The Insurance Companies now have sufficient notice of the claim and they can verify the same and settle the claim.
- 9.3.2. The Insurance companies have been directed to investigate the claim upon receipt of the AIR in terms of their Third Party Claim Procedure Manual and to submit

their reply along with the copy of the investigation report and the computation of compensation according to them before the Claims Tribunals within 60 days wherever the accident, driving licence, permit, evidence and other documents relate to Delhi and within 90 days where the documents relate to outside Delhi. If there is no defence under Section 149 of the Motor Vehicles Act, 1988, the Insurance Companies have been directed to deposit the admitted amount according to their computation with their reply before the Claims Tribunal. The copy of the AIR furnished by the Police to the Insurance Company shall be sufficient notice of the institution of the claim petition before the Claims Tribunal.

9.3.3. 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.

9.4.4. 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.

9.4. **Abdul Subhan vs. State (NCT of Delhi), 2007 CriLJ 1089, 133(2006)DLT562–**

This Court has issued following directions for proper investigation of road accident cases:-

“13. Before I part with this case I would like to make it known that I have come across various cases of a similar nature involving allegations of rash and/or negligent driving in which I find that the investigations carried out are below par. It is a well-known fact that road accidents are on the rise and many of these accidents result in fatalities. It is also becoming more and more apparent that the investigating agencies are not investigating such accidents in a proper and scientific manner. The result and consequence of which is that even those persons who might have been guilty for having committed offences under Sections 279/304A IPC are being acquitted on the basis of benefit of doubt or lack of evidence. This is not a very happy situation. In cases of road accidents particularly those which result in fatalities, the investigation should be carried out in a swift and scientific manner.

13.1. In most cases I find that the site plans are not produced. Even the site plan that is produced is of a very unsatisfactory nature. It is, therefore, imperative that the investigating officer should be provided with maps of the roads drawn to scale so that accurate site plans can be produced in evidence for the appreciation of courts. The exact point of impact as well as tyre skid marks and the point at which the vehicles come to rest after the collision should be demarcated clearly. The observations with regard to the length of the tyre skid marks of the vehicles involved in the impact go a long way in indicating the speeds at which the vehicles were traveling. This would enable the courts to examine the evidence in a much more objective manner and the courts would not be faced with vague and subjective expressions such as "high-speed".

13.2. The mechanical inspection reports that are prepared are also, I find, in a majority of cases, of a very superficial and cursory nature. The inspection ought to be carried out by qualified personnel who are able to indicate in their reports the exact physical conditions of the vehicles. They should be able to point out with exactitude the damage suffered by the vehicles as a result of the impact. The mechanical inspection report should indicate all the tell-tale signs of the collision such as the paint of one vehicle rubbing off on the other. It should also indicate as to whether the vehicles were mechanically sound or not prior to the impact so as to enable the court to arrive at a conclusion as to whether the collision took place due to human rashness or negligence or mechanical failure beyond human control.

13.3. As a rule, photographs ought to be taken not only of the vehicles involved in the collision but also of the site and surrounding areas so that the exact topography can be easily discerned by courts.

13.4. The prevalent weather conditions must be noted by the investigating officer. This would go to establish as to whether the road was slippery due to rain; whether there was poor visibility due to fog or mist etc.

13.5. Furthermore, the path of movement of the vehicles must be sought to be established in the course of investigation and not be left open to ambiguity and doubt as in the present case.

13.6. The drivers of the vehicle involved must also be subjected to tests to reveal whether they had consumed any intoxicants.

13.7. Proper investigation of such accidents would go a long way in aiding the criminal justice system in convicting those who are guilty and acquitting those who are innocent. A shoddy investigation will only point in one direction and that is in the acquittal of all whether they are guilty or whether they are innocent. Because, no criminal court would (and ought not to) convict any person merely on the basis of conjectures, assumptions, probabilities. All elements of subjectivity need to be eliminated and the investigation should be such that, when a charge

sheet is filed, the court is presented with a case which when taken objectively would lead to the inescapable conclusion that a conviction is maintainable.”

9.5. New India Assurance Co. Ltd. vs. Kashmiri Lal, AIR 2006 Delhi 112 -

This Court has given the following directions to the Claims Tribunals:-

“5. In my view the victims of motor accidents are either persons disabled or are legal heirs of the deceased and the compensation to the such helpless victims of such accidents is indeed an ameliorative and social piece of legislation and accordingly such relief cannot be bound down by a narrow and constricted meaning of the Act and ought to receive a liberal interpretation. Section 174 in my view is only one of the modes of recovery and does not preclude other methods. Section 168(3) mandates that the awarded amount is to be deposited within 30 days of the pronouncement of the award. In any event a public sector Insurance company cannot be heard to urge that it would not pay amounts in respect of an Claims Tribunal award which is enforceable except through the mode of arrears of land revenue. This plea is wholly untenable in view of the time limit of 30 days prescribed under Section 168(3) of the Act. Consequently, it is necessary to find ways and means to ensure expeditious payment of compensation payable as per the award of a Tribunal in accordance with the mandate of Section 168(3).

6. This writ petition has been filed under Article 227(1) of the Constitution which reads as follows:-

"227. Power of superintendence over all courts by the High Court.--[(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]"

Thus since this Court has powers of superintendence over the Claims Tribunals within Delhi, it is competent to issue general directions

which govern the exercise of powers by such Tribunals.

7. In view of the above pleas, the following directions are issued which are required to be followed by all Motor Accidents Claims Tribunals.

(a) While filing the written statement, the concerned insurance company is required to furnish details of its Bank account and the Bank to the Court. In case a written statement has already been filed in an existing claim, all insurance companies are required to furnish the name of the concerned Bank and their account numbers within 3 months from today.

(b) Within a period of 30 days of the award, which is the period prescribed for depositing the amount under Section 168(3) of the Act to the High Court, the insurance company is required to tender the payment awarded by the Claims Tribunal by issuing cheques in the name of the claimant(s) unless and until a stay order has been obtained from the High Court. The names of the claimants who are to be paid the amounts along with the amount payable is required to be stated in the award.

(c) If after the expiry of 90 days which is the prescribed period for preferring an appeal under Section 173(1) of the Act, payment of the amount awarded by the Claims Tribunal has not been made, notice must be issued to the Bank named by the Insurance Company directing such Bank to deposit the cheque drawn in the name of the claimant/claimants legally entitled as per the award covering the amount(s) as per the Claims Tribunal award within a week of receipt of such orders and cheques should be retained for being given to the claimant.

(d) Once the amount is deposited by cheque as per the aforesaid procedure the Claims Tribunal is required to ensure that within a period of six weeks thereafter the amount is disbursed to the claimants under the supervision of the Presiding Officer by issuing the said cheque to the claimant so that the claimants are not put to undue harassment.

(e) In case for some reason it is not possible to make the payment to the claimant within six

months of the issue of the cheques in the name of the claimant, then the Claims Tribunal should ensure that such cheques are returned to the Insurance Companies in lieu of fresh cheques drawn in favor of the appropriate account of the Claims Tribunal which are required to be deposited in an interest bearing short term fixed deposit for a six monthly period by the Claims Tribunal.

(f) In case the Claims Tribunal has to resort to the procedure prescribed under sub para (c) above which requires it to secure the amount through the banks upon a failure of the insurance company to deposit the amount within the time stipulated by Section 168(3) and the above procedure, cost of Rs. 5000/- payable to the claimant is required to be imposed on the Insurance Companies.

(g) If directions given by the Claims Tribunal to the Banks are not complied with, the Claims Tribunal may order freezing of Bank Accounts to the extent covered by the award."

9.6. UOI vs. Nanisiri, MAC.APP.No.682/2005 decided on 13th January, 2010, MANU/DE/0218/2010-

This Court has issued the following directions to the Claims Tribunals for the protection of the award amount:-

"7. It has been brought to the notice of this Court that after the deposit of cheques by the Insurance Companies with the Claims Tribunal, no intimation is given to the claimants and in many cases, by the time, the claimant gets the information of deposit of the cheque, the cheque has already expired. It is stated that in many cases, the cheques have also been lost like in the present case. This problem can be resolved by directing the Insurance Companies to directly deposit the award amount with the bank with the direction to the bank to keep specified amount in fixed deposit in terms of the award and release the balance amount by transferring the same to the Saving Bank Account of the victim/claimant. All the Motor Accident Claims Tribunals are, therefore, directed to henceforth direct the Insurance Companies to directly deposit the award amount in the bank within 30 days with further directions as to the disbursement of the

same in terms of the award and the case be kept pending till the compliance is placed on record. The directions given by this Court for deposit and disbursement of the award amount have been reaffirmed by the Hon'ble Supreme Court in the order dated 17th December, 2009 in SLP(C) No.11801-11804/2005..."

9.7. New India Assurance Co. Ltd. vs. Ganga Devi, MAC.APP.135/2008 decided on 20th January, 2010-

This Court has issued the following directions to the Claims Tribunals for the protection of the award amount:-

"15. It has been pointed out by the learned counsel for the claimants that the Claims Tribunal are passing directions for releasing part of the award amount and the remaining amount is kept in fixed deposit for a long period due to which the claimants are unable to meet their exigencies and have to approach the Tribunal again and again for release of the award amount. It is suggested by learned counsel for the claimants that a direction be given to the Claims Tribunal to keep the amount in fixed deposit in such a manner that the claimants get the award amount in a phased manner which will take care of their exigencies such as illness, marriage of children, education etc.

16. The Claims Tribunal shall consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example, if a sum of Rs.5,50,000/- has been awarded to the claimants, Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years.

17. If the family of the claimants have school/college going children, the maturity period of the fixed deposit receipts be kept

preferably in the month of 'March' every year so that the family is able to meet the annual expenses towards the admission and tuition fee of the children."

9.8. Resham vs. Harish Kaushik, MAC.APP. No.560/2007 decided on 22nd February, 2010-

This Court has issued the following directions to the Claims Tribunals for protection of the award amount:-

- "4. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellant No.1.
5. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.
6. No cheque book be issued to appellant No.1 without the permission of this Court.
7. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.
8. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.
9. Half yearly statement of account be filed by the Bank in this Court."

9.9. Sobat Singh vs. Ramesh Chandra Gupta, MAC.APP.No.422/2009 decided on 23rd February, 2010-

This Court has issued the following directions to the Claims Tribunals for streamlining the system:-

"(i) Before or at the time of passing of the award, the Claims Tribunals shall examine the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement

and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

(ii) At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

(iii) If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be retained in the Court record.

(iv) The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

v) If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688.**

(vi) The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-

- a) Date of award
- b) Case number
- c) Title of the case
- d) Award amount
- e) Date of deposit of the award amount
- f) Date of notice of deposit by the depositor.
- g) Date of notice of deposit by the Tribunal.
- h) Amount of interest upto date of notice of deposit.
- i) Whether award amount and complete interest deposited.
- j) Balance outstanding interest.
- k) Remarks (Action taken to recover the balance interest)

(vii) In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.

(viii) In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels.

(ix) In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days.”

9.10.New India Assurance Co. Ltd. vs. Rakesh Ahuja, MAC.APP.No.236/2009 decided on 23rd December, 2009, MANU/DE/3421/2009–

This Court has issued the following directions to curb the menace of fake driving licences:-

“(i) All complaints relating to fake driving licence by the Insurance Company and/or owner of a vehicle be made in writing to DCP/Crime, Police Headquarter, I.P. Estate, New Delhi. DCP/Crime has nominated Mr. Mohan Singh Dabas, ACP/Anti-Auto Theft Squad, Crime Branch, Phone No.011-26925457 as nodal officer to monitor the fake driving licence cases.

(ii) All the Insurance Companies shall make a complaint whenever they get information of fake driving licence. The Insurance Companies shall also compile the data of fake driving licences in respect of accidents which have occurred in the last three years, i.e., after 1st January, 2007 in Delhi and shall make a complaint to the DCP, Crime Branch, Delhi Police in the format given in para -11 (ii) of the order dated 3rd December, 2009. The complaint shall be accompanied by the copy of the fake driving licence. The complaint shall be transmitted electronically to Delhi Police at the E-mail ID acp-scrb-dl@nic.in, along with the scanned copy of the licence said to be fake. The complaint shall also be made in writing duly signed by the authorized officer of the Insurance Company.

(iii) The Delhi Police shall take the following action in respect of the aforesaid complaints:-

(a) If the case is pending investigation, then to ensure further investigation into the issue of fake driving licence in the concerned Police Station.

(b) In pending trial cases, to ensure filing of supplementary charge-sheet on this aspect.

(c) The cases in which the trial has already been completed, to ensure registration of fresh FIR by the concerned police station.

(iv) ACP/Anti Auto theft shall maintain record of all such complaints and action taken by police.

(v) Delhi Police shall create a database of information regarding fake licences and licence holders received from Insurance Companies or other sources.

(vi) Whenever the police registers an FIR against a person for driving with a fake licence, particulars of that FIR be entered in the entry against the information received.

(vii) The office of DCP/Crime shall prepare and maintain a tabulator chart (database) of the information received and look for any 'patterns' within it. It shall take such action according to law against those concerned as it considers proper.

(viii) The police shall place the information of those cases where the Driving Licence produced was found to be fake on a website so that the Transport Authorities in other States can access it and be armed with this information before issuing a Driving Licence for such a person in that State."

9.11. Saramma Scaria Vs. Mathai, 2003 ACJ 213-

The Division Bench of Kerala High Court has given the following directions to the Claims Tribunals:-

"11. In the wake of the above circumstances we are inclined to set aside the order of the Tribunal and remit the matter back to the Tribunal for de novo consideration. However, we are inclined to give certain directions to the Claims Tribunals for future guidance and compliance.

12. The Claims Tribunal may, after considering the application and the statement, if any could dismiss the application summarily, if for reasons to be recorded it is of the opinion that there are no sufficient grounds for proceeding therewith.

13. Tribunal on evidence finds that a claim petition is frivolous or made on experimental basis would dismiss the same with compensatory costs and in appropriate cases would take action against vexatious and frivolous litigations.

14. Tribunal if finds there is no reason to dismiss the application summarily will have to frame issues. When issues are framed the Tribunal is duty bound to answer the issues framed and

decide the claim petition on merits on the basis of the report made available under Section 158(6) read with Rule 378(5) of the Rules.

