IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6626 of 2015 (O & M)
Date of decision: 09.12.2016.

Rajesh .... Petitioner.

Versus

Parmod and others ...... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S SARON
HON'BLE MS. JUSTICE LISA GILL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate
for the Advocates.

Mr. Sandeep Suri, Advocate
for the respondents-National Insurance Company Ltd.,Oriental Insurance Company and United India Insurance Co.

Mr. Vinod Gupta, Advocate for
New India Assurance Company Ltd.

S.S SARON, J.

The petition arises out of an appeal that was filed against an award passed by the learned Motor Accident Claims Tribunal ('MACT' - for short) under the Motor Vehicles Act, 1988 i.e. FAO No.2604 of 2013. The issue in the petition now relates to non-payment or delay in payment of fees to counsel/advocates who represent the nationalized insurance companies i.e. the United India Insurance Co. Ltd; Oriental Insurance Co. Ltd.; New India Assurance Co. Ltd. and National Insurance Co. Ltd., and defend them in this Court and before the Lok Adalats as also appear in Mediation proceedings in cases arising out of Motor Accident Claims. The grievance of the advocates who represent these Insurance Companies is that despite the said companies having formed a common body i.e. General Insurance (Public Sector) Association of India ('GIPSA' - for short) and the said body fixing the fee schedule for payment to the Counsel representing them in this Court, the due fee was not being paid.

A Division Bench of this Court in the present petition on 08.04.2015 passed the following order:-

> "On 10.12.2014, learned Single Judge of this court while disposing of an appeal (FAO No. 2604 of 2013) filed by the claimant (injured of a motor accident) made a reference vide separate order to the following effect:
>
> > "During the hearing of FAO No. 2604 of 2013, this Court issued notice of motion on 19.08.2013 for 21.01.2014, however, none had put in appearance for the Insurance Company - The United India Insurance Company Limited in spite of service, as a consequence of which an order was passed that on account of this non representation delay has been caused in disposing off the appeal. Thereafter not much assistance on behalf of the Insurance Company was forthcoming and as a consequence of which this Court was

constrained to pass orders dated 21.07.2014 and when nothing could materialize, has led to the passing of order dated 12.09.2014. 26 Standing Counsel representing four Insurance Companies (1. United India Insurance Co. Ltd.; 2. Oriental Insurance Co. Ltd.; 3. New India Assurance Co. Ltd. and 4. National Insurance Co. Ltd.) appeared before the Court and brought their plight to the notice of the Court of how the officers and officials of these Companies were circumventing the administration of justice for their personal ends and gains. It has been highlighted during the course of hearing that these General Insurance Companies are for obvious reasons manipulating the guidelines/fee structures approved by GIPSA and under that undue exercise the Counsel were being not properly assisted and thus, intentionally causing delay in the disposal of these matters before the Court and invariably were causing loss to the exchequer of these Companies which mostly are public undertakings. It has been highlighted with much emphasis how the fees and bills of the advocates, who had been representing the Companies in the matters, were not being paid since decades. This unholy nexus and trend assumes greater importance as people in general, who repose faith in promises of financial security made by these Companies in times of their sufferings and injury, were left high and dry. Thus, what was invented as a social welfare has become a tool of exploitation in the hands of these officers of the Companies who are out and out also trying to harm the advocates who are the officers of the Court. It has often been seen that the Counsel who do not toe the line are changed in between the hearings. Thus, the sufferings are increased manifold by the inordinate intentional delay of these Companies and lack of assistance to their Counsel. Since these issues of vital public importance are being faced by almost all the advocates present before the Court for these Insurance Companies, is an impediment and delaying process in the dispensation of justice.

Thus, this Court is pleased to treat this issue as a writ petition and refer it to the Hon'ble Acting Chief Justice for constituting an appropriate Bench to look into the matter so that much relief could come about to the poor litigants."

The said reference has been put up before this Bench to be treated as Public Interest Litigation. Keeping in view the importance of the issue raised in the aforesaid reference, let notice be issued to the following four Insurance Companies for April 28, 2015 :

(1) United India Insurance Co. Ltd. through its Deputy General Manager, SCO No. 123-124, Sector 17, Chandigarh;

(2) Oriental Insurance Co. Ltd. through its Chief Regional Manager, SCO No. 110-111, Sector 17, Chandigarh;

(3) New India Assurance Co. Ltd. through its Deputy General Manager, SCO No. 36-37, Sector 17, Chandigarh; and

(4) National Insurance Co. Ltd. through its Deputy General Manager, SCO No. 332-334, Sector 34, Chandigarh."

