

S. Rajaseekaran Vs Union Of India & Ors

Court: Supreme Court Of India

Date of Decision: Jan. 8, 2025

Acts Referred: Constitution of India, 1950 – Article 21

Motor Vehicles Act, 1988 – Section 2(12A), 161, 162, 162(2), 164B, 164B(3)(a)

Motor Vehicles (Amendment) Act, 2019 – Section 161(3), 163

Central Motor Vehicles (Motor Vehicle Accident Fund) Rules, 2022 – Rule 11, 11(c), 12

Hon'ble Judges: Abhay S. Oka, J; Augustine George Masih, J

Bench: Division Bench

Advocate: Gaurav Agrawal, Ravi Raghunath, Krishna Kumar, Vikramjeet Banerjee, Mrinal Elkar Mazumdar, Neeraj Kumar Sharma, Indira Bhakar, Mukesh Kumar Verma, Harish Pandey, Shashwat Parihar, Kanu Agarwal, Varun Chugh, Bhuvan Kapur, Vinayak Sharma, Piyush Beriwal, Rajesh Singh Chauhan, Apoorv Kurup, Shreekanth Neelappa Terdal, Gurmeet Singh Makker, R. Bala, Swarupama Chaturvedi, Mukesh Kumar Maroria, Sunita Sharma, Ishaan Sharma, Annirudh Sharma li, Jagdish Chandra Solanki, Viresh B. Saharya, Perna Mehta, Satyajeet Kumar, Astha Sharma, Sanjeev Kaushik, Himanshu Chakravarty, Muskan Surana, Guntur Pramod Kumar, Perna Singh, Samarth Krishan Luthra, Dhruv Yadav, Santosh Kumar - I, Pradeep Misra, Sunny Choudhary, Nitin Lonkar, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Sameer Abhyankar, Rahul Kumar, Aryan Srivastava, Aakash Thakur, Ayushi Bansal, V. N. Raghupathy, Mythili S, Nishe Rajen Shonker, Ruchira Gupta, Tulika Mukherjee, M. P. Vinod, Kishan Chand Jain, Rajesh Kumar, Ashwini Kumar, E. C. Agrawala, Subhasish Mohanty, Azmat Hayat Amanullah, Rebecca Mishra, Anando Mukherjee, Neeraj Shekhar, Rajesh Kumar Maurya, Anand Krishna, Vivek Kishore, K. Enatoli Sema, Limayinla Jamir, Amit Kumar Singh, Chubalemla Chang, Prang Newmai, Rashmi Nandakumar, Yashmita Pandey, Aravindh S., Akshay Gupta, Aadithya Aravindh, D. K. Devesh, M/s Arputham Aruna And Co, Sumit Gupta, Akshay Tiwari, Jaikriti S. Jadeja, Tanya Shrotiya, Raghvendra Kumar, Pranaya Kumar Mohapatra, Deepanwita Priyanka, Prashant Bhagwati, Shishir Deshpande, Rajat Bhardwaj, Baani Khanna, Robin Singh, Pukhrambam Ramesh Kumar, Karun Sharma, Rajkumari Divyasana, Amit Anand Tiwari, Sabarish Subramanian, Devyani Gupta, Vishnu Unnikrishnan, Tanvi Anand, Saushria Havelia, Danish Saifi, Shantanu Sagar, Prabhat Ranjan Raj, Anil Kumar, Gunjesh Ranjan, Keshav Khandelwal, V. Shyamohan, Sanjay Jain, Swati Ghildiyal, Devyani Bhatt, Sneha Menon, Avijit Mani Tripathi, T.K.Nayak, Marbiang Khongwir

Judgement

Abhay S. Oka, J

1) By this order, we are dealing with the issue of cashless treatment for the victims of motor vehicle accidents. Section 162 of the Motor Vehicles

Act, 1988 (for short, "the MV Act") was brought into force from 1st April 2022. Section 162 reads thus:

"162. Scheme for golden hour. –

(1) Notwithstanding anything contained in the General Insurance Companies (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being

in force or any instrument having the force of law, the insurance companies for the time being carrying on general insurance business in India shall provide in

accordance with the provisions of this Act and the schemes made under this Act for treatment of road accident victims, including during the golden hour.

(2) The Central Government shall make a scheme for the cashless treatment of victims of the accident during the golden hour and such scheme may contain

provisions for creation of a fund for such treatment.

(emphasis added)

To understand the object of the scheme for the golden hour, it is necessary to consider the definition of the golden hour in Section 2 (12-A), which

reads thus:

“(12-A) “golden hour” means the time period lasting one hour following a traumatic injury during which there is highest likelihood of preventing death by

providing prompt medical care.”

As can be seen from the definition, the one hour following a traumatic injury suffered in a motor accident is the most crucial hour. In many cases, if

required medical treatment is not provided within the golden hour, the injured may lose his life. Section 162 is crucial in the present scenario where

motor accident cases are ever-increasing.

2) In 1989, in the case of *Parmanand Katara v. Union of India and Ors* (1989) 4 SCC 286, this Court observed that every injured citizen brought

for medical treatment to a hospital should be instantaneously given medical aid to preserve life. Thereafter, the procedural criminal law should be

allowed to operate in order to avoid death.