15. Tribunal even in the absence of any evidence adduced by the claimants could decide the issues on the basis of the FIR, scene mahazar, wound certificate and other materials applying the principle of *res ipsa loquitur*. This principle as such may not dispense with the need to prove a fact alleged by a person but the Tribunal after considering the police report, objection filed by the opposite party if any, can reach a conclusion though no oral and documentary evidence was adduced by the claimant. Of course in appropriate cases Tribunal could insist the appearance of injured person so as to get itself satisfied of the claim. Culpability could be presumed if Tribunal satisfied on the basis of the available materials that the claim is genuine and award adequate compensation.

16. Tribunal may if it considers necessary, direct any Medical Officer in a Government Hospital or in a Medical College Hospital or any Board consisting of such Medical Officers to examine the injured and issue disability certificate indicating the degree and extend of the disability, if any, sustained as a result of the accident. Tribunal also in appropriate cases depending upon the facts of the case should see that the disability certificate be produced before the Tribunal to be issued by specialist doctor (Government or Private) with not less than 10 years standing in the specialty, who had not treated the patient in the acute stage after the accident. In this connection we may refer to Government order dated 15.5.1997 which says that such a condition is to ensure unbiased and accurate assessment of the permanent disability.

17. Claims Tribunal shall see that it shall obtain all information from the police, medical and other authorities and shall not drive the injured or the claimants to the police stations or hospitals so as to get copies of those reports. On request and paying necessary fees relevant reports pertaining to the case obtained from the police station or hospital should be furnished to the claimants. If it is found that the party is financially poor, care should be taken that the expenses be met by the Government.

18. Office of the Claims Tribunal should help the injured person or the claimants in appropriate cases to file proper application in Form No.A claiming compensation before the Tribunal. Special interest should be taken in cases where the party is not represented by legal practitioner.

19. Office of the Tribunal should impress upon the applicants about the statutory provision it would not be necessary that the claimant himself should conduct the proceeding. He could entrust the case to an agent duly authorised by him or a legal practitioner. Tribunal should also ascertain from the injured or the claimants as to whether any injustice has been meted out to them from any quarters at any stage of the proceedings.

20. Tribunal should also take care to inform the Bar Council of Kerala if the legal practitioner appointed by claimants fails to appear before it. The Bar Council of Kerala should take appropriate steps depending upon the merits of each case where there is non-appearance of the counsel.

21. Tribunal should show compassion when the claimant or the injured are examined before it. Unnecessary and inconvenient questions should not be put either by the Tribunal or legal Practitioners considering the fact that the injured as well as claimants are in considerable financial and psychological pressure. The approach of the Tribunal should be to help the persons in distress and not to scare them away from the corridors of Tribunal. Tribunal should bear in mind the fact that the claimants or the injured are not seeking any charity. Claimants would feel that Tribunal is a place of comfort and solace and not a place of harassment.

22. Certificate issued by Medical Officer if not objected to may be marked in evidence. If marked on admission without reservation, the contents are not only evidence but are taken as admitted, the result being the contents cannot be challenged either by way of cross-examination or otherwise. Therefore the certificates issued by doctors which are not objected to by the other side could be relied upon by the Tribunal in awarding compensation.

In doubtful cases the Tribunal can summon the doctor.

The above mentioned directions should be scrupulously observed by the Motor Accidents Claims Tribunals in the State. Communicate a copy of the judgment to all the Motor Accidents Claims Tribunals in the State for information”.

9.12. Rekha vs. Raj Balam Rajbhar, MAC.APP.No.576/2007 decided on 9th December, 2009 -

This case related to death of a 8 year old girl where mother of the deceased girl filed the claim petition. The appellant was from the lowest strata of the society. The Claims Tribunal dismissed the claim petition on the ground that the appellant could not produce the document to show her relationship with the child. The Claims Tribunal did not conduct any inquiry into the matter. This Court, in appeal, directed the SDM to conduct the inquiry. The SDM conducted the detailed inquiry and submitted the report that the appellant was the mother of the deceased child which was accepted by this Court and the award was passed.

9.13. Rukmani Jain Ahri L. Sarikamnth Nayak, MAC.APP.No.524/2009 decided on 14th January, 2010-

The accident resulted in the death of a man in road accident in Tamil Nadu. The legal representatives filed the claim petition in Delhi alleging that they were residing in Delhi at the time of filing of the claim petition. The learned Tribunal dismissed the claim petition without conducting any inquiry. In appeal, this Court directed the SHO to conduct an inquiry. The SHO submitted the report confirming that the legal representatives were residents of Delhi at the time of filing of the claim petition. This Court accepted the report of the SHO and set aside the contrary findings of the learned Tribunal. The case was remanded back for proper inquiry by the Tribunal.

9.14. INTEREST ON THE AWARD AMOUNT

The question of Interest on the award amount being an important one, decisions on this may now be referred to:-

9.14.1. About 10 years back, the Claims Tribunals had been awarding interest in the range of 12% to 15%. With the fall in the bank interest rates, the Apex Court reduced the rate of interest rate from 12% per annum to 9% per annum by the judgment of **United India Insurance Co. Ltd. vs. Patricia Jean Mahajan, (2002) 6 SCC 281** and **Kaushnuma Begum vs. New India Assurance Co. Ltd., (2001) 2 SCC 9**. The Apex Court further reduced the interest rate to 7.5% per annum in the case of **Dharampal & Ors. vs. U.P. State Road Transport Corporation, 2008 ACJ 2041**.

9.14.2. In the case of **Ghaziabad Development Authority vs. Balbir Singh, II(2004) CPJ 12 (SC)**, the Hon'ble Supreme Court examined the question of law on the issue whether the grant of interest @ 18% per annum by Consumer Forums in cases of deficiency of service by Development Authorities like HUDA and GDA was justifiable.

9.14.3. It was submitted by learned Attorney General before the Apex Court that the interest should be awarded taking into consideration the rates of interest payable by Financial Institutions if the amount were deposited with them. He further submitted that under the Interest Act, "Correct Rate of Interest" would mean the highest of the maximum rates at which interest may be paid on different class of deposit by different class of Scheduled Banks in accordance with the direction given or issued under the RBI. The reliance was placed on the judgment of **Central Bank of India vs. Ravindra, AIR 2001 SC 3095** where the interest had been defined. The reference was also made to the case of Hon'ble Supreme Court relating to motor accident claims in the case of **United india insurance Co. Ltd. vs. Patricia Jean Mahajan** (supra) where in context of claims under Motor Vehicle Act, the Hon'ble Supreme Court held that with the change in economy and policy of RBI, the

interest rates were lowered and the interest @ 9% per annum was awarded on the footing that the Nationalized Banks were granting interest at that rate on fixed deposit for one year. The arguments of learned Attorney General are recorded in paras 13 to 17 of the judgment.

9.14.4. The Hon'ble Supreme Court held that the principle that interest must be granted at Bank rate of interest is only applicable where proceedings are for recovery of debt and damages and where refund of amount is being claimed and the direction is to refund amount with interest, but this principle does not apply to grant of compensation. The finding of the Hon'ble Supreme Court in para 18 of the judgment is reproduced herein: -

“18. There can be no dispute to the principles laid down in *Prashant Kumar Shahi's* case and *Bihar State Housing Board's* case (supra). It is on these principles that it is already held that awarding interest at a flat rate of 18% is not justified. It is clear that in all these cases interest is being awarded as and by way of compensation/damages. Whilst so awarding it must be shown that there is relationship between the amount awarded and the default/unjustifiable delay/harassment. It is thus necessary that there be separate awards under each such head with reasons why such award is justified. However, the principles that interest must be granted at the current rate of interest is only applicable where the proceedings are for recovery of debt or damages. They apply where a refund of amount is being claimed and the direction is to refund amounts with interest. The principles which govern grant of interest do not apply to grant of compensation. For this reasons also it becomes necessary to consider facts and award damage/compensation under various heads.”

9.14.5. The Hon'ble Supreme Court further held that when the Commission is satisfied that the complainant is entitled to compensation for harassment or mental agony or oppression, they should direct the department concerned to pay the amount to the complainant from the public fund

immediately but to recover the same from those who are responsible for such unpardonable behaviour. It was held that the word compensation is very wide connotation and it may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional sufferings, insult or injury or loss. The observations of the Hon'ble Supreme Court in this regard are reproduced herein:-

“We are in full agreement with what is observed herein. Thus the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss.”

“.....Such compensation is for vindicating the strength of law. It acts as a check on arbitrary and capricious exercise of power. It helps in curing social evil. It will hopefully result in improving the work culture and in changing the outlook of the office/public servant. No authority can arrogate to itself the power to act in a manner which is arbitrary. Matters which require immediate attention should not be allowed to linger on. The consumer must not be made to run from pillar to post. Where there has been capricious or arbitrary or negligent exercise or non exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unpardonable behavior.”

9.14.6. The Hon'ble Supreme Court held that the Commission must determine that there has been deficiency in service which has resulted in loss or injury and in cases

where the possession had not been given to the allottee, grant of interest @18% per annum was upheld by the Court. The findings of the Hon'ble Supreme Court in this regard are as under:-

“8. However, the power and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard and fast rule can be laid down, however a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury both mental and physical. Similarly, compensation can be given if after allotment is made and there has been cancellation of scheme without any justifiable cause.”

9.14.7. The Hon'ble Supreme Court held that interest according to Bank Rates can be directed to be paid only where the proceedings are for recovery of debt and damages and where the refund of amount is claimed. However, where the authority has failed to discharge its obligations or acted capriciously or arbitrarily or negligent exercise or non-exercise of power, which has resulted in harassment and mental suffering, the interest up to 18% per annum can be awarded by way of compensation. In paras 21 and 22, the Hon'ble Supreme Court upheld the award of interest @18% per annum in cases where the allotment of plots was made

and the payment was collected but subsequently the scheme was cancelled and the money was not returned.

9.14.8. The compensation becomes due immediately upon the accident and the interest is imposed by way of penalty for mental agony and harassment and not by way of bank rate. The Hon'ble Supreme Court has permitted interest @18% per annum in the case of **Ghaziabad Development Authority vs. Balbir Singh** (supra) on the ground that the interest is by way of penalty. Those cases related to the default of the authorities to provide the plots/houses in terms of the agreement. The motor accident claims are on a better footing as the non-payment of the award amount violates Article 21 of the Constitution and the delay in payment of compensation may lead to irreparable damage as most of the times the victims of the road accident belong to the lowest strata of the society and death of the sole bread winner of a large family leads to starvation of the family members.

9.14.9. Where the Insurance Company has computed the compensation in accordance with law without any delay, has deposited the admitted amount and has contested the case only with respect to the disputed amount or has bonafide defence, the interest should be awarded according to bank rates. However, where the Insurance Company has failed to discharge its obligations or acted capriciously or arbitrarily or negligent exercise or non-exercise of power, which has resulted in harassment and mental suffering to the claimant, the Claims Tribunal may consider awarding higher interest in terms of the judgment of the Apex Court in the case of **Ghaziabad Development Authority vs. Balbir Singh** (supra).

9.15. Sat Prakash vs. Jagdish in FAO.No.365/1999 decided on 26th March, 2010-

The relevant findings of this Court relating to the legal fees of lawyers are as under:-

“11. Considering that the lawyers are the officers of the Court and they are entitled to their legal fees with dignity and so far as the claimants are concerned, they are entitled to the reasonable cost of litigation, it is desirable that wherever the lawyer – client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant’s counsel to be deposited with the Bank along with the award amount to be released by the Bank directly to the counsel. The Insurance companies should also deposit the fee of their counsel by means of a separate cheque drawn in the name of their counsel with the Bank simultaneously along with the award amount to be released by the Bank to the Insurance Company’s counsel.”

9.16. Somari Devi vs. Ragwar Singh in FAO No.884/2003 decided on 22nd May, 2009-

This Court has elaborated the scope of Section 165 of the Indian Evidence Act, 1872. The relevant findings of this Court are reproduced hereunder:-

“12. The learned Tribunal could have invoked Section 165 of the Indian Evidence Act which is reproduced hereunder:-

“SECTION 165. JUDGE'S POWER TO PUT QUESTIONS OR ORDER PRODUCTION –

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any

objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this Section shall not authorize any Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted."

13. This section invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

14. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15. Mr. Edmund Burke arguing in Warren Hastings Trial said that it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves through negligence, ignorance, or corrupt collusion, could not bring it forward. He has a duty of his own, independent of them, and

that duty is to investigate the truth. If no prosecutor appears, the Court is obliged through its officer, the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the Judge is to see it done effectively, and to act his own part in it.

16. In *Bartly vs. State*, 55 Nebr 294 : 75 N.W.832 Harrison, C.J., said:

“It is undoubtedly necessary that the Judge who presided should acquire as full a knowledge of the facts and circumstances of the case on trial as possible, in order that he may instruct the jury, and correctly, to the extent his duty demands, shape the determination of the litigated matters, that Justice may not miscarry, but may prevail; and doubtless, it is allowable at times, and under some circumstances, for the presiding Judge to interrogate a witness”.

17. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

18. The framers of the Act, in the Report of the Select Committee published on 1st July, 1871 along with the Bill settled by them, observed as follows:-

“Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.

That part of the law of evidence which relates to the manner in which

witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases – probably the vast numerical majority – the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly than he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter.”

19. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided.”

9.17. Rajiv Dhawan vs. Phirtu, order dated 19th August, 2009 in MAC.APP.347/2009-

9.17.1. Section 196 of the Motor Vehicles Act provides for imprisonment upto three months or fine upto Rs.5,000/- or both for the driver and owner of the uninsured vehicles. Delhi Police has not been prosecuting the owners and drivers of uninsured vehicles under Section 196 of the Motor Vehicles Act. This Court issued Show Cause Notice to the Commissioner of Police on 19th August, 2009 in pursuance to which the Delhi Police has regretted the lapse in not implementing Section 196 of the Motor Vehicles Act and has issued a Standing Order No.157/2009 for adding Section 196 of the Motor Vehicles Act in all pending investigations and for filing of supplementary challans in the cases pending trial in respect of uninsured vehicles. Upon invoking Section 196 of the Motor Vehicles Act, the owners of many uninsured vehicles have paid the claim amount to the claimants.