A perusal of the above order shows that in consequence of the order dated 10.12.2014 passed by the learned Single Judge in

FAO No.2604 of 2013, the reference was treated as a public interest litigation and notices were issued to United India Insurance Co. Ltd.; Oriental Insurance Co. Ltd.; New India Assurance Co. Ltd. and National Insurance Co. Ltd. All the insurance companies are nationalized companies.

In response, replies have been filed by insurance companies.

Shri R.K. Patlon, Regional Manager, New India Assurance Co.Ltd., Chandigarh in his reply has undertaken to comply with all the fee circulars sent by the Head Office in this regard relating to the payment of legal fee to the advocates. It has been submitted that the fee circular would be implemented in toto.

Mr. Akshay Bhan, Senior Advocate appearing for the advocates whose fee are due and payable by the above mentioned four insurance companies submits that the New India Assurance Co. Ltd. has committed to pay all the fee in terms of its affidavit and they are in the process of doing so.

It has been undertaken by the said Company that as and when the advocates submit their list of cases along with case number, title and file number, the same would be checked and intimation to the concerned advocate would be given within a month. Thereafter, the fee bill would be called from the advocate for the cases in which fee had not been paid and on receiving the fee bill in the unpaid cases, the remaining or balance fee would be released to the counsel within four months from the date of receiving the fee bills in the decided cases. In the pending cases, it has been submitted that half of the fee would be released, if not released within three months from the date of receipt of the bill; besides, in the pending cases where half fee had already been paid, the remaining fee would be paid as per the Schedule after the decision of the case as attached by the advocates claiming their fee with their civil miscellaneous application.

However, according to Shri Akshay Bhan, Senior Advocate, the entire fee is liable to be paid and not in the manner as has been indicated.

The petition as already noticed relates to the payments of fee to the advocates of this Court, who have been representing the Insurance Companies. The grievance of the counsel/advocates is that they have been appearing for the Insurance Companies and defending them in this Court; however, their due fee which is payable is not being paid. Besides, since they had been representing the Insurance Companies, the Benches of this Court had asked them to put in appearance for the Companies wherever their service were incomplete or even where the service was complete but no one appeared for them. They also appeared in Lok Adalats and other forum like Mediation and Conciliation Centres etc. The Insurance Companies have formed a common body i.e. GIPSA consisting of Chairman and board members of the aforementioned four Insurance Companies. The senior most Chairman of the four Insurance Companies is the Chairman of GIPSA. The GIPSA meets from time to time to decide various common issues and matters so as to have some semblance of maintaining uniformity in various aspects like service conditions, payment of claims due, the method of assessment of claims etc. These also includes the drawing up of Schedules for payment of fee to advocates, surveyors, investigators and salaries of the employees of the Insurance Companies. This body has been formed to maintain uniformity amongst the four nationalized Insurance Companies. The decision taken by GIPSA is forwarded to the aforesaid four nationalized Insurance Companies for its implementation. After receiving the Schedule, the Head Offices of the Insurance Companies send these to their Regional Offices for its implementations.

Mr. Akshay Bhan, Senior Advocate appearing for the advocates whose fees are due and payable submits that the advocates representing the Insurance Companies were never apprised of the Schedule relating to payment of fee to the advocates as these were never circulated amongst the advocates. It was during the year 2014 that the said Schedule came to be known as it had been obtained under the Right to Information Act, 2005; besides, it came to light when FAO No.2604 of 2013 was pending before a learned Single Judge of this Court and the issue of non-payment of fee to the advocates representing the Insurance Companies came up. The Schedules issued by GIPSA from time to time regarding the fee payable to the advocates representing the Insurance Companies in Court cases filed by the claimants were not adhered to by the Insurance Companies. It is, therefore, prayed that the Schedule which has been drawn up by the GIPSA, which is an overall body of the Insurance Companies itself for maintaining uniformity should be adhered to and the unanimous decisions taken by the companies should be implemented.

