$~16

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

\+ CM(M) 1197/2021 & CM APPL. 46815/2021

HDFC ERGO GENERAL INSURANCE CO. LTD. ..... Petitioner

Through: Mr. Sameer Nandwani, Mr. Nikhil, Mr. Sarthak Arora & Ms. Niyati Jadun, Advs.

versus

VIRENDER SINGH & ORS. ..... Respondents

Through: Mr. S. N. Parashar, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **26.02.2024**

1. This petition is invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India and is instituted by the petitioner/Insurance Company, assailing the impugned order dated 04.10.2021, passed by the learned Presiding Officer, MACT-02 (North District), Rohini Court, Delhi in MAC No. 192/2020 titled as 'Virender Singh vs. Kamlesh Kumar Verma'.

2. Mr. S. N. Parashar, Adv., learned *amicus curiae* is present. Respondents No. 4 & 5, who are the driver and the registered owner of the offending vehicle respectively, have not appeared despite notice issued by this Court.

3. This Court shall proceed to decide the present petition. Shorn of

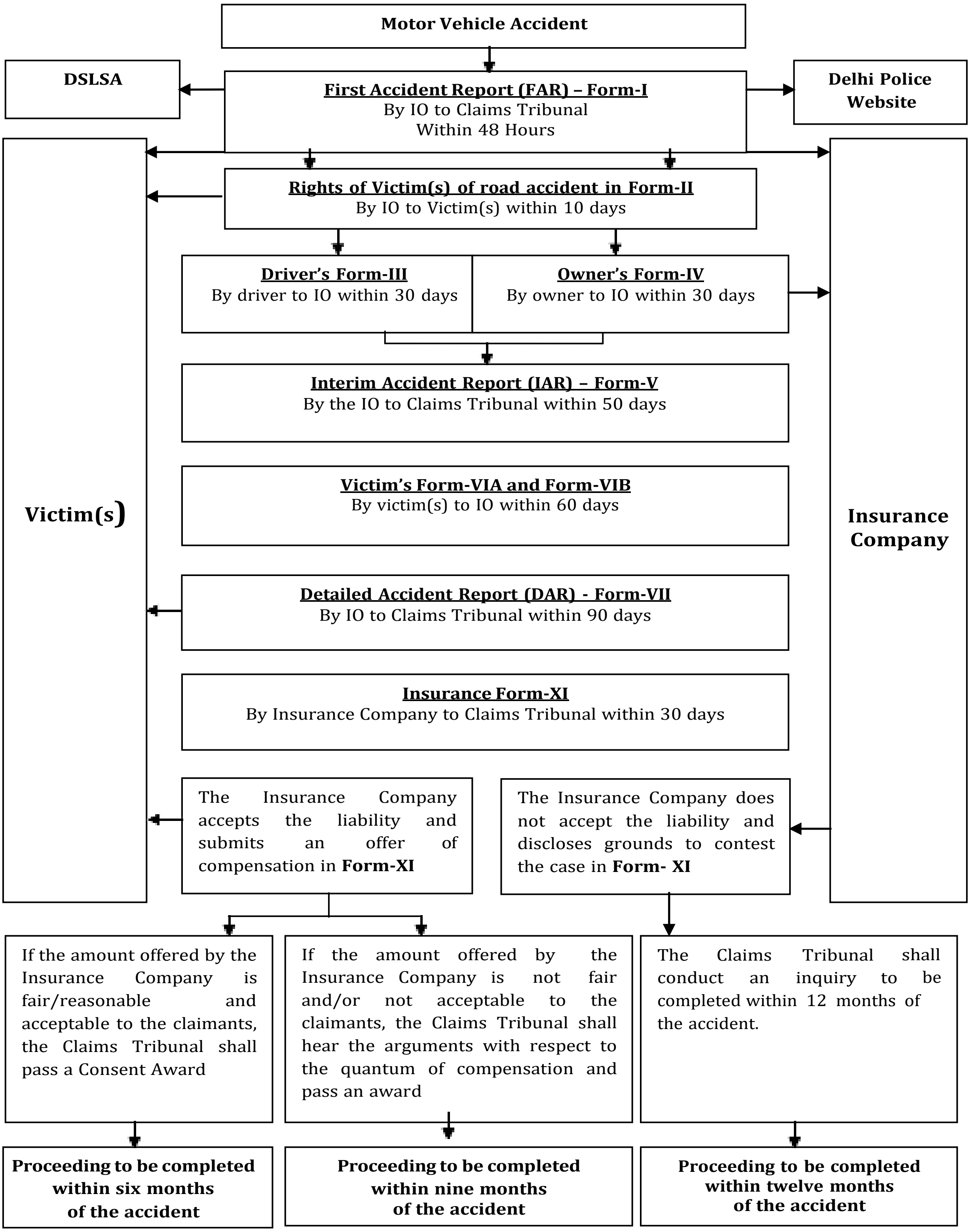
unnecessary details, the claimants have sought compensation under Section 140 & 166 of the Motor Vehicles Act for the death of Smt. Shipa, in a motor accident that occurred on 10.05.2020, involving the offending vehicle No. DL-8SBM-3437 which was being driven by respondent No. 4/Omprakash.

4. Evidently, respondents No. 4 and 5 have not filed their written statements before the learned Tribunal and their defence has already been struck off. Insofar as the present petition is concerned, a plea was taken that although the offending vehicle was insured, the driver was not possessing a valid driving license at the time of the accident, so much so that he was prosecuted under Section 3/181 of the Motor Vehicles Act, besides under Section 185 of the Motor Vehicles Act for driving the vehicle under the influence of alcohol.

5. Learned counsel for the petitioner has urged that despite such facts being apparent in the record, the learned Tribunal has called upon the Insurance Company to submit its legal settlement offer in the instant case.

6. *Ex facie* the impugned order cannot be sustained in law. Reference can be invited to the decision in **Rajesh Tyagi & Ors. vs. Jaibeer Singh & Ors.**, wherein, by virtue of the flow chart provided it is clearly indicated that whenever the Insurance Company does not accept its liability and takes grounds to contest the case in Form 11, the Tribunal is enjoined to commit inquiry which is to be completed within 12 months thereof. It would be expedient to reproduce the flowchart from the judgment in ***Rajesh Tyagi (supra)***:

FLOW CHART OF SCHEME FOR MOTOR ACCIDENT CLAIMS



7. Further, since there was a fundamental breach of the terms and conditions of the Insurance Policy on the part of respondents No. 4 & 5, no liability can be fastened upon the Insurance Company. In this regard, reliance can be placed on the decision of the Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh & Ors.**, **(2004) 3 SCC 297**, the relevant portion of which reads as under:

> "84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major."

8. Accordingly, the impugned order dated 04.10.2021 insofar as it was called upon the petitioner/insurance company to file its legal offer in the pending matter is hereby quashed.

9. Learned Trial Court shall proceed with recording of the evidence of the claimants and decide the matter as per law.

10. Accordingly, the present petition is disposed of along with the pending application.

11. Copy of this order be sent to the learned Trial Court for necessary information and compliance.

DHARMESH SHARMA, J.

FEBRUARY 26, 2024/sa