9.18. Head of Department, Air Force Station Amla vs. Ram Kumar Giri, judgment dated 12th November, 2009 in MAC.APP.No.284/2008-

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

9.18.2. The law with respect to sovereign immunity is well-settled by the Hon'ble Supreme Court in various judgments. The rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble Supreme Court has further held that Article 300 of the Constitution has saved the right of Parliament to enact such law but no law has been enacted till now. The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian

jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof. The Hon'ble Supreme Court in the case of **Pushpa Thakur v. Union, 1984 ACJ 559, AIR 1986 SC 1199** has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned.

9.18.3. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court.

9.18.4. Vide order dated 12th November, 2009, this Court has directed the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future.

9.19 Yashpal Luthra vs. United India Insurance Co. Ltd., judgment dated 9th December, 2009 in MAC.APP.No.176/2009, MANU/DE/3174/2009-

9.19.1. A comprehensive/package insurance policy covers the occupants in a private car and a pillion rider on a two-wheeler and there is a specific clause in the insurance policies in this regard. Tariff Advisory Committee (TAC) and

Insurance Regulatory and Development Authority (IRDA) are the statutory authorities to regulate the tariff and terms and conditions of the insurance policies and there are directions of both these authorities to cover the occupants in a private car and a pillion rider on a two-wheeler under comprehensive/package policy.

9.19.2. Despite the clause in the policy and the directions of the TAC and IRDA, the insurance companies do not accept their liability and litigation in this regard is pending in various Courts all over the country.

9.19.3. This Court examined the officers of United India Insurance Co. Ltd. as well as TAC and IRDA under Section 165 of the Indian Evidence Act, 1872. All the officers admitted the liability of the Insurance Companies in such matters. The Court also issued notice to all other insurance companies. On 16.11.2009, IRDA issued fresh circular reiterating the factual position. IRDA thereafter convened a meeting dated 26th November, 2009 of all the 17 Insurance Companies who after deliberations, admitted their liability in respect of occupants in a private car and a pillion rider on a two-wheeler under the comprehensive/package policy. All the Insurance Companies agreed to comply with the Circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the insurance companies. All the Insurance Companies further agreed to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and to issue instructions to their respective lawyers and the operating officers within seven days. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in respect of appeals filed by the claimants before the High Courts on the above aspect. The number of appeals pending before the High Courts have been agreed to be identified by the Insurance Companies

within two weeks and the withdrawal to be done within four weeks thereafter.

9.19.4. This Court held that where the vehicle is covered under a comprehensive/package policy, there is no need for a Motor Accident Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In view of the Tariff Advisory Committee's directives and those of the Insurance Regulatory Development Authority, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the case before it. All the Motor Accident Claims Tribunals have been directed to take note and ensure that no such plea is allowed to be put forward by any insurance company.

10. THE 'INQUIRY' CONTEMPLATED UNDER SECTION 168 of MOTOR VEHICLES ACT, 1988

10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon

receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record.

11. INVESTIGATION OF MOTOR ACCIDENT CASES BY THE POLICE

11.1. Section 158(6) of the Motor Vehicles Act was incorporated in 1994 and it provides that the SHO of the Police Station shall send Accident Information Report (AIR) to the Claims Tribunal within 30 days of the recording of the FIR and a copy to the concerned Insurance Company. The object of Section 158 (6) of the Motor Vehicles Act is that the police is the first agency to take cognizance of the accident and it has the entire evidence required for initiating the proceedings for compensation.

11.2. During the course of hearing of **Rajesh Tyagi vs. Jaibir Singh, FAO No.842/2003** on 21st April, 2009, it was noticed that Delhi Police was not implementing Section

158(6) of the Motor Vehicles Act despite directions passed by the Hon'ble Supreme Court in **General Insurance Council vs. State of Andhra Pradesh, AIR 2007 SC 2696**. Notice was, therefore, issued to the Commissioner of Police to place on record the status on implementation of Section 158(6) of the Motor Vehicles Act along with the data of compliance for the last 22 months from the date of the judgment of the Hon'ble Supreme Court. Directions were also given to the Claims Tribunals to place on record the compliance of Section 166(4) which provides that the Claims Tribunals shall treat the report forwarded to it under Section 158(6) as an application for compensation.

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

Stations on 28th May, 2009.

11.4. On 28th May, 2009, Dy. Commissioner of Police (Hqrs.) of Delhi Police admitted non-compliance of Section 158(6) and filing of incorrect affidavit before the High Court whereupon proceedings for contempt of Court were initiated against DCP (Hqrs.). DCP (Hqrs.) tendered unconditional apology and sought permission to withdraw the incorrect affidavit. Delhi Police agreed to strictly follow the law in future and consider the suggestions for streamlining the motor accident cases.

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

11.5.1 Delhi Police has started a website (www.dpaccicclaim.in) in which all relevant information/documents are placed which can be downloaded by the claimants, Insurance Companies as well as Tribunals.

11.5.2 Registers to be maintained at police station level indicating the details such as FIR Number, date of dispatch of Form 54 to the learned Claims Tribunal, etc. A column containing details of information not included in Form 54 along with reasons for its non availability shall also be maintained in the register.

11.5.3 Delivery of FIR to the Claims Tribunals on the date of registration.

11.5.4 Entries in red ink in FIR index about date of dispatch of Accident Information Report (hereinafter referred to as AIR).

11.5.5 Checking of AIR (Form 54) dispatch records mandatorily during six monthly inspections by Gazetted Officer.

11.5.6 ACsP/SHOs shall forward final reports to the Magistrate only on production of dispatch of AIR (Form

54) to the learned Claims Tribunal, owner and insurer of the offending vehicle and the victim/his or her family.

11.5.7 Claims Tribunal Monitoring Cell headed by Inspector to be set up in each District to monitor delivery of AIR (Form 54) in time.

11.5.8 Monthly meeting of ACsP, PG Cell, In-charge of Claims Tribunal Monitoring Cells with the Claims Tribunals.

11.5.9 Appointment of Naib Court (a police officer) by District DCsP with the Claims Tribunals.

11.5.10 Review of pendency of AIR (Forms 54) by District DCsP in weekly law and order meeting.

11.5.11 Placement of AIR (Form 54) on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.

11.5.12 Installation of checklist boards in SHOs rooms.

11.5.13 Establishment of District Cells as pilot project in three districts.

11.6. This Court passed following directions to Delhi Police on 8th June, 2009:-

“(i) In terms of the said undertaking of the Delhi Police, the Accident Information Report (Form 54) be submitted with the concerned Motor Vehicles Tribunal within 30 days of the registration of FIR of accident. The Accident Information Report shall contain the following additional information:-

“14. In case of death: Names and address of the next of kin of the deceased.

15. In case of injury: Nature of injuries suffered

16. Names and addresses of the eye-witnesses.

17. In case of transport vehicles:

(i) Particulars of the permit.

(ii) Particulars of the fitness certificate”.

- (ii) The Accident Information Report shall be accompanied by the attested copies of the FIR, site plan, photographs, registration cover, driving licence, insurance policy, permit and fitness certificate of the offending vehicle. MLC and Post - mortem report shall be submitted as soon as they are received. If any of the aforesaid information or document is not available at the time of submitting the AIR, the same may be submitted as soon as the same is received.
- (iii) Simultaneously upon filing of AIR by the SHO with the Claims Tribunal, the copy of the AIR be furnished to the Insurance Company along with the aforesaid documents."

11.7. With respect to the accidents during the period 1994-2009, Delhi Police has been directed vide order dated 5th November, 2009 to carry out the following action:-

11.7.1 The Delhi Police shall file Accident Information Reports under Section 158(6) of the Motor Vehicles Act in respect of all the pending cases filed before the Claims Tribunals after 14th November, 1994.

11.7.2. The Delhi Police shall collect the list of all pending cases filed after 14th November, 1994 from the Claim Tribunals and shall file the Accident Information Reports at the time of the hearing of the claim cases before the learned Tribunal.

11.7.3. 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.

11.7.4. 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.

11.7.5. 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.

11.7.6. In the event of non-compliance of this order by Delhi Police, the concerned Tribunal shall bring the same to the notice of the ACP concerned in the monthly meeting between Claims Tribunals and the ACsP in terms of order dated 8th June, 2009.

12. SUBMISSIONS OF THE LEARNED AMICUS CURIAE

Dr. Arun Mohan, the learned amicus curiae has, based on his research, made following submissions on the scope of “Inquiry” under Sections 168 and 169 of the Motor Vehicles Act, 1988:-

12.1. In the dispensation of justice, the role of procedure is to enable consistency, accuracy and predictability in the outcome. All judicial procedures have to conform to the principles of Natural Justice where the prime factor is the right to be heard.

12.2. There are broadly two procedural systems: (1) Adversarial; and (2) Inquisitorial.

12.3. The first, in relation to criminal law also called Accusatorial, is to be found in England (on which pattern our legal system is based), USA, Canada and Australia.

12.4. The second, Inquisitorial, is found in the Continental Europe.

12.5. In broad terms, an Adversarial system refers to the common law system of conducting proceedings

in which the parties, and not the Judge, have the primary responsibility for defining the issues in dispute and for investigating and adjudicating the dispute.

12.6. In the Adversarial system, two or more opposing parties gather evidence and present the evidence and their arguments to the Judge. The Judge knows nothing of the litigation until the parties present their cases to him as the decision maker.

12.7. The term 'Inquisitorial' refers to civil code systems in which the Judge has such primary responsibility. 'Inquisitorial' also connotes an Inquiry where the decision maker investigates a matter.

12.8. In the Inquisitorial system, the presiding Judge is not a passive recipient of information. Rather, the presiding Judge is primarily responsible for supervising the gathering of the evidence necessary to resolve the case. He actively steers the search for evidence and questions the witnesses, including the respondent or defendant. The lawyers play a more passive role, suggesting routes of Inquiry for the presiding Judge and following the Judge's questioning with questioning of their own.

12.9. An Inquisitorial system is a legal system where the Court or a part of the Court is actively involved in determining the facts of the case, as opposed to an Adversarial system where the role of the Court is solely that of an impartial referee between parties. Inquisitorial systems are used in some countries with civil legal systems as opposed to common law systems.

12.10. The Court procedures in an Inquisitorial system vary from country to country.

12.11. Even countries using common law, including the United States, may use an Inquisitorial system for summary hearings in the case of misdemeanors such as minor traffic violations.

12.12. In some jurisdictions, the trial Judge may participate in the fact-finding Inquiry by questioning witnesses even in Adversarial proceedings.

12.13. Even in our criminal trials which are purely Adversarial (or Accusatorial), the recent trend has been for a more active role for the Judge.

12.14. The goal of both the Adversarial system and the Inquisitorial system is to find the truth. But the Adversarial system seeks the truth by pitting the parties against each other in the hope that competition will reveal it, whereas the Inquisitorial system seeks the truth by questioning those most familiar with the events in dispute. The Adversarial system places a premium on the individual rights of the accused, whereas the Inquisitorial system places the rights of the accused secondary to the search for truth.

12.15. The relative merits and demerits of Adversarial systems have been extensively debated.

12.16. The emphasis on 'winning at all costs' without commensurate concern for truth-seeking dismays some citizens, and a growing number are demanding reforms in the legal system.

12.17. The Adversarial system has severe critics as well as staunch defenders. The Courtroom is seen as a battleground or playing field where contestants vie for victory.

12.18. Although many concede that the Adversary system is imperfect and that it may be subject to abuse and manipulation, many still believe that, by giving all parties and their advocates an opportunity to present evidence and arguments before an impartial Judge, it promotes a free and pluralistic society with the best available means of settling disputes.

12.19. The Code of Civil Procedure, 1908 is a Code which embodies many rules of procedure which were drawn from common law.

12.20. Section 2(g) of the Criminal Procedure Code [1 of 1974] defines 'inquiry' as being every inquiry, other than a trial, conducted under that Code by a Magistrate or Court. The Cr.P.C. being primarily Accusatorial, the term 'inquiry' is used more as a forerunner to a trial. Though the term Inquiry has been

used also for proceedings which culminate in restraints or other action, but not punishment.

12.21. History of the statutory provision : - The phrase '*hold an inquiry*' followed by '*to determine*' the '*amount*' as a final adjudication in contradistinction to an Inquiry into facts so as to recommend some other action or trial as it appears in Section 168(1) of Motor Vehicles Act, 1988 has the following legislative history:-

- Motor Vehicles (Amendment) Act (100 of 1956). Also Extraordinary Part II, Section 2, No. 47 November 12, 1955, pages 555, 626. Gazette of India, inserted Sections 110A to 110F in the Motor Vehicles Act [4 of 1939]. This is where 'inquiry' found statutory insertion. Prior to this amendment, the claimant had in every case to sue in the Civil Courts.
- It was only in 1956 [by Amendment Act 100 of 1956] that the legislature substituted, for the ordinary remedy of a civil suit, a special remedy which was summary in nature and provided for the constitution of Claims Tribunals with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death or bodily injuries to persons arising out of the use of motor vehicle.
- Sections 110A to 110F were inserted the Motor Vehicles Act 1939.
- Section 110A provided for the procedure for making a claim for compensation.
- Section 110B provided for an award of the Claims Tribunal to be made after giving the parties an opportunity of being heard, and after an Inquiry into the claim.
- Section 110C, incorporated the words: subject to any rules that may be made in that behalf, the Tribunal *may follow such summary procedure as it thinks fit*.
- Section 110D provided for an appeal from the award made by the Claims Tribunal.
- Section 110E, provided for recovery of compensation money as arrears of land revenue.
- Section 110F excluded, the jurisdiction of the Civil Court.
- The civil Court was also debarred from issuing any injunction in respect of any action taken or to be

taken by or before the Claims Tribunal in respect of a claim for compensation.

- These provisions show the importance attached by the legislature to the need for prompt disposal of such claims, while leaving unaffected the principles of substantive law as to liability.
- The no fault liability was introduced in the 1939 Act, pursuant to Law Commission's 85th Report (1980) by Amendment Act 47 of 1982.
- These provisions (Sections 110A to 110F) were also inserted (with some changes) by Amendment Act, [35 of 1977] into The Inland Vessels Act [1 of 1917].