In response, Mr. Sandeep Suri, Advocate appearing for the three Insurance Companies other than New India Assurance Co. Ltd. submits that the Schedules issued by GIPSA from time to time were only for internal consideration and approval. These created no privity of contract between the insurance companies and the advocates, who represented them. It is submitted that the three Insurance Companies that he represents are free to enter into negotiations independently of the Schedules issued by GIPSA for paying the due fee to the advocates. It is submitted that at best, the Schedules issued by GIPSA give the guidelines for the maximum limit of fee that is payable and the Insurance Companies have the liberty to change the Schedule at the local level. It is also submitted that GIPSA is a non-statutory body and its decision are not binding on the Insurance Companies and these are only in the nature of guidelines.

We have given our thoughtful considerations to the contentions of the learned counsel for the parties.

In order to appreciate the controversy, the various Schedules relating to payment of fee to the advocates that have been issued by the Insurance Companies on the basis of fee Schedules fixed by GIPSA from time to time may be noticed in seriatim.

The first schedule which is on record is from the United Insurance Company Ltd. dated 28.02.2005 (Annexure A-1), which relates to revision of fee of advocates/investigators with effect from 01.11.2004. The said schedule/letter is as under:-

> "Reg:- Revision of Fees for advocates/ investigators w.e.f. 1.11.2004.
>
> Enclosed please find herewith HO Tech Deptt. Circular letter No.HO/LMD/230/04 dated 21.02.2005 wherein they have intimated us that the governing board of GIPSA has approved the revised fee schedule of advocates/investigators w.e.f. 1.11.2004 as per detail given therein. You are, therefore, advised to implement the same in your office w.e.f. 1.11.2004 as per the directions of the Head Office.
>
> J.S. Khera
> Encl: as above Asstt. Manager."

In terms of the above, the Head Office, Technical Department had issued a circular dated 21.2.2005 wherein the governing board of GIPSA had approved the revised fee Schedule of the advocates/investigators w.e.f. 1.11.2004.

Insofar as the advocates fee in the High Court is concerned, the same is provided for under Clause (g) and is as follows:-

> "(g) <u>High Court appeal against MACT awards</u>
>
> Fees Payable - Rs.7500/-
>
> where services of Senior advocates are required the fees is to be negotiated and approved by the Regional Manager/Manager at Regional Office."

Mr. Akshay Bhan, Senior Advocate submits that in terms of circular dated 21.02.2005 the standard fee of Rs.7500/- was payable to the advocates irrespective of the number of cases for which the advocate was engaged.

The above circular was followed by the Circular dated 9.1.2009 (Annexure A-2) issued by the United India Insurance Co. Ltd. The said Circular reads as under:-

> "Reg:- Revision of Fees payable to the advocates/ investigators w.e.f. 01.1.2009.
>
> The Governing Board of GIPSA in its meeting held on 23.12.2008 approved the revised fee schedule for the advocates/investigators. It has also been agreed in the meeting that the revised fee schedule will be implemented w.e.f. 01.1.2009 by all Member Companies.
>
> A copy of the revised fee schedule is sent herewith and the same may be implemented w.e.f. 01.1.2009.
>
> Kindly acknowledge the receipt of this letter and confirm the action taken.
>
> Encl: as above Deputy General Manager."

In terms of the above, the fee payable to the advocates/ investigators was revised w.e.f. 1.1.2009. The Governing Board of GIPSA in its meeting held on 23.12.2008 had approved the revised fee Schedule for the advocates/investigators. It was also agreed in the meeting that the revised fee Schedule would be implemented w.e.f. 01.1.2009 by all Member Companies. Copy of the revised fee Schedule to be implemented w.e.f. 01.1.2009 was enclosed.