12.22. The other statutes in which the inquiry is contemplated are as under:-

- Evacuee Interest (Separation) Act [64 of 1951] – Section 8(1).
- Displaced Persons (Compensation and Rehabilitation) Act [44 of 1954] – Sections 5, 7 and 21(2)
- Public Liability Insurance Act [6 of 1991] – Section 7(1)
- National Environment Tribunal Act [27 of 1995] – Section 5(2)
- Maintenance and Welfare of Parents and Senior Citizens Act, [56 of 2007] - Section 5(1)

12.23. The term 'Inquiry' can also be of varying kinds. There can be three types of Inquiries:

12.23.1 An Inquiry which is only fact-finding, as for example an Inquiry under the Commissions of Inquiry Act;

12.23.2 An Inquiry which is forerunner to a trial, for example an Inquiry under the Cr.P.C.; and

12.23.3 An Inquiry which culminates in a final decision determining a right or liability and susceptible to a first appeal.

12.24. The procedure for the third type of inquiry has to be somewhat deeper than they would be with an Inquiry that does not culminate in a final decision for determination of rights and liabilities. Further, for this

(third) type, there has also to be a mix of the Adversarial element.

12.25. An Inquiry contemplated by Section 168(1) of Motor Vehicles Act, 1988 is of this type. It is a different matter that in practice, before the Claims Tribunals, the typical civil Court mindset – of pure Adversarial – has dominated and the real purpose has been lost.

12.26. The statutory provision is as clear in its wording as it could be. It confers complete powers upon the Presiding Officer of the Claims Tribunal to follow such summary procedures as he thinks fit. Moreover, as noted above, it is an Inquiry as distinct from a trial. Unfortunately, Courts have not viewed the matter in its correct perspective.

12.27. As far as the Claims Tribunal is concerned, it is a lean towards something appropriate which can be loosely called a mix of Inquisitorial and Adversarial procedures which are summary and, more importantly, tailored to the subject. Such tailoring being carried out in exercise of the statutory edict – follow such summary procedure as it (the Presiding Officer / Claims Tribunal) thinks fit.

12.28. The procedure has always been adapted to the needs of the jurisdiction which is being exercised.

12.29. Sections 168 and 169 of the Motor Vehicles Act, 1988 does not use the word 'trial', but uses the word 'inquiry' and that too a 'summary' one. It will need to be a little more detailed – so as to make the right to be heard meaningful – but the overall objective to determine just and fair compensation remains paramount, in which case procedure can be quite short and need not replicate the typical civil Court trial.

12.30. The statute has allowed the Claims Tribunals to follow such summary procedure as it thinks fit, subject to any rules. This really means that a far wider discretion to evolve procedure has been given to the Claims Tribunal than has been given to the civil Court. However, in following the procedure, Claims Tribunal cannot ignore the principles of Natural Justice. The Claims Tribunal has to render a judgment which on facts approximates best with what transpired and on

law shows a fair and correct application to the facts as are admitted or as (the disputed ones) are found.

12.31. In our system of jurisprudence, what should be the depth of procedure is a question that must be kept uppermost in the judicial mind. Too shallow and too summary is as wrong as having one so deep, detailed and in-depth that they consume too long a time and defeat the purpose.

12.32. Despite the elapse of over two decades of the new Act plus 25 years of the old Act, one has not seen (except in the recent past) the conceiving and following – as a part of '*as it thinks fit*' – of such summary procedure as would be efficient and effective. In my respectful submission, it therefore falls upon the Hon'ble High Court to exercise its jurisdiction to conceive and detail such procedure, and do so as part of issuing a guideline judgment.

12.33. Most of that which has to be proved before or considered by the Claims Tribunal is something that: (1) can be found at the time of investigation, i.e., within a day or two of the accident; and (2) can be verified by a field agent of the insurance company as to its authenticity, thus preparing a near complete package from which a matter can be fairly without really anything more material, (adducing of evidence) inquired into / adjudicated upon by the Claims Tribunal though as a matter of tradition, some opportunity to lead evidence may be given.

12.34. Going into this further is necessary, because there are many poor claimants where after years of waiting, the Claims Tribunal has passed an order (to the effect) the claimants have failed to prove and therefore the petition is dismissed. The purpose of the statute is social purpose as the statute uses the word (and rightly) inquiry. It does not use the word 'trial'.

12.35. What does this 'inquiry' mean? The first is the Proportionality; and the second is Tailoring of procedures. For the first, overspeeding by 10 kmph, jumping of a traffic light and the other is a terrorist act where it would be a sentence to death. One can be short and swift and the other will have to be comprehensive. Second, to be able to serve its larger purpose, i.e. hand out efficient and fair justice, a procedure must always be tailored to the subject (or

offence). This way, it yields: (1) more accurate justice at minimal costs in terms of money; and (2) minimal time consumption.

12.36. The result is that the deprivation in that one year will defeat justice. It will not apply the balm at a point of time by when the wound can heal and to offer the balm when the wound would have become chronic and not heal, is no justice. If medical attention to the injured in accident needs to must begin well within one hour, the legal attention must also conclude well within one year.

12.37. On the question of material facts, the facts in issue and evidentiary facts, the following excerpts from ‘Justice Courts and Delays’ (Chapter 6 Topic 4 at page 453 – paras 14 and 15) are relevant:-

“14 The word ‘fact’ has been used in law of evidence, to mean and include the *factum probandum* or the principal fact to be proved and the *factum probans* or the evidentiary fact from which the principal fact follows immediately or by inference. Put differently, ‘Facts’ may be either ‘facts-in-issue’ which are the principal matters in dispute or merely ‘relevant facts’ which are evidentiary in nature and purpose, and therefore, directly or by inference, prove or disprove the ‘facts-in-issue’.

15 Broadly stated, in current use there are three categories of Facts:

Material facts	May or may not be in dispute, but are necessary to be averred so as to make the suit maintainable.
Facts-in-issue	Arise from Pleadings (and also from the contents of a document, answers to interrogatories, statement before issues etc), but do not, repeat not, include such of the material facts which are not in dispute.

Evidentiary facts	Such facts as are necessary to be brought on record so as to prove or disprove the facts-in-issue.
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The first, 'Material facts' are necessary to be stated in order to constitute a cause of action for a claim, or form the basis of a defence. The Second, or the *factum probandum* or the facts-in-issue, are the principal matters in dispute and are the facts to be proved. The third – *factum probans* – are evidentiary facts, which directly or by inference, prove or disprove the facts-in-issue (*factum probandum*). "

12.38. There is a duty of the insurance company. Let us – by picking up a hundred decided cases from the Claims Tribunal – ask ourselves as to that which was adduced as evidence: How much of it was really necessary? How much of it was missing? and, more importantly, how much could have been received as information at the initial stage? and then, after giving an opportunity to the insurance company to ascertain and verify (and not simply deny) can be treated as evidence sufficient for the purposes of inquiry.

And, what was that which could not have been collected at the time of investigation and presented as a package to the Claims Tribunal, and required to could not be adduced as evidence at the trial or Inquiry before the Claims Tribunal (assuming it to be a trial).

These questions have to be split as short pointed questions which are placed within a chain of facts where the bulk – hopefully – has been identified and is not disputed. Thus, assuming 20 facts that were necessary to decide the case, at least 15 (or more) are identified and then admitted in the chain of facts. Of the remaining five (or less) also, the scope should be narrow and the onus correctly placed.

To explain the pointed or the narrow range of the issue, and we go here in relation to the income, to have an issue which reads:

What amount was the deceased earning? is no issue, as that gives a range from a beggar at the street corner on the one side to a big time stock operator on the other.

An issue like this should be preceded by a note based on the investigation and the documents and the positive defence where the prefatory note (or the post-script) could record the admitted facts as to the occupation and then record the range, as for examples Rs.5 lakhs per year as contended by the claimants or only Rs. 50,000 (or minimum wages) per year as contended by the insurance, or anywhere in between.

Similarly, if he left behind five relatives, who all was or was not a relative and if so, a dependent on the deceased ought to be a separate small or sub-issue with prefatory notes and post-scripts.

The material for these prefatory notes or post-scripts ought to be on the basis of information collected soon after the accident, and the positive defence of the insurance company. Many of the papers so collected can be taken as self-proving and the Claims Tribunal can come to a decision.

12.39. In a typical civil trial of the 19th century, almost all onus was upon the plaintiff. Here, it is an inquiry, but even if it were a trial, the onus – by reason of:

- (a) prior investigation;
- (b) documents collected and prima facie showing the state of affairs;
- (c) positive defence of the insurance company; and
- (d) presumptions;

has to be placed on the claimant, the insurance company or even the police. However, this is not something which is based on the personal knowledge of the police, but on record and papers that were collected by them during the course of investigation.

All documents in power and possession of the parties which are relevant to the controversy should be produced and the affidavit of discovery and production of documents (on the lines of Form No.5 Appendix C to the Code) should be filed (or ordered) in routine. This responsibility is greater if the party is an

instrumentality of the State as many of the insurance companies are.

Insofar as the insurance companies in the private sector are concerned by reason of their placement and their duties towards society generally, in this case the principle would equally apply to the insurance companies in the private sector.

If the Presiding Officer of the Claims Tribunal senses that all documents or a particular document or a copy of the record has not been produced, he can always make an order directing discovery and production of documents on affidavit by way of special discovery (which is discovery relating to a particular document or a class of documents or copy/ies of record) or a general discovery of documents relating to the controversy.

12.40. The aforesaid submissions of the amicus curiae have been noted verbatim with a view to help generate ideas in order to develop more efficient procedures and practices. Number of other submissions made by the amicus curiae have been accepted, but have not been noted above for sake of brevity.

13. PRINCIPLES APPLICABLE TO INQUIRY UNDER SECTIONS 168 AND 169 OF THE MOTOR VEHICLES ACT, 1988

With respect to the nature of inquiry, this Court accepts the following principles to be applicable to the inquiry under Sections 168 and 169 of the Motor Vehicles Act, 1988:-

13.1. On a fair reading of the statute, the wide power given to the Tribunal, the absence of 'onus' upon the claimant, the general position of the claimants and their wherewithal with the social obligation of the welfare State, all indicate that the procedure of the Claims Tribunal has to be Inquisitorial though keeping in view that most other procedures in the country are Adversarial, it would be proper to conceive and put in practice something which is a mix of the two.

13.2. To explain the difference, the Claims Tribunal would not be simply passive, give both the parties sufficient opportunity to adduce evidence, and

at the end of the 'trial' announce who has won. At the same time, he will not assume the role of investigator and of the prosecutor apart from being the Judge in the Inquisitorial system.

13.3. Even in the pure Adversarial (where, in the past, the Judge remained passive and even in civil and criminal litigation), there has been a slow and steady move towards more active participation of the Judge. There have been two factors. The first is to do greater justice by removing imbalance between the two parties (and their lawyers); and the second is to more efficiently manage the cases and bring about efficiency

13.4. The proceedings before the Claims Tribunal are more of an Inquiry rather than an Adversarial trial. In other words, it is not that the claimant has to allege everything which the insurance can (without bothering to ascertain the facts) deny everything and then the Court expects proof of one and every allegation made in the claim petition.

13.5. Keeping in view the wording of the statute, the use of the phrase 'hold an inquiry' as also particularly the absence of the word 'trial' and; the larger purpose of the statute as demonstrated by the Statement of Objects and Reasons; observation into what has gone on; the type of the claimants; the type of the issues; and the need to bring about efficiency, procedure as are tailored to the subject has to be evolved by the Claims Tribunal.

13.6. The nature of the claims before the Claims Tribunal do not vary as widely as they do before a Civil Court, and there is an element of stereotype in them.

13.7. The facts which are to be ascertained are usually known and it is to be found out whether those facts exist or do not exist. It is only in that sense that an Inquiry is to be carried out.

13.8. Most of these facts are such which are to be proved by documents, generally as copies of records. If these are listed and summoned so that they are before the Claims Tribunal, it can make a world of a difference.

13.9. There is a distinction between proof of a document and what the document proves. Some of the documents can be taken at their face value. In fact, the onus is reversed so that the evidence in proof can be asked only if there is specific denial. The photocopies of documents or entries from the Transport Department can be presumed as correct leaving the onus to disprove on one who disputes it. Every document produced does not require a proof as if it were an unregistered Will leaving a large estate to an outsider.

13.10. If an allegation is denied, the respondent must state his reasons for the denial and if necessary, put forward his own version of events. Subject to certain exceptions, the general rule is that if a defendant fails to deal with an allegation, it is to be taken as an admission.

13.11. If following this procedure which is generally collection of documents, a case appears to be one which can be disposed of at the first hearing, it should be so disposed of. There can, however, be cases where there is need for further inquiry. But that will have to depend upon whether a sufficient defence has been raised.

13.12. If the case needs further inquiry, the Court may frame issues. Issues help as a signpost to how the matter has to be proceeded with. They are signposts of topics (facts). However, before the issues, if a prefatory note on the facts which are not in dispute or not sufficiently in dispute or facts that can be taken judicial notice of, is made, the controversy stands narrowed down, the issues are more accurately framed and serve a greater purpose.

13.13. The present practice of framing the issues in a wide form calls for a change. Instead, what the Claims Tribunals as a part of 'following such procedures *as it thinks fit*' should do is to first go through the file and identify: (i) the chain of material facts and events (most of which are ordinarily not disputed); (ii) the scope of defences that are permissible; (iii) the factual questions that survive for decision; (iv) the missing links, and (v) the points of law which will need application to the facts and determination. After putting down a page or two of written material to depict the aforesaid, and also

narrow down the controversy, frame pointed issues which bring out the factual and legal questions. The onus of the sub-issues has to be more correctly placed. The defence expected has to be not a mere denial but a positive one after the Respondents have investigated. The scope of the issues when framed could be narrow and not wide.

13.14. It is not always that if issues have been framed, further evidence is required. The matter can be disposed of after hearing the arguments based on the material on record or some evidence on a specific point may be called for. In any inquiry, there is also a duty of the Court to see that the evidence which could have been brought is brought so that justice is done. A template for a judgment keeping in view the various types of cases that come, can be developed by Claims Tribunal in consultation with each other and then slowly perfected over time.

13.15. For these issues, a form which is more of a checklist can be developed and the Claims Tribunal can simply correlate the claim, the response and the material on record and then come to a conclusion whether any issue arises or is to be treated as an admitted fact or what could the pointed issue that is to be framed.

13.16. These principles may be kept in mind by the Claims Tribunals while dealing with the motor accident claim cases.

14. SUMMARY OF PROCEDURES

The procedure for investigation of motor accident claim cases by the police under Section 158(6) of the Motor Vehicles Act and the inquiry by the Claims Tribunal under Sections 166(4), 168 and 169 of the Motor Vehicles Act, 1988 read with the Delhi Motor Accidents Claims Tribunal Rules, 2008 in terms of the aforesaid directions issued by the Hon'ble Supreme Court and this Court is summarized as under:-

- 14.1. Immediately upon the receipt of the intimation of the accident, the Investigating Officer of the police shall inspect the spot of accident, prepare a site plan and also take photographs of the accident spot. The Investigating Officer shall also conduct spot inquiry by examining the eye-witnesses/bystanders.
- 14.2. The Investigating Officer shall intimate the accident to Accident Claims Tribunal within 48 hours of the accident.
- 14.3. If the particulars of insurance are available, the intimation of the accident shall also be given to the concerned Insurance Company of the offending vehicle.
- 14.4. The particulars of the accident shall also be uploaded on the website of Delhi Police.
- 14.5. 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 Accident Information Report by the police.
- 14.6. The Investigating Officer shall collect the relevant evidence relating to the accident as well as computation of compensation.
- 14.7. The Investigating Officer shall file the Accident Information Report with the Claims Tribunal within 30 days of the accident with copy to the Insurance Company and the claimant.
- 14.8. The Accident Information Report shall be accompanied by certified copies of the FIR, site plan, photographs, registration cover, driving licence, Insurance policy, permit, MLC, post-mortem report, challan and the documents relating to the proof of age, occupation, income and the number of legal representatives and their age in death case and proof of injuries and expenditure incurred by the insured in injury cases.

- 14.9. 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.
- 14.10. The Investigating Officer shall produce the driver, owner, claimant and eye-witnesses before the Claims Tribunals along with the Accident Information 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 Accident Information 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.
- 14.11. The police shall follow the Manual prepared by them for investigation of motor accident claim cases and filed in the case of **Rajesh Tyagi vs. Jaibir Singh** (supra). The relevant instructions contained in the Police Manual and the standing order No.157/2008 at page Nos.14 to 21 and the check list prepared by the police in this regard are attached to this order for ready reference of the Claims Tribunal.
- 14.12. The Investigating Officer shall also comply with the directions given by this Court in **Rajesh Tyagi vs. Jaibir Singh** (supra) and **Abdul Subhan vs. State (NCT of Delhi)** (supra). The checklist prepared by the

police shall be attached to the Accident Information Report.

- 14.13. The Claims Tribunals shall examine whether the Accident Information Report is complete in all respects and shall pass appropriate order in this regard. If the Accident Information 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.
- 14.14. The Claims Tribunals shall treat the Accident Information 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 Accident Information Report as a miscellaneous application which shall be registered as a main claim petition after the appearance of the claimants.
- 14.15. The Claims Tribunal shall list the miscellaneous Accident Information Report (AIR) for preliminary hearing to enable the police to notify such date to the victim/family of the victim, owner, driver and insurer of the vehicle involved in the accident.
- 14.16. After the appearance of the claimants, the miscellaneous petition shall be converted and registered as a claim petition. Where the claimant(s) have filed a separate claim petition, the AIR shall be tagged to the claim petition. If no independent claim has been preferred, the Claims Tribunal shall call upon the claimant to submit statement of facts regarding compensation in Form 'G' along with documents mentioned in Rule 8 of the Rules.
- 14.17. The Claims Tribunal shall also inquire and satisfy itself that the AIR relates to real accident and that is not the result of any collusion/fabrication.

- 14.18. The notice to the claimant, owner, driver and eye-witness shall be served through the Investigating Officer of the police. The notice to the Insurance Company shall be served through the nominated counsel of each company.
- 14.19. The Claims Tribunal may examine the claimant on oath to elucidate the material information (Rule 10).
- 14.20. The Claims Tribunal may visit the site of the accident for local investigation but in such event, must prepare a brief memorandum of facts observed, making it part of the record (Rule 15).
- 14.21. The Claims Tribunal may require production of the vehicle involved in the accident for inspection (Rule 16)
- 14.22. The Claims Tribunal may summarily examine the Investigating Officer of the police, the eye-witness or 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. The notice to the eye-witness be sent through the police (Rule 17).
- 14.23. The Claims Tribunal may direct the Medical Officer or the Board of Medical Officers to examine the injured and give opinion indicating the degree and extent of disability, if any suffered within 15 days of receipt of direction (Rule 18).
- 14.24. The Claims Tribunal shall obtain supplementary information and documents, which may be found necessary from the police, medical and other authorities (Rule 25).
- 14.25. If the Claims Tribunal finds that the claim petition cannot be disposed of at one hearing, it shall record the reasons which necessitate the adjournment (Rule 29).
- 14.26. The designated officer of the Insurance company appointed within 10 days of receipt of intimation of the claim, shall take a

reasoned decision with respect to the compensation payable in accordance with law to the claimant within 30 days of the receipt of the Accident Information Report and shall submit the same with the Claims Tribunal.

- 14.27. If there is no defence under Section 149 of the Motor Vehicles Act, 1998, the Claims Tribunal may direct the Insurance companies to deposit the admitted amount according to their computation with the Claims Tribunal following the principles of Order XII Rule 6 of the Code of Civil Procedure. The Tribunal shall by a summary inquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.
- 14.28. With respect to the pending cases relating to Motor Accident Claims, all the Insurance Companies shall 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 decision/order in writing about the amount payable in accordance with law. The decision 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 decision of the designated officer.
- 14.29. The Tribunal shall categorize the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability. Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary inquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition. Where the insurer disputes the liability, the Claims Tribunal shall frame the issues.
- 14.30. Before or at the time of passing of the award, the Claims Tribunals shall examine

the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

- 14.31. At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.
- 14.32. If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the

Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be retained in the Court record.

- 14.33. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.
- 14.34. The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.
- 14.35. If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra).
- 14.36. The Claims Tribunal shall consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example, if a sum of Rs.5,50,000/- has been awarded to the claimants, Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years.

- 14.37. The following conditions may be imposed in respect of the fixed deposit:-
- 14.37.1. The interest on the aforesaid fixed deposits to be paid monthly by automatic credit of interest in the Savings Account of the claimant.
- 14.37.2. Withdrawal from the aforesaid account to be permitted to the claimant after due verification and the Bank to issue photo Identity Card to facilitate identity.
- 14.37.3. No cheque book to be issued to the claimant without the permission of this Court.
- 14.37.4. The Bank to issue Fixed Deposit Pass Book instead of the FDR to the claimant and the maturity amount of the FDR be automatically credited to the Saving Bank Account of the beneficiary at the maturity of the FDR.
- 14.37.5. No loan, advance or withdrawal to be allowed on the said fixed deposit receipt without the permission of the Tribunal.
- 14.37.6. Half yearly statement of account be filed by the Bank in the Tribunal.”
- 14.38. The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-
- a) Date of award
 - b) Case number
 - c) Title of the case
 - d) Award amount
 - e) Date of deposit of the award amount
 - f) Date of notice of deposit by the depositor.
 - g) Date of notice of deposit by the Tribunal.
 - h) Amount of interest upto date of notice of deposit.

- i) Whether award amount and complete interest deposited.
- j) Balance outstanding interest.
- k) Remarks (Action taken to recover the balance interest)

- 14.39. In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.
- 14.40. In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels.
- 14.41. In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days.
- 14.42. Where the vehicle is not insured, the Claims Tribunal shall ensure that the police has prosecuted the owner/driver of the offending vehicle under Section 196 of the Motor Vehicles Act by calling report from the Police. The Claims Tribunal shall also call for a report from concerned Metropolitan Magistrate to find out whether the owner of the offending vehicle has given security for satisfaction of the award or the vehicle has been sold in terms of Rule 6 of Delhi Motor Accidents Claims Tribunal Rules, 2008. The Claims Tribunal may also direct the owner and driver of the offending vehicle to furnish their affidavit of assets and income in Form-16A, Appendix-E under Order XXI Rule 41(2) of the Code of Civil Procedure and sufficient security under Order XXXVIII Rule 2 of the Code of Civil Procedure.
- 14.43. Where the Insurance Company has computed the compensation in accordance with law without any delay, has deposited the admitted amount and has contested the case only with respect to the disputed amount or has bonafide defence, the interest should be awarded according to

bank rates. However, where the Insurance Company has failed to discharge its obligations or acted capriciously or arbitrarily or negligent exercise or non-exercise of power, which has resulted in harassment and mental suffering to the claimant, the Claims Tribunal may consider awarding higher interest in terms of the judgment of the Apex Court in the case of **Ghaziabad Development Authority vs. Balbir Singh, II(2004) CPJ 12 (SC)**.

- 14.44. Wherever the lawyer – client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant's counsel to be deposited with the Bank along with the award amount to be released by the Bank directly to the counsel.
- 14.45. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.
- 14.46. The Claims Tribunal shall follow the latest precedents rendered on the subject as also principles relating to the nature of inquiry mentioned in paras 9 and 13 above.
- 14.47. While conducting the inquiry, the Claims Tribunal must be on guard against fanciful or false claims. The victims may deserve sympathy, but the matter has to be approached and decided according to law. Incidence of exaggerated or false claims has to be deftly dealt with. In appropriate cases, the Claims Tribunal should not hesitate to lodge a complaint under Section 340 Cr.P.C. Similarly, the Insurance Company which puts forward an evasive or irresponsible defence is liable to be burdened with costs, but

where the defence is found to be false, similar action ought to be taken against them. In order to ensure efficiency of procedures and accuracy of the result (determination of the amount), purity in the information received by the Claims Tribunal and veracity of the documents that are placed before the Tribunal, whatever be the source must be brought about.

- 14.48. The aforesaid observations are without prejudice to the discretion of every Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act.

15. **CHECKLIST FOR THE CLAIMS TRIBUNALS**

- 15.1. Keeping in view the type of facts generally involved; the facts, the sub-evidentiary facts; and which are disputed (and therefore in issue); the evidentiary facts; the documents which prove (or disprove) the facts; if a format more of a 'checklist' needs to be developed and made available to the everyone concerned, it will be a help to the claimant, to the lawyers and to the Court.

- 15.2. This is not to be confused with a 'form' for the application as provided by the Rules. It will act like a series of sign posts to help call for the necessary information and then proceed with the matter. The Claims Tribunal may use the 'checklist' (as also its own experience) to list those facts and documents which will help turn down a false or exaggerated claim and also facilitate the proof and adjudication of a just claim against a brick-wall of untenable defences often put forward by the Respondents with the hope that the case would be dismissed or the claimant would get tired and settle for less. A checklist can be prepared by the Claims Tribunals which can be periodically updated. The office of the senior-most Claims Tribunal should prepare a checklist which can be circulated with all the Presiding Officers and

at a monthly meeting, they can jointly consider what all amendments and additions are to be made to it. Such a list can then be submitted to the High Court for its scrutiny.

- 15.3. Developing a form-cum-checklist is a specialized task but a beginning has to be made. As the first draft, a format-cum-checklist has been prepared and is annexed to this judgment as **Annexure I**, in the hope and anticipation that this will act as discussion paper for Presiding Officers of the Claims Tribunals and the lawyers to add/amend in order to prepare what would be a fine form. It is expected that the Presiding Officers of the Motor Accident Tribunals will meet periodically and based on their daily experience, discuss the facts, evidentiary facts, sub-evidentiary facts and documents; the existence and/or non-existence of which enables the Tribunal to draw a right inference for making an accurate determination. It may take a few months for a fine form to be finalized. After this form-cum-checklist is perfected, it can be translated into Hindi and other languages for guidance of the claimants so that they do not miss out on giving the information and documents and are also told that a comprehensive format will ensure that fanciful or false claims do not succeed.

16. CLAIMS INVESTIGATION MANUAL

16.1. The Delhi Police has issued Standing Order No.157/2008 with respect to the investigation of road accident cases on 14th August, 2008. The Delhi Police has also prepared a Manual for investigation of motor accident cases in pursuance to the directions issued by this Court in the case of **Rajesh Tyagi vs. Jaibir Singh, FAO.No.842/2003**. The Delhi Police has also compiled a

check list for investigation of the accident cases. The police shall follow the same while investigating the motor accident cases. The copies of the operative portion of the Manual, Standing Order and the checklist of Delhi Police are attached to this order as **Annexures II, III & IV** respectively for ready reference by the Claims Tribunals.

17. THE NEED TO BRING ABOUT EFFICIENCIES

17.1. The need to banish delays and bring about efficiencies in the adjudicative process, whether inquisitorial or adversarial, cannot be disputed. To achieve this however it needs more than a mere wish. Fortunately, the statute empowers the Tribunal, but ingrained notions of Civil Court mindset and adherence to tradition has stifled the growth and evolution of practice and procedures, leading thereby to long delays and inefficiencies, or simply injustice. It is this as the avowed goad which should operate as the guiding star to help determine the approach of the Tribunal in every case.

17.2. In our judicial system, the doctrine of precedent plays an important part. The precedent applies both to substantive law as well as procedural law. The High Court, which is the appellate Court, can, in exercise of its appellate jurisdiction, as also its jurisdiction under Article 227 for superintendence of justice administration in the State, lay down a precedent which contains the procedure.

17.3. In other words, the principle of 'as it may think fit' which is with every Claims Tribunal and perforce are also

with the appellate Court (which has more power by reason of being a High Court) can always formulate/form procedures as are suited, tailored, proportional, efficient, do not breach the rules of Natural Justice, and serve the purpose of speedy justice.

17.4. The scope of these proceedings/this judgment is to visualize and give guidelines as a precedent as to what procedure and practice the Claims Tribunal could adopt as part of summary procedure. It may be made clear that this is only a guide and does not in any way fetter the powers of the Presiding Officer to do what on the facts of a case he thinks fit and right.

18. CONCLUSION

Coming back to the facts of the present case, in view of the legal position as enunciated above, the appeal is allowed, impugned award is set aside and the case is remanded back to the Tribunal for conducting fresh inquiry in accordance with law. The inquiry be completed within a period of six months. The parties are directed to appear before the Claims Tribunal on 10th May, 2010. LCR be sent back to the Claims Tribunal immediately through a special messenger.

19. This Court highly appreciates the extensive research and contribution of the learned amicus curiae, Dr. Arun Mohan in this matter.