Clause 'F' of the Circular relates to High Court appeals against MACT awards, which reads as under:-

"F. High Court Appeal Against MACT Awards:

EXISTING	Revised Fees as approved by the GB
Fees Payable Rs.7500/- Where services of Sr. Advocates are required the fees is to be negotiated and approved by the Regional Manager at Regional Office. Multiple cases: No provision	Fees Payable Rs.10,000/- However, the services of senior advocate only have to be utilized for cases involving specific issues of importance or where law point is involved with approval of DGM/GM HO only 10% clerkage & actual/ reasonable expenses may be paid in addition to the fees. Multiple cases 100% for the first case 50% for the second case 10% for rest of the cases

In terms of the above, the fee which was earlier payable to the extent of Rs.7500/- irrespective of the number of cases had now been revised vide circular dated 01.01.2009 to Rs.10,000/-; besides, 10% clerkage and actual/reasonable expenses it was provided may be paid in addition to the fee. A provision was also made for fee payable in multiple cases i.e. 100% for the first case; 50% for the second case and 10% for rest of the cases. This would in fact mainly mean the cases arising out of the same claims transaction or accident.

The third Circular was issued by GIPSA on 18.03.2014 (Annexure A-3). It was addressed to General Manager (Motor TP), Member Companies. The same reads as under:-

> "General Manager (Motor TP)
> Member Companies
>
> Re: Advocate/Investigator's Fees
>
> Dear Sir/s,
>
> This has reference to the various Meetings on the captioned subject on 5th January, 2014 wherein the Revision in Advocates/Investigator's Fees was considered. The matter was placed before the Governing Board of GIPSA in its Meeting dated 26th February, 2014. The Governing Board has approved the revision in Fees as recommended by GMs.
>
> The revised schedule of fees is attached herewith for implementation w.e.f. 1st April, 2014
>
> Yours sincerely,
>
> -sd-
>
> (N.Tobdan)
> Chief Executive
> Encls. As above."

A perusal of the above shows that with reference to various meetings regarding Advocates' and Investigators' fee, the revision in advocates/investigators fees was considered. The matter was placed before the Governing Board of GIPSA in its Meeting dated 26th February, 2014. The Governing Board approved the revision in Fees as recommended by the General Managers of all the four

Insurance Companies. The revised Schedule of fees for its implementation w.e.f. 01.04.2014 was circulated.

Insofar as High Court advocates' fee are concerned, Clause 'F' of the circular is as follows:-

<u>(F) High Court Appeal Against MACT Awards:</u>

(i) Appeals: a) Mumbai & Delhi - Rs.20,000/- b) Other Centres - Rs.15,000/- Plus 10% clerkage and actual/reasonable expenses may be paid in addition to the above fees.
(ii) Multiple cases: First Case @100% Second Case @50% Each additional Case @20%
(iii) Services of senior advocate may be utilized for cases involving specific issues of importance or where law point is involved. Such matters to be decided by individual Member Company on merits of the case
(iv) Retainer's fee: To be deducted by the Companies on individual basis depending upon the requirement.

Mr. Sandeep Suri, Advocate appearing for the Insurance Companies other than New India Assurance Company Ltd. submits that there is no dispute with regard to the circulars dated 01.01.2009 and 01.04.2014. The dispute, however, relates to the circular of 01.11.2004 (Annexure A-1).

Mr. Akshay Bhan, Senior Advocate submits that there are three segments to this circular i.e. half fee being paid, no fee being paid where Counsel put in appearances for the Insurance Companies on the asking of the Court and appearance before the Lok Adalats or Mediation and Conciliation Centre where the matter is referred by this Court.

According to Mr. Sandeep Suri, Advocate for the Insurance Companies, the circular dated 16.03.2005 (Annexure R-3) was issued by the Oriental Insurance Company Ltd. with regard to minutes of meeting held on 16.03.2005. It is mentioned therein that a meeting of officials of the National Insurance Company Ltd., New India Insurance Company Ltd., United India Insurance Company Ltd. and Oriental Insurance Company Ltd. was held on 16.03.2005 at the Regional Office of Oriental Insurance Company Ltd., Chandigarh. The officials who attended the meeting are mentioned. The meeting had been convened to discuss the matter relating to appeals before this Court, State Consumer Disputes Redressal Commission (Punjab, Haryana and UT) and to adopt common legal fee structure to be given to Advocates further to receipt of GIPSA Circular dated 22.11.2004. It was agreed by the representatives of all the Companies that keeping in view the volume of work at High Court, the Schedule as mentioned therein be adopted from 01.04.2005 for the cases allocated. Insofar as the High Court fee is concerned, the Schedule is as follows:-

HIGH COURT APPEALS	A	For appeals filed by claimants appellants against MACT Awards	Rs.5000/- inclusive of all expenses
	B	For appeals filed by company against MACT Awards	Rs.6000/- inclusive of all expenses
	C	For each connected case(s) under A & B.	20% of the applicable schedule as above.