20. Copy of the order be given Dasti to the counsel for the parties and the learned amicus curiae.

21. Copy of the order be also sent to the Principal District and Sessions Judge, District Judges, all the Claims Tribunals and Additional District Judges handling motor accident cases through the Registrar (Appellate) of this Court. Copy of this order be also sent to the Principal Secretary (Law), Government of NCT of Delhi.

22. Copy of this order be also sent to Mr. S. Sundar, Chairman of the Expert Committee appointed by the Ministry of Road Transport and Highways, Government of India for consideration while recommending the amendments to the Motor Vehicles Act.

APRIL 12, 2010

J.R. MIDHA, J

FORMAT OF THE CHECKLIST FOR MACT

1. Date of accident :
2. FIR No., date and under Sections :
3. Name of the Police Station :
4. Name and phone No. of the Investigating Officer :
5. Registration No. of the offending vehicle :
6. Engine and chassis No. of the offending vehicle :
7. Name, address and phone No. of the owner of the offending vehicle :
8. Name, address and phone No. of the driver of the offending vehicle :
9. Particulars of the driving licence:-
Driving Licence No. :
Issue by :
Period : From..... to.....
Class of vehicle :
10. Particulars of the permit (In case of commercial vehicle) :
11. Particulars of fitness certificate (In case of commercial vehicle) :
12. Name and address of the Insurance Company, policy number and period of policy :
.....
.....
13. Name, address and phone No. of the designated officer of Insurance Company :
14. Date of appointment of the designated officer of Insurance Company :
15. Name of the victim :
16. Age of the victim :

17. Occupation of the victim :
18. Income of the victim :
19. In case of death, particulars of legal representatives of the victim:-
 - (i) Names of legal representatives :
 - (ii) Age of legal representatives:
 - (iii) Relationship :
20. In case of injury :
 - (i) Nature of injury :
 - (ii) Disability (if any) :
 - (iii) Period of treatment :
 - (iv) Expenditure on treatment :
21. Date of filing of Accident Information Report (AIR) :
22. Documents filed along with AIR :
 - (i) FIR :
 - (ii) MLC :
 - (iii) Post-mortem report :
 - (iv) Photographs :
 - (v) Site Plan :
 - (vi) Mechanical Inspection Report :
 - (vii) Seizure Memo :
 - (viii) Driving Licence :
 - (ix) Permit :
 - (x) Fitness Certificate :
 - (xi) Insurance Policy :
 - (xii) Notice under Section 133 of the Motor Vehicles Act :
 - (xiii) Statement of the eye-witnesses :

- (xiv) Report under Section 173, :
Cr.PC.
23. Whether the police has :
verified the aforesaid documents
24. Date of service of AIR on the :
Insurance Company
25. Date of service of AIR :
on the claimant
26. Whether AIR is complete :
in all respects?
27. Deficiencies in the AIR :
28. Whether the designated :
officer of the Insurance Company
has submitted the report within
30 days of the AIR?
29. Whether the Insurance Company:
has admitted the liability?
30. If so, the amount assessed by the:
Insurance Company
31. Defences raised by the :
Insurance Company
32. Whether the claimant has filed :
the application in Form 'G' along
with the affidavit, photograph
and proof of residence?
33. Name and address of :
the eye-witnesses
34. Documents on record relating to:-
- (i) Proof of age of the victim :
- (ii) Proof of occupation :
of the victim
- (iii) Proof of income of :
the victim
- (iv) In case of death:-
- (a) Proof of number of :
legal representatives
- (b) Proof of age of legal :
representatives

- (c) Proof of relationship :
- (v) In case of injury :
- (a) Proof of injury :
- (b) Proof of disability :
(if any)
- (c) Proof of period of :
treatment
- (d) Proof of expenditure :
on treatment
- (e) Proof of future :
treatment
- (f) Cost of artificial :
Limb, (if applicable)
- (g) Proof of absence :
from duty
- (h) Proof of expenses on :
conveyance incurred by injured
- (i) Proof of services of :
attendant and expenses incurred.
35. Whether the above documents :
have been verified by the police.

INVESTIGATION OF ACCIDENT CASES

Objectives

Upon completion of this session, you will be able to:

- preserve and photograph the accident scene and prepare sketch thereto
- collect evidence including seizures from the scene of accident
- appropriately record the FIR in accident cases
- conduct proper investigation in accident cases
- prepare chargesheet in accident cases
- describe the instructions contained in SO No 157/2008

The investigation in all accident cases shall strictly be conducted as per the instructions contained in Standing Order No. 157/2008 (ANNEXURE-A of manual) as discussed in this lesson.

I. INFORMATION

(A) Mode of receipt of information – The information in an accident case may be received from following sources:

- i. PCR through CPCR on wireless
- ii. By stander or a witness or victim on telephone
- iii. Duty constable of hospital (where injured has been shifted) on telephone
- iv. Victim personally reporting in PS

(B) Steps to be taken by CDCR and Duty Officer on receipt of information

- (i) First information received in the Central District Control Room (CDCR) be transmitted to the nearest PCR van quickly to remove the injured to the nearest hospital for medical treatment. Simultaneously, information should be communicated to the local police to detail the earmarked staff to visit the accident spot and investigation be taken up without any delay.
- (ii) The CDCR shall simultaneously inform the Traffic Control Room, who shall direct the Area Traffic Inspector/Zonal Officer to the accident spot.
- (iii) Once received, the duty officer of the police station shall immediately record the information in Daily Diary and hand over the DD to the emergency officer.
- (iv) In case information is received directly at Police Station, in addition to recording the same in DD register, duty officer of the police station shall also ensure that PCR and CDCR are informed accordingly.

II. ACTION BY INVESTIGATING OFFICER IN POLICE STATION

- ◆ Collect the relevant DD entries pertaining to information of accident
- ◆ Make an entry in the DD Register for departure (if not already made) to the place of occurrence/hospital, as the case may be
- ◆ Obtain the Digital Camera from Malkhana
- ◆ Carry the Checklist (Annexure – ‘B’ of the manual)

- ◆ Carry Mechanical Inspection Form (Annexure – ‘C’ manual)
- ◆ Carry dead body bag and white sheet in case of fatal accident
- ◆ Carry Police Tape to secure/mark the scene
- ◆ Carry Investigating Officer’s kit
- ◆ Inform Draftsman telephonically, if possible (in case of Fatal Accidents)
- ◆ Inform Mechanical Inspector telephonically
- ◆ Inform private photographer telephonically (depending on circumstances)

III. INVESTIGATION KIT:

The Investigation Kit to be carried by IO shall consist of following

- (1) First Aid Box
- (2) Torch light (for use during night)
- (3) Measuring Tapes - Cotton (100 feet)
- (4) Measuring Tape - Steel
- (5) Chalk for marking
- (6) Crime Investigation Box
- (7) Sheets of papers, pencils of various colours, carbon papers, fountain pen
- (8) Blank case diaries
- (9) Camera fitted with flash light unit
- (10) Mobile Phone with Camera facility (subject to approval)
- (11) Gloves
- (12) Face Mask

Note : The Investigating officer may also avail the service of the professional private photographer depending on the circumstances.

IV. INSPECTION OF THE SPOT:

- (i) The inspection of the spot to be conducted in a professional and scientific manner considering following points:
 - a. directions of the vehicle(s) involved in the accident;
 - b. condition of the road;
 - c. whether one way or two way;
 - d. visibility at the time of accident;
 - e. existence of speed breakers;
 - f. potholes on the road;
 - g. skid marks etc.

Note : All these points should find mention in the site inspection note.

- (ii) Rashness/negligence on the part of the driver including the violation/jumping of red light by the offending vehicle should be ascertained

on the basis of the inspection of the accident spot which should also be properly projected in site plan.

- (iii) In cases where the IO has to leave the spot on account of recording of statement of the injured/obtaining the MLC of the injured or for any other reason, he shall ensure that the scene of accident is not left unattended
- (iv) Vehicle(s) involved in accident sometimes causes obstructions to the free flow of traffic, which should be immediately removed to a side after taking photographs and recording their position.

Note: a) The SHO/ATO/Investigating Officer will take a decision regarding divergence of traffic in co-ordination with Traffic Police, if required.
b) The IO/SHO to analyze the need for re-enforcement to maintain law order in case of situation going ugly.

V. **MECHANICAL INSPECTION & FORENSIC EXAMINATIONS:**

- (i) **MECHANICAL INSPECTION** : As far as possible, Mechanical Inspection of the vehicle should be got done at the spot through a Mechanical Inspector or any other expert. In case, the expert is not readily available, it may be got done in the Police Station. Following important details should be minutely recorded during the mechanical inspection:
 - a. details of the damage of the vehicle(s)
 - b. point of impact
 - c. paint marks
 - d. any other evidence transferred from one vehicle to another at the time of impact – **Locard's 'Principle of Exchange'**.

Private Mechanical Inspector can be engaged and their fee may be got reimbursed from investigation funds.

- (ii) **FORENSIC EXAMINATION** : Forensic expert/Crime team should be summoned at the spot to collect exhibits carefully to seek expert's opinion especially in 'hit and run' cases. All efforts should be made to collect all relevant evidence in fatal accident cases.

Locard's 'Principle of Exchange' : It is the fundamental rule upon which forensic science is based. Whenever there is contact between two items, there will be an exchange. In an accident, when two objects collide, there will be exchange of paints, clothes, hair, blood, tissues etc. which require forensic examination as these are not visible through naked eyes.

- (iii) The observations about the damage should find mention in the 'ruqqa', statements of the witnesses. Photographs should indicate damages clearly and details be mentioned with case details.
- (iv) Fatal accident cases, where there is no eyewitness, should be closely monitored / supervised by the Senior Officers.

VI. SITE PLAN

- (i) Properly drawn site plan renders valuable evidence than the oral testimony of witnesses. Rashness/negligence on the part of the driver is ascertained by various factors depicted in the site plan. For example skid marks; over taking from left side; right of way, jumping red light etc.
- (ii) Site plan should be prepared according to the scale showing the following
 - a. directions of movement of vehicles,
 - b. position of the vehicles,
 - c. point of impact,
 - d. position of deceased;
 - e. skid marks;
 - f. width of the road,
 - g. central verge or road divider;
 - h. lamp post;
 - i. traffic lights,
 - j. zebra crossing etc.

The services of qualified draftsmen can be requisitioned at the scene of accident (in case of fatal accident). Different colour markings could be used to describe any other circumstances/evidence having bearing in the case.

VII. PHOTOGRAPHS

- (i) Photographs of the accident spot can be taken by the Investigating Officer, or through official/ professional photographer.
- (ii) The photographs of tyre marks, skid marks should be taken by placing the scale bar as well as chit indicating the case details/name of witnesses.
- (iii) Vehicles should be photographed from all angles to fully illustrate the extent of damage.
- (iv) Besides, the photographs of the site and surrounding areas be also taken to show the exact topography for the perusal of the court at the time of trial.
- (v) On each photographs, details of what is being projected should be mentioned.

VIII. SPOT ENQUIRY

- (i) The Spot Enquiry may be conducted from the eye-witnesses/by standers.
- (ii) It should also be verified if the driver of the offending vehicle has complied with the provisions of 134A of MV Act regarding providing medical assistance to the injured.
- (iii) The injured should be immediately removed to hospital for immediate medical treatment, if not already done.

IX. RECORDING OF FIR

- (i) In case the injured is declared 'fit for making statement' by the doctor attending him, his statement should be recorded highlighting and clearly mentioning the following:
 - a. manner in which accident occurred
 - b. Rash/reckless/negligent act attributed to the driver of the offending vehicle
 - c. description of the accused and the vehicles involved
(in case the accused has escaped from the spot)
 - d. details of the accused and the vehicle involved
(in case the accused is present at the spot)
- (ii) In case the injured is declared 'unfit' for making a statement, the case can be registered in following ways:
 - a. on the observations of the I.O. by endorsing the First Information (DD) received at the Police Station
 - b. on the basis of the statement of eye witnesses
 - c. on the basis of the statement of co-passenger, if any.

X. FATAL ACCIDENT CASES

- (i) Fatal accident cases necessarily involve conducting inquest proceedings and should invariably be investigated by an Upper Subordinate.
- (ii) I.O shall carry with him white sheet to cover the dead body. In no case the dead body should remain uncovered.
- (iii) I.O should prepare inquest papers – Brief facts, form 25.35 (B) PPR, Identification statement, MLC, copies of FIR/DD entries with due care and caution.
- (iv) The presence of I.O at the time of Post Mortem and handing over the body to the relatives after re-identification under proper receipt is necessary.

- (v) 'Hit and run' accident cases where the identity of the deceased is unknown should be examined by the ACP concerned to satisfy himself that it is not related to any other crime.

XI. TEST IDENTIFICATION PARADE

In case the driver of offending vehicle escapes from the spot, the Test Identification Parade of the accused driver should be invariably conducted after obtaining the details of the driver from the owner of the offending vehicle in response to notice u/s 133 M.V. Act.

XII. MEDICAL EXAMINATION/PM REPORT

- (i) In case the final opinion on the MLC of the injured is not given by the doctor, the IO shall ensure that the MLC along with the treatment papers of the injured shall be deposited for final result at the earliest possible. **(However, pursuant to the order of the Hon'ble High Court of Delhi dated 15.1.10, in case of 'grievous injury', the IO is supposed to verify and submit the 'insurance certificate' before the MACT within 48 hrs alongwith the intimation of factum of accident. Hence, a clarification be sought from the doctor in all U/O cases – Sample Application at ANNEXURE-S)**
- (ii) In case where the victim or the driver of the erring vehicle has consumed alcohol, the IO shall request the doctor to preserve the blood sample which shall be sent for examination to ascertain the quantity of alcohol in the blood.
- (iii) The IO shall follow up with the Record Clerk or Forensic Department for timely collection of MLC/PM Report.

XIII. LEGAL ACTION UNDER M.V. ACT

- (i) The driver of the offending vehicle if found without license, be booked u/s 3/181 M.V. Act and the owner be booked u/s 5/180 M.V. Act.
- (ii) In case minor is found driving the vehicle, a report be sent to Juvenile Justice Board u/s 4/181 M.V. Act
- (iii) If the driver has consumed Alcohol/intoxicants, he should be examined medically and booked u/s 185 M.V. Act.
- (iv) If the vehicle involved in the accident is uninsured/or not having valid insurance, the driver as well as owner be booked u/s 196 M.V. Act.
- (v) If the driver if found in possession of a forged driving license, a separate case u/s 465/468/471/474 IPC be registered and investigated. Similar action is to be taken in case of forged insurance policy etc.