In terms of the above, in appeals filed by the claimants/ appellants against MACT awards, the fee payable was Rs.5000/-

inclusive of all expenses; for appeals filed by the Insurance Companies against MACT Awards, the fee payable was Rs.6000/- inclusive of all expenses; besides, for each connected case(s) of the above, 20% of the applicable Schedule as above.

The dispute, therefore, that now survives is with respect to the first Circular that was issued and according to the advocates, they are liable to be paid Rs.7500/- for each case irrespective of the fact whether the appeal had been filed by the claimants or by the companies; besides, there is no concept of half fee being paid at the time of filing the appeal and the balance fee at the time of disposal of the appeal even as per the Schedule of the Insurance Companies. Moreover, fee is also liable to be paid to the advocates who put in appearances before the Lok Adalats/Mediation Centers as also in cases where notices are accepted on the asking of the Court.

Mr. Sandeep Suri, Advocate, however, submits that this could be changed at the local level. Reference has been made to an E-mail dated 08.12.2014 (Annexure R-1). In terms of the said Circular dated 08.12.2004 (Annexure R-1), it had been intimated that GIPSA had been from time to time assisting its Member Companies in evolving a common Schedule of fees for advocates/ investigators based on the inputs received from various stakeholders. The first such revision in the professional fees of advocates/investigators at GIPSA was done with effect from 01.11.2004. Thereafter it was further revised with effect from 01.01.2009 and then it was again revised with effect from 01.04.2014. It was primarily clarified that the amounts specified in the said Schedules represented only the maximum amount up to which payment of professional fee could be made by the Member Companies to advocates/investigators as per the stipulations indicated therein and the Companies or their offices in a particular location/geography were free to determine the fee lower than the said maximum fee so stipulated in the Schedule, if it was found that such lower amount of professional fee was commensurate with the assignment as also in tune with the prevailing charges in a particular city for similar assignment. However, it was desirable if such a deviation is followed on a uniform basis amongst all the four Member Companies by holding local ICCC meeting and evolving consensus to that effect. It is further mentioned that GIPSA was simply a coordinating mechanism amongst its four member companies for the purpose of facilitating deliberations on matters of common interest and did not have any supervisory or controlling mandate over its member companies.

It is to be noticed that advocates representing the Insurance Companies are professional and they are entitled to charge their fee in accordance with the settlement that is reached at with their clients.

In **RD Saxena v. Balram Prasad Sharama,** (2000) 7 SCC 264, the Supreme Court observed that an advocate must conduct himself at all times in a manner befitting his status as a member of a high and honourable profession. It was held that in the context of recovering his fees, he is not to depart from such standard or behave in a manner which is not fair, reasonable and according to law. The members of the legal profession have a social duty to show the people a beacon of light by their conduct and actions. The poor, uneducated and exploited mass of people, it was observed, need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country. It was held that it is true that an advocate is competent to settle the terms of his engagement and his fee by private agreement with his client but it was equally true that if such fee was not paid he had no right to retain the case papers and other documents belonging to his client. Like any other citizen, an advocate has a right to recover the fee or other amounts payable to him by a litigant by way of legal proceedings but subject to such restrictions as may be imposed by law or the rules made in that behalf.