XIV. MISCELLANEOUS INSTRUCTIONS

- (i) In an accident where no injury is caused to any person but vehicles are damaged, it can be dealt with u/s 279 IPC or u/s 184 M.V. Act depending on the circumstances of case to avoid unnecessary harassment.
- (ii) The Police has no power to accept compromise or ask the parties to enter into a compromise as these offences are not compoundable.
- (iii) A report/ information involving a Diplomatic Car having (CD No.) to be sent to the Principal Secretary (Home), Govt. of NCT, Delhi.
- (iv) The first priority of the local police/PCR van staff is to hospitalize the victim for medical treatment and not to wait for police formalities.
- (v) The seized vehicles of the victims / complainants should be released to the owner on furnishing surety bond after completing the investigation.
- (vi) In accident cases registered u/s 279/337/338/304-A IPC, sections 427/429 IPC should not be applied as their ingredients are different.
- (vii) The IO should be thorough with the provisions of IPC and MV Act as already discussed in lesson 2.

XV. CONCLUSION OF INVESTIGATION

- (i) The police report u/s 173 Cr.P.C is a conclusion that an Investigating Officer draws on the basis of material collected during investigation and such conclusion can only form the basis for the competent court to take cognizance thereupon and to proceed with the case for trial. Therefore, the investigation should be concluded logically based on the admissible evidence.
- (ii) The Investigating Officer should ensure that memos or “Furds” and statements of the witnesses are properly recorded. The investigation of accident cases should have to be completed within 30 days after the arrest of the accused person. It is advisable that the victim or the family of the victim in Fatal Accidents case is apprised of the developments in the investigation.
- (iii) The Charge Sheet in accident cases should be filed within stipulated period mentioning the following
 - a. names of the party,
 - b. nature of information,
 - c. names of the witnesses and
 - d. the conclusion drawn on the basis of the evidence collected during investigation against the accused.
- (iv) In accident cases following point are required to be taken note of, while preparing the Charge Sheet:

- a. Permissible speed on the road where accident has taken place.
- b. Site plan indicating exact position of the vehicle and the victim involved in the accident.
- c. Condition of the road lighting i.e. whether sufficient light was there or otherwise.
- d. Number of vehicles and other road users on the road at the time of accident viz. whether the road traffic was dense or otherwise.
- e. Lane of the vehicle in which the accident took place.
- f. Approximate speed of the erring vehicle.
- g. Whether the driver of the erring vehicle was listening to mobile or he was talking to someone else sitting beside him?
- h. Width of the road, whether it was having central verge or not.
- i. Was there any speed breaker in close proximity?
- j. Condition of the road whether raining or otherwise.

Reference Material:

- 1. SO No 157/2008 – ANNEXURE-A of the manual
- 2. MV Act
- 3. Indian Penal Code
- 4. MACT Manual

Delhi Police

STANDING ORDER NO. 157 OF 2008

Investigation of Road Accidents Cases.

INTRODUCTORY:

It is a well known fact that road accidents are on a rise and many of these accidents result in fatalities. It is becoming more and more apparent that the investigations of accident cases (fatal or non-fatal) are not done in a proper and scientific manner. As a result the accused are acquitted on the basis of benefit of doubt or lack of evidence and in some cases even the courts have passed severe strictures or remarks against the Investigating Officers. It has been further observed that road accident cases are not given appropriate importance in many of the police stations.

Not only do the proper and scientific investigations of such cases assume importance, but also the arrival of the PCR van and the local police at the scene of occurrence are equally important. Immediate removal of the injured to the hospital can save a precious life. Delayed action on the part of the police to remove an injured to the hospital has on occasions drawn adverse media attention resulting in criticism amongst the citizens.

1. PRELIMINARY STAGE :-

i) INFORMATION ON ACCIDENTS :

As soon as an information of a road accident is received in the Central Police Control Room (CPCR), the same should be communicated to the nearest PCR van quickly for the removal of the injured to the nearest hospital for immediate medical attention and simultaneously to the concerned police station for detailing the Emergency/Investigating Officer to the scene of occurrence and taking up the investigation without any delay. In case the information is received directly in the police station, the IO should be dispatched immediately and the PCR informed. In all accident cases, the Central Police Control Room (CPCR) shall immediately inform Traffic Control Room which shall, in turn, direct area Traffic Inspector/Zonal Officer to reach the accident site immediately.

ii) INVESTIGATING OFFICERS KIT:

The following equipments shall be carried by the IOs while proceeding to the scene of accident:-

1. First Aid Box.
2. Torch light (during night only).
3. Measuring tapes cotton 100 feet.

4. Steel measuring tapes.
5. Crime Investigation Box.
6. Sheets of Papers, pencils of various colours, carbon papers and Fountain pen.
7. Blank Case diaries.
8. Camera fitted with flash light unit.

The officers investigating accident cases may avail the services of a professional private photographer, depending on the circumstances.

iii) INSPECTION OF THE SPOT:

In accident cases, whether fatal or simple, the inspection of the spot in a professional and scientific manner is very important. The skid-marks indicate the probable speed of vehicle(s) which can be an important tool to help investigating officer to arrive at some pertinent conclusions. The direction(s) of the vehicles involved in the accident, condition of the road, whether one-way or two-way, road-curve, visibility at the time of the accident, existence of speed-breakers or potholes on the road, skid-marks etc. should invariably find mention in the Spot Inspection Note (Mauka-Mulahiza) of the case diary.

iv) MECHANICAL INSPECTION:

If the vehicle(s) involved in the accident are causing hindrance in the smooth flow of traffic, it is advisable to remove them to a side. As far as possible the mechanical inspection of the vehicles should be done at the spot itself. The IO should note down the details of damages of vehicle(s) involved in an accident minutely, such as area of damage, extent of damage, point of impact between the vehicles and see if there are paint-marks or any other evidence transferred from one vehicle to another at the time of impact. He should bring them on record through his observations mentioned in the endorsement of the ruqqa, statements of witnesses, photographs etc.

If the Mechanical Inspector or any other expert is not readily available at the spot, it should be got done in the police station after it has been brought from the spot. Many IOs are trained in inspection of vehicles which are involved in accidents. They shall normally carry out inspection of vehicles involved in accidents themselves and prove the same before the trial court. In case of those not trained, inspections shall be carried out by the officers in the District/Sub-Division trained for the purpose. In case of doubt, M.T.I. staff from Provisioning and Logistics Unit may be summoned for expert opinion/advice, as the case may be. The vehicles should be released only after their mechanical inspection has been done. There are professional private Mechanical Inspectors whose services can be availed and their fee may be got reimbursed from the investigation fund.

v) FORENSIC EXAMINATION:

In an accident case inevitably there is an impact between two objects – vehicle with vehicle or vehicle with a living being or vehicle with any other object etc. The Locard's Principle of Exchange is the fundamental rule upon which forensic science is based. It states that, "with contact between two items, there will be an exchange." Such

exchanges of paints, clothes, hair, blood, tissues, etc. etc. could either be easily visible or of a minute nature which escapes the naked eye. In fatal accident cases, efforts should be made by the I.O. to trace out and seize in an appropriate manner all such relevant evidence. Where necessary, a forensic expert should be requisitioned at the spot to examine the scene of accident and the vehicle(s) or at least the exhibits should be collected carefully by the I.O. with the help of Crime Team and sent to the FSL for an opinion. In accident cases, particularly fatal accident, where there are no eye witnesses such evidence could be critical in nature. This needs to be closely supervised by the district DCP, so that cases are not overlooked or ignored in a routine manner.

vi) SITE PLAN:

In an accident case, properly drawn site plan renders far more valuable evidence than the oral testimony of witnesses as the site plan speaks a lot of facts itself. A site plan shall be prepared according to scale which should indicate the positions and in which the vehicles were found, point of impact, position of the deceased, skid-marks, width of the road, central verge or road-divider, lamp-post, etc. depending on the circumstances of the case site plan. The investigating officer may, if necessary, requisition the services of a qualified draftsman at the scene of accident. Different colour markings could also be used to describe any other circumstance/evidence having a bearing on the case.

vii) PHOTOGRAPH:

An I.O. may himself take photographs of the spot or he may take assistance of the official photographer or even of a professional photographer. Where there are tyre-marks or skid marks of any other kind which are relevant to fix responsibility of the accident on anyone, they should be photographed after placing a chit near them bearing the details of the case and signatures of the witnesses present at the spot so that at some later stage it may be possible to co-relate the photograph to a particular case. A scale-bar to illustrate the length of the marks shall also be used while photographing. Damages occurred by the vehicles on account of the accident, should also be got photographed from all angles to fully illustrate the extent of damage.

2. INVESTIGATION :-

i) RECORDING OF F.I.R.:

If the condition of the injured person permits, his statement should preferably form the basis of FIR. The I.O. should keep in mind that the safety and life of the injured must receive precedence over any other thing. Both, the statement on which the FIR is to be registered and subsequent statements of the witness(s), the description of the accused and the vehicles involved in the accident should be mentioned as far as possible.

ii) FATAL CASES:

(a) Investigation by an Upper Subordinate- Fatal accident cases necessarily involve conducting inquest proceedings and, therefore, shall invariably be investigated by an upper subordinate officer. The SHO shall **ensure that the IO is well versed with the law and procedure** required for conducting investigation of such cases.

(b) The IO while proceeding to the spot of a fatal accident shall also carry sheets of white cloth supplied to the Malkhanas to cover dead bodies. In no case the body of the deceased shall be allowed to remain uncovered. Shrouds to be kept in PCR vans and the Police Stations shall be procured centrally by the P&L Unit and supplied to all districts/Units and stocks replenished when the need arises.

(c) **Post-Mortem Examination-** Inquest Papers i.e. Brief facts, Form No. 25.35(B) PPR, Identification statements, MLC, copies of FIR/DD entries, etc. should be filled in with due care and caution. The IO shall remain present at the time of the PM examination and after the same is over, the dead body be handed over to the relatives after re-identification under proper receipt. In all fatal hit and run cases where the offending vehicle is not known and also victims' identity is not known till the time of post mortem, the ACP/Sub-Division shall satisfy himself that the case is of road accident and not related to any other crime. He shall also record the same on the inquest report of the case.

3. PREPARATION OF CASE FILE:-

The I.O. should ensure that the memos or fards and statements of witnesses are properly recorded. The investigation of all accident cases shall be completed at the earliest and the charge sheet submitted thereafter without delay. All other directions concerning investigation contained in the Criminal Procedure Code, Evidence Act, MV Act, Police Rules, Standing Orders etc. shall be strictly complied with.

It is advisable that in all fatal accidents, the Investigating Officers should visit the families of the victim(s), if they are located in Delhi, to inform them about the progress of the investigation of the case and the action taken by the Police. The IO shall also record a case diary to this effect.

The SHOs will ensure that all officers of police stations, detailed for investigation work, make fully conversant with the provisions of the S.O. They shall also arrange for the equipments required to be carried by the IOs detailed on this duty. These articles should be kept ready/handy with the Duty Officer to avoid delay. In addition to the equipments indicated above, stretchers will also be taken to the spot, if necessary. These arrangements should be made by all the SHOs without demur.

4. CHARGE SHEET:-

Fatal accidents or simple accidents involving physical injuries are to be necessarily dealt with u/s 279, 304-A IPC or 279/337/338 IPC as the case may be. After this, the vehicles are to be seized, the defaulting driver arrested, the mechanical inspection of vehicles done, the charge sheet should be prepared and submitted in the court. These cases are summon-trial-cases and require to be sent to court after completion of the investigation within 6 months from the date of the arrest of the defaulting driver, as is required u/s 167 (s) Cr.P.C. The investigation carried beyond 6 months without the permission of the Metropolitan Magistrate is bad in law and not maintainable in the court.

The following points are required to be taken note of while preparing charge sheet u/s 173 Cr. P.C. in accident cases:

- i) Permissible speed on the road where accident has taken place.
- ii) Site plan indicating exact position of the vehicle and the victim involved in the accident.
- iii) Condition of the road light whether sufficient light was there or it was not.
- iv) Number of vehicles and other road users on the road at the time of accident viz. whether the road was crowded or otherwise.
- v) Lane of the vehicle in which the accident took place
- vi) Approximate speed of the erring vehicle.
- vii) Whether the driver of erring vehicle was listening to mobile or he was talking to someone else sitting beside him?
- viii) Width of the road whether it has central verge or not.
- ix) Was there any speed breaker in close proximity?
- x) Condition of the road whether raining or otherwise.

5. MAINTENANCE OF STATISTICS:-

The Traffic unit shall have all statistics relating to road accidents in Delhi maintained in the unit and prepare a monthly review suggesting preventive measures. The SHO shall ensure timely dispatch of the accident reports to the DCP/Traffic (VIP), Teen Murti Traffic Lines, Mother Teresa Crescent, New Delhi.

i) **Daily diary of Accident Report:** This report shall be furnished by the SHO in **Appendix-I** to cover 24 hours period of all the accident cases. This diary shall include fatal, grievous injury, simple injury, simple collisions and non-injury accidents. In other words, this diary shall contain information about registered cases, cases in which only challans under Motor Vehicle Act were prepared following the occurrence of any road accident and even cases where challans under M.V. Act were not considered necessary and only reports were lodged in Police Station Daily Diary. These reports shall be sent by the SHO daily by 10 AM to the district DCP office who will in turn compile information of the entire district in the prescribed proforma and a copy of the same will be sent to the office of DCP/Traffic (VIP), Teen Murti Traffic Lines, Mother Teresa Crescent, New Delhi by 5 PM everyday. The copies of FIRs shall also be attached along with these reports.

ii) **Report by Traffic Inspector:** The Traffic Inspector and the Zonal Officer of the Traffic Unit shall also collect required information from the police station or the Investigating Officer and submit to the DCP/Traffic (VIP), Teen Murti Traffic Lines, Mother Teresa Crescent, New Delhi.

6. SUPERVISION OVER INVESTIGATION:-

The concerned SHO and ACP shall be responsible for supervising the investigation and proper pairvi of such cases in court. In fatal accidents, the scene of

occurrence shall be visited by the concerned SHO/Inspector (Investigation) and concerned Traffic Inspector immediately or at the earliest.