A Division Bench of this Court in **M/s Rajnish Brothers and others v. Union of India and others**, CWP No.8525 of 1998 decided on 01.02.1999 had granted fee payable to the advocates who were not receiving the same from various statutory bodies. It was noticed that a former Senior Standing Counsel for the Union of India had produced before the Court a photocopy of a communication dated 01.02.1995 issued by the office of Defence Estates, Jalandhar Circle, Jalandhar Cantonment by which he was informed that sanction for the release of payment of an amount of more than Rs.1,40,000/- had been given. However, despite a lapse of four years, the payment had not been made. This Court observed that the facts disclosed by different counsel, disclosed a very sad and sorry state of affairs. It was pointed out by different counsel that the payment of their bills had been held up for more than ten years. Learned counsel had stated that even the bills of Senior Advocates and the advocates who succeeded them had not been paid by the Union of India or the respective State Governments so far. It was also pointed out by the counsel that even the statutory authorities/instrumentalities of the State were not paying the bills of the counsel engaged by them in different cases. In this situation, it was observed that the learned counsel claim and this Court held rightly so that unless the payment was made immediately, they should be entitled to recover the amount along with interest with effect from the date of submission of the bill till its payment. Faced with this situation, learned counsel appearing for the respondents - States of Punjab, Haryana and Chandigarh Administration as also the Union of India prayed that the learned counsel may furnish the list of cases in which the payment had not been made. They stated that necessary payments would be made at the earliest possible without any avoidable delay. It was further stated that the pending bills which were already with the authorities would be processed expeditiously and status reports would be filed before the Court on the next date of hearing. Learned counsel were asked to furnish list of cases in which payments had not been made to the concerned counsel. In the meantime, status reports regarding the bills which had already been submitted were ordered to be prepared and furnished to the Court. The Advocate Generals for the States of Punjab and Haryana were also directed to prepare the lists of Regular First Appeals as also the Letters Patent Appeals relating to land acquisition cases which had been decided by this Court in relation to the respective States during the last twenty five years, in which the payments had not been made to the counsel so far. These lists were ordered to be filed in Court on the adjourned date. The Director, Defence Estates, Ministry of Defence, Western Command, Kendriya Bhawan was directed to appear in Court on the date the case was adjourned to and explain as to why the payment of the bills, for which the sanction was conveyed vide letter dated 01.02.1995 had not been made. The list of cases, in which the payments had not been made was also asked to be submitted. It was further clarified that in respect of local bodies of their being no standing counsel, the list shall be furnished to the respective Executive Officers, who were to ensure that the payments were made without any avoidable delay. In case the needful was not done, the concerned authority, it was held, would be liable to make payments with interest at such rate as may be thought reasonable by the Court at the time of final disposal of the case.

Therefore, the payment of fee by a litigant or a client to his counsel who is engaged by him is a matter between both and they settle their fees on agreed terms. However, where the fee that is due and payable by the client of an Advocate and is not paid, it is not that the advocate can lightly initiate litigation in that regard because of the fiduciary relationship between them. Even otherwise, it is not a pleasant task for an advocate to be litigating against his own client whom he had been helping and pursuing his cause. Therefore, advocates even though they have a right to their fee, seldom indulge in litigation and probably rightly so. Filing of suits by advocates at times, may even be looked down upon and may not be much appreciated in view of the close relationship between the parties. However, this would cast a more onerous responsibility on the litigants or clients particularly like the Insurance Companies to pay the due fee to their advocates for representing them and pursuing their cause. There would always be an obligation on the part of a client of an advocate like the Insurance Companies especially the nationalized Companies to pay and clear the fee that is payable to their advocates. It is for the clients to perform their obligation of payment of fee specially where they are governments, statutory bodies etc., and nationalized Insurance Companies, as in the present case. It is, therefore, an obligation of the Insurance Companies to pay the agreed fee to their advocates who represent them in Court cases. The advocates that represent the Insurance Companies in Court cases are legally entitled to their fee.

The only dispute in the case is that whether an amount of Rs.7500/- per case is payable in terms of the circular dated 01.11.2004 (Annexure A-1). The GIPSA is a Coordinating body which had been formed with the consent of the Insurance Companies. In fact its object is laudable as it maintains uniformity on various aspects amongst the Insurance Companies and even though it is non-statutory in nature but the representatives of each of the Insurance Companies is a part of the decision making process by GIPSA. This gives an element of certainty and would also have a binding effect with respect to the decisions that have been taken. The decisions taken in the GIPSA are not to be lightly brushed aside. The GIPSA had taken a decision on 01.11.2004 to pay fee at Rs.7500/- for each case in which an advocate is engaged. Then the same is not liable to be brushed aside ten years later by taking recourse to an e-mail dated 08.12.2014 (Annexure R-1). The advocates are claiming their due fees on the basis of a Circular issued by GIPSA, which is a coordinating body of all the nationalized Insurance Companies. There is no reason why the own Circular of the Insurance Companies is not adhered to and followed.

We are of the view that the circulars once having been issued by GIPSA providing for payments of counsel fee to the advocates engaged by the Insurance Companies for their Court cases, which also includes the circular dated 01.11.2004, the same would not mean that at the local level, the amount of fee fixed could be readjusted thereafter. Once a decision had been taken by the Insurance Companies to pay a certain fee to the counsel engaged by them, the same is not liable to be curtailed with retrospective effect although in a subsequent engagement the same may be altered or different terms may be settled with the advocates who are engaged in any particular case or cases. However, in the absence of such an eventuality the fee payable on which a decision had been taken is liable to be paid. It is not the case of the Insurance Companies other than the New India Assurance Company Ltd. that the said circular was not adhered to or that its members were not represented in the meeting of the GIPSA, when the decision was taken. Besides, it is to be noticed that there is no provision in any of the Circulars issued by GIPSA for paying the fee at intervals by way of half fee. However, in case such a condition is to be incorporated in the terms for engaging a counsel, the companies may in future, if so advised, enter into such terms with the counsel whom they are engaging and it would be for the advocates to accept those conditions or not. However, at this stage, the advocates, who have been representing the Insurance Companies are claiming what GIPSA had already decided and nothing beyond that. Therefore, we are of the view that the circular dated 01.11.2004 (Annexure A-1) regarding the payment of fee for advocates of the High Court to the extent of Rs.7500/- should be given wherever these have not been given; besides, the fee should be paid in lump sum and in case where part fee has been paid, the balance fee is liable to be paid.

Another important aspect is that many a time the Insurance Companies are served but no one puts in appearance for them may be due to a communication gap. This Court in order to avoid any particular Insurance Company being un-represented or being proceeded against *ex parte* has been asking the Counsel, representing the same Insurance Company whose case is taken up to put in appearance and inform the Company so that it is duly represented. The advocates then appear for the particular Insurance Company may be on the asking of the Court. In case he continues to represent the concerned Insurance Company and no arrangements have been made by it to engage another counsel then it cannot be said that the advocate would not be entitled for his fee as per the Schedule being followed by the Insurance Companies for the payment of fees. The advocates in fact put in appearances on the asking of the Court and the Court is fully justified to do so as the advocates are officers of the Court. The appearances by the advocates avoids the cases of the Insurance Companies being left unattended or undefended. Rather it is in the interest of the Insurance Companies themselves that where a counsel engaged by them has not put in appearance or that it was unable to engage a counsel in time, then instead of it being proceeded against ex parte an advocate, who is already representing them in another case, is asked to appear. As such we feel that there is no justification for declining the payment of due fee as per schedule approved by GIPSA i.e. the schedule dated 01.11.2004. This is more so for the reason that the Insurance Companies have been paying the fee as per the subsequent schedules issued on 01.01.2009 (Annexure A-2) and 01.04.2014 (Annexure A-3). It is further clarified that in case a counsel has put in appearance on the asking of the Court and the counsel then informs the Insurance Companies and thereafter the Insurance Companies engage another lawyer, the fee would be paid to the lawyer, who has put in appearance for the Insurance Companies at the time of final hearing of the appeal. In case half fee has been paid to the counsel, who was engaged, the balance fee would be payable to the counsel, who appeared at the time of final hearing of the case.

Another important aspect is that the cases are referred to the Lok Adalats and/or Mediation Centres on the directions of this

Court. Therefore, where the counsel appear before the Lok Adalat or the Mediation Centre and the matter is settled there, the counsel should be paid the same fee as it payable in the High Court in respect of the matter which are referred by this Court.

The petition is accordingly disposed of and the Insurance Companies shall adhere to the three schedules framed by GIPSA i.e. 01.11.2004, 01.01.2009 and 01.04.2014 and full fee wherever payable shall be paid and balance wherever payable shall be paid. The necessary due payments should be made to all the advocates to whom fee is due and payable as expeditiously as possible after necessary verification and preferably by 30.06.2017 and in case the same is not paid, the amount payable shall entail payment of simple interest at 7 per cent per annum from 01.07.2017 onwards from 08.04.2015, when this Court issued notices to the Insurance Companies.

For the purpose of verification, the counsel shall give the orders disposing of the matters and list of cases.

(S.S SARON)
JUDGE

09.12.2016 (LISA GILL)
A.Kaundal/amit JUDGE

Whether speaking/reasoned : Yes.
Whether reportable : Yes.