7. DIRECTIONS OF THE HON'BLE HIGH COURT OF DELHI:-

To ensure that police officers investigating accident cases conduct investigation in a professional manner, the Hon'ble High Court of Delhi, in a Revision Petition (Crl.) No. 114 of 2006 – Abdul Subhan Versus State (NCT of Delhi), has also issued certain directions for proper investigation of road accident cases. For the benefit of IOs, these guidelines are reiterated as under:-

i) In most of the cases the site plans are not produced or the same are of a very unsatisfactory nature. It is imperative that the investigating officer should be provided with maps of the roads drawn to scale so that accurate site plans can be produced as evidence before courts. The exact point of impact as well as tyre skid marks and the point at which vehicles come to rest after the collision should be demarcated clearly. The length of the tyre skid marks of the vehicles involved in the impact, indicate the speed at which the vehicles were traveling. This would enable the courts to examine the evidence in a much objective manner and the courts would not have to face vague and subjective expressions such as 'high – speed'.

ii) The mechanical inspection reports that are prepared, in a majority of cases are very superficial and of cursory nature. The inspection ought to be carried out by qualified personnel who are able to indicate in their reports the exact physical condition of the vehicles. They should be able to point out exactly the damage suffered by the vehicles as a result of the impact during the accident. The mechanical inspection report should indicate all the tell-tale signs of the collision such as the paint of one vehicle rubbing off on the other. It should also indicate as to whether the vehicles were mechanically sound or not prior to the impact so as to enable the court to arrive at a conclusion as to whether the collision took place due to human rashness or negligence or due to mechanical failure beyond human control.

iii) The photographs of the scene ought to be taken not only of the vehicles involved in the collision but also of the site and surrounding areas so that the exact topography can be easily understood by courts.

iv) The prevalent weather conditions must be noted and mentioned by the investigating officer. This would establish situations like whether the road was slippery due to rain or otherwise, whether there was poor visibility due to fog or mist etc. or otherwise.

v) The path of movement of the vehicles must be sought to be established in the course of investigation and should not be ambiguous and doubtful.

vi) The drivers of the vehicles involved must also be subjected to tests to reveal whether they had consumed any intoxicants.

vii) All elements of subjectivity need to be eliminated and the investigation should be such that, when a charge sheet is filed, the court is presented with a case which when taken objectively should lead to the inescapable conclusion that a conviction is maintainable.

8. MISCELLANEOUS INSTRUCTIONS:-

- (i) Accidents when no injury is caused to any person but only vehicles are damaged, can either be dealt with u/s 279 IPC or u/s 116/117 MV Act and these sections have almost the same thrust and effect. Though in cases where impact is quite severe and the damages are severe, the action should normally be taken u/s 279 IPC but in simple accidents, prosecution u/s 116, 117 or other provisions of the MV Act should be preferred, so that unnecessary harassment is not caused to the concerned individuals. Such cases cannot be many and can be easily identified by the supervisory officers.
- (ii) The police officer has no power to accept a compromise or ask the parties to enter into a compromise. The offence u/s 279 IPC and 116, 117 MV Act and other provisions of MV Act, etc. is against the state and non compoundable in courts.
- (iii) Report/information of road accidents involving C.D. (diplomatic) cars are to be sent to the Principal Secretary (Home), Govt. of N.C.T. of Delhi.
- (iv) All police officers and PCR vans should rush the accident victims to the nearest hospital or trauma centre.
- (v) It is the duty of the police officer to ensure that the treatment of the accident victim starts immediately as soon as a victim is brought to the hospital and it need not wait for police formalities.
- (vi) The vehicles of the victims and/or complainants seized by the police as case property may be released to the owner on furnishing a surety bond after completing necessary investigation such as getting the vehicle photographed, mechanical inspection etc. This was observed in Criminal Writ Petition No.1476/2007 - Arun Handa Vs. Govt. of NCT of Delhi & Ors.
- (vii) While registering FIR under section 279/337/338/304-A IPC etc. it should be kept in mind that Section 427 IPC should not be added as criminal intention is essential ingredient of Section 427 whereas it is not so in the cases u/s 279/337 IPC etc.
- (viii) Similarly it has been observed that some times FIR u/s 279/429 IPC are registered. As mentioned above Section 279 IPC deal with rash or negligent driving whereas section 429 IPC, presuppose mensrea. Further, cases could be registered under section 429 where mischief is committed by killing, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox of whatever value as an act of mischief. Where mere rash and negligent driving is involved, cases under section 279 IPC should be registered.

The S.O. on the subject "Investigation of road accidents cases" aside there are two other important Standing Orders. Standing Order No. 328 regarding statutory obligation of police officers under section 158 (b) M.V. Act to forward the claims to concerned MACT and Standing Order No. 339 dated 8/02/2008 regarding release of

vehicles belonging to accident victims. Strict compliance of these Standing Orders should also be ensured while dealing with road accident cases.

This S.O. is issued in supersession of old S.O. no. 157 issued vide this Hdqrs. No. 46722-821/C&T/AC-V/PHQ, dated 14.8.2008.

-sd-
(Yudhbir Singh Dadwal)
Commissioner of Police:
Delhi.

No. 52221-320 /C&T (AC-V)/PHQ., Dated Delhi the 10/09/2008
Copy to:-

1. All Special Commissioners of Police, Delhi.
2. All Joint & Addl. Commissioners of Police, Delhi.
3. All DCsP of Districts/Units, including FRRO, Delhi/New Delhi.
4. SO to CP, LA & FA to CP, Delhi.
5. All ACsP/PHQ, including ACP/IT Centre (PHQ) with CD.
6. All SHOs/Traffic Inspectors in Delhi.
7. Reader to C.P./Delhi.
8. All Inspectors/PHQ, Delhi.
9. HAR/PHQ with 5 spare copies.
10. Library/PHQ, Delhi with 5 spare copies.

APPENDIX-I

Daily Traffic Accident Report

POLICE

STATION _____ TO

DATE _____

Date and time of accident	Exact place of occurrence	Vehicles involved (Give Registration No.)	Nature of accident (a) Collision with or avoidance of or (b) Other kind i.e. hitting fixed objects over-turning etc.	No. of persons killed/injured (grievous/simple injury) etc.	Aged, sex of person dead or injured.	DD/FIR No., u/s and date of cases with brief facts results of Investigation until the times of dispatch of the report.

ANNEXURE-IV

CHECK LIST FOR COMPLIANCE OF CLAIMS TRIBUNAL AGREED PROCEDURE

Case FIR No. _____ Date _____ u/s _____

P.S. _____ Name of IO _____

Mobile No of IO _____ AIR No _____

Note: IO must fill up the proforma by ticking the appropriate box to ensure compliance of all directions as mentioned in Claims Tribunal Agreed Procedure. The concerned SHO and ACP/SDPO shall also ensure compliance of all the points mentioned below.

PART-I

IMMEDIATE ENQUIRY FORM

(For gathering information to be submitted within 48 hours)

1. FIR No., date & u/s _____
2. Name of the Police Station _____
3. Source of Information
(Name, Address & Tel. No.) _____
 - a) Driver/Owner _____
 - b) Victim _____
 - c) Witness _____
 - d) Hospital/Medical facility _____
4. Date _____
5. Time and place of accident _____
6. Nature of Accident
a) Simple b) Grievous c) Fatal _____
(if MLC is U/O it be clarified from the doctor if the injury could be grievous)
7. Name & address of the injured/deceased _____

8. Whether medical attendant for victim
 secured by erring driver/owner in terms
 of section 134(a) MV Act _____
9. Details of the hospital where taken _____

10. Multi angle photographs to be taken _____
11. Detailed site plan(scaled in case of fatal) _____
12. Details of the eyewitnesses (attach additional sheets, if required)
- (i) Name _____
 - (ii) Address _____
 - (iii) Contact Number _____
 - (iv) Statement _____
13. Registration Particulars of the vehicle
(if available immediately)
- (i) Registration No. _____
 - (ii) Engine No. _____
 - (iii) Chassis No. _____
14. If vehicle is registered outside Delhi,
the name of the RTA _____ District _____ State _____
15. Insurance Details (**in grievous injury, the Insurance Certificate and verification report regarding its genuineness be submitted to MACT within 48 hrs**)
- (i) Name & address of the insurance company _____

 - (ii) Policy No. _____
 - (iii) Insurance certificate and validity of policy _____
16. Details of driving license of erring driver _____
- (i. **whether valid for the type of vehicle being driven**)
 - (ii. **whether he is holding any other license – obtain in writing from driver**)
- _____
17. Details of driving license of the victim, (wherever applicable) _____

18. If the D/L is issued from outside Delhi,
the name of the RTA _____ District _____ State _____
19. Name and address of the owner / driver (if available) _____

PART-11

(For filing of detailed accident report within 30 days)

1. Collection of relevant evidences:-

- (i) Photographs of the scene of accident from all angles ☐
- (ii) In the case of death:-

- (a) Proof of age of deceased ☐
- Birth certificate ☐
- School certificate ☐
- Any other----- ☐
-

- (b) Proof of occupation ☐

- (c) Proof of income
- Salary slip ☐
- Income tax returns ☐
- Agricultural income ☐
- Others----- ☐
-

- (d) No. of legal representative ☐

(iii) In case of injuries:-

- (a) Proof of injuries suffered (MLC etc.) ☐
- (b) Expenses incurred by the injured ☐

2. Collection of relevant documents :-

- (i) Driving license ☐
- (ii) R.C ☐
- (iii) Insurance Certificate ☐
- (iv) Fitness (in case of commercial vehicle) ☐
- (v) Permit (in case of commercial vehicle) ☐
- (vi) MLC ☐
- (vii) Death certificate ☐
- (viii) P.M. Report ☐
- (ix) Birth certificate of deceased ☐
- (x) Salary slip, if employed ☐
- (xi) Certificate of employer ☐

- (xii) Income-Tax return ☐
- (xiii) Prescription slip of doctor ☐
- (xiv) Bill for medical expenses. ☐

3. Verification of above mentioned documents:-

- (i) Driving license Verified ☐
 (to be valid for vehicle being driven)
 If not verified, the reason thereof-----
- (ii) R.C Verified ☐
 If not verified, the reason thereof-----
- (iii) Insurance Certificate Verified ☐
 If not verified, the reason thereof-----
- (iv) Fitness (in case of commercial vehicle) Verified ☐
 If not verified, the reason thereof-----
- (v) Permit (in case of commercial vehicle) Verified ☐
 If not verified, the reason thereof-----
- (vi) MLC Collected ☐
- (vii) Death certificate Verified ☐
 If not verified, the reason thereof-----
- (viii) P.M report Collected ☐
 If not collected, the reason thereof-----
- (ix) Birth certificate of the deceased(s) Verified ☐
 If not verified, the reason thereof-----
- (x) Salary slip Verified ☐

If not verified, the reason thereof-----

(xi) Certificate of employer Verified ☐

If not verified, the reason thereof-----

(xii) Income-Tax return Verified ☐

If not verified, the reason thereof-----

(xiii) Prescription slips of doctor Verified ☐

If not verified, the reason thereof-----

(xiv) Bill for medical expenses Verified ☐

If not verified, the reason thereof-----

4. Whether Detailed Accident Report (DAR) filed with the claim Tribunals within 30 days or not.

(i) Filed ☐

(ii) If not filed, the reason thereof -----

5. DAR shall be accompanied by the following documents:-

- | | | |
|--------|---|--------------------------|
| (i) | Report U/S 173 Cr.P.C. | ☐ |
| (ii) | FIR | ☐ |
| (iii) | MLC | ☐ |
| (iv) | PM Report | ☐ |
| (v) | Photographs | ☐ |
| (vi) | Site Plan | ☐ |
| (vii) | Mechanical Inspection report | ☐ |
| (viii) | Seizure memos | ☐ |
| (ix) | Death Certificate | ☐ |
| (x) | Proof of age of deceased | ☐ |
| (xi) | Occupation and income proof of deceased | ☐ |
| (xii) | Age of the legal representatives of the deceased | ☐ |
| (xiii) | Proof of injuries and expenses in the case of injuries along with affidavit about the verification of the said documents. | ☐ |

6. Whether the driver, owner, claimants and eye-witness have been produced before the Claim Tribunals alongwith the DAR or not.

(i) Produced

- | | |
|---------------|--------------------------|
| * Driver | ☐ |
| * Owner | ☐ |
| * Claimants | ☐ |
| * Eye-witness | ☐ |

(ii) If not produced, the reason thereof in case of

- | | |
|---------------|-------|
| * Driver | ----- |
| * Owner | ----- |
| * Claimants | ----- |
| * Eye-witness | ----- |

7. Whether copy of DAR has been furnished to the concerned insurance company or not.

(i) Furnished ☐

(ii) If not furnished, the reason thereof -----

8. Whether copy of DAR has been furnished to the claimants or not.

(i) Furnished ☐

(ii) If not furnished, the reason thereof -----

9. Whether copy of DAR has been furnished to the Secretary, Delhi Legal Services Authority, Central Office, Pre-Fab Building, Patiala House Court, New Delhi or not.

(i) Furnished ☐

(ii) If not furnished, the reason thereof -----

10. Whether an advance notice has been given to the concerned Insurance Company about the date of filing of the DAR before the Claim Tribunals or not.

(i) Given ☐

(ii) If not given, the reason thereof -----

11. Whether the Claim Tribunal has accepted the Detailed Accident Report or not

(i) Accepted ☐

(ii) If not accepted, the reason thereof -----

12. Has the investigation of the accident been completed within 30 days

Yes ☐

No ☐

If no, the reason beyond his control, such as

(i) Hit & run accident ☐

(ii) The parties reside outside the jurisdiction of the court ☐

(iii) The DL is issued outside the jurisdiction of the court ☐

(iv) The victim has suffered grievous injuries and is still undergoing treatment ☐

(v) Any other
reason(specify).....
.....

13. Whether the IO has approached the claim tribunal for extension of time.

Yes ☐

No ☐

If yes,

(i) Date of extension of time-----

(ii) Period of extension of time-----

14. Whether the IO has complied the points within the extension time

Yes ☐

No ☐

If no, reason thereof -----

Signatures of:-

Investigating Officer_____

Inspector Investigation_____

SHO_____

ACP_____

Addl.DCP-II/C (through Inspector MACT Cell)