3) When a person gets injured in a motor accident, his near and dear ones may not be around. Therefore, there is no one to help him. However, the

injured person must receive the required medical treatment in the golden hour, since it is essential for his survival. Every human life is precious.

Despite this, we find that the treatment needed in the golden hour is denied due to various reasons. The hospital authorities sometimes wait till the

arrival of the police. They are always worried about the payment of charges for the treatment, which in a given case can be on higher side. That is a

reason why Sub-Section (1) of Section 162, which starts with a non-obstante clause, provides that the insurance companies carrying on general

insurance business in India shall provide for the treatment of road accident victims, including during golden hour in accordance with the scheme made

under the MV Act.

4) It is the obligation of the Central Government under Sub-Section (2) of Section 162 to make a scheme for cashless treatment of accident victims

during the golden hour. It is provided that such a scheme may contain provisions for creating a fund for such treatment. Simultaneously with Section

162, Section 164-B was brought on the statute book. Section 164-B reads thus:

“164-B. Motor Vehicle Accident Fund :-

(1) The Central Government shall constitute a Fund to be called the Motor Vehicle Accident Fund and thereto shall be credited—

(a) payment of a nature notified and approved by the Central Government;

(b) any grant or loan made to the Fund by the Central Government;

(c) the balance of the Fund created under scheme framed under Section 163, as it stood immediately before the commencement of the Motor Vehicles (Amendment)

Act, 2019; and

(d) any other source of income as may be prescribed by the Central Government.

(2) The Fund shall be constituted for the purpose of providing compulsory insurance cover to all road users in the territory of India.

(3) The Fund shall be utilised for the following, namely :—

(a) treatment of the persons injured in road accidents in accordance with the scheme framed by the Central Government under Section 162;

(b) compensation to representatives of a person who died in hit and run motor accident in accordance with schemes framed under Section 161;

(c) compensation to a person grievously hurt in a hit and run motor accident in accordance with schemes framed under Section 161; and

(d) compensation to such persons as may be prescribed by the Central Government.

(4) The maximum liability amount that shall be paid in each case shall be such as may be prescribed by the Central Government.

(5) In all cases specified in clause (a) of sub-section

(3), when the claim of such person becomes payable, where amount has been paid out of this Fund to any person, the same amount shall be deductible from the claim

received by such person from the insurance company.

(6) The Fund shall be managed by such authority or agency as the Central Government may specify having regard to the following:—

(a) knowledge of insurance business of the agency;

(b) capability of the agency to manage funds; and

(c) any other criteria as may be prescribed by the Central Government.

(7) The Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts of the Fund in such form as may

be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(8) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(9) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Fund under this Act shall have

the same rights, privileges and authority in connection with such audit of the Government accounts and, in particular, shall have the right to demand the production

of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(10) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the

audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of the

Parliament.

(11) Any scheme framed under sub-section (3) of Section 161, as it stood immediately before the commencement of the Motor Vehicles (Amendment) Act, 2019, shall

be discontinued and all rights and liabilities accruing thereunder shall be met out of the Fund with effect from the date of commencement of this Act.

(emphasis added)

Sub-Section 3(a) of Section 164-B provides that the motor vehicle accident fund can be utilised to treat persons injured in road accidents in

accordance with the scheme framed under Section 162(2) for cashless treatment of accident victims during golden hour.

5) Central Motor Vehicles (Motor Vehicle Accident Fund) Rules, 2022 were framed to give effect to Section 164-B of the MV Act. Rule 11 deals

with the utilisation of components of the motor vehicle accident fund. Rule 12 provides for disbursement of motor vehicle accident fund for cashless

treatment. Thus, by amending the MV Act, a fund has been created that will be available to provide cashless treatment in golden hour in accordance

with Section 162 of the MV Act. However, the enactment of Section 164-B and the Central Motor Vehicles (Motor Vehicle Accident Fund) Rules,

2022, will serve no purpose unless the Central Government comes out with a scheme under Sub-Section (2) of Section 162.

6) Along with an affidavit dated 5th April 2024, the Central Government has placed on record a draft concept note prepared by the Ministry of Road

Transport and Highways of the Government of India. However, no such scheme has been brought into existence. Learned counsel appearing for the

applicant in IA No. 202442 of 2023 has expressed several concerns about the contents of the concept note. He pointed out that the concept note

provides for payments of a maximum amount of Rs.1,50,000/-under the scheme. According to him, the concept note states that under the scheme,

treatment will be given for only seven days. We find that these two concerns must be addressed while framing the scheme. The scheme must be such

that it serves the object of saving lives by providing immediate medical treatment in the golden hour.

7) Thus, the scenario which emerges is that Section 162, which incorporates the obligation on part of the Central Government to make a scheme for

cashless treatment of victims of accidents during the golden hour and Section 164-B, which provides for the creation of motor vehicle accident fund,

were brought on the statute book from 1st April 2022. However, the scheme, as contemplated by Sub-Section (2) of Section 162, has not seen the

light of the day. As pointed out earlier, a motor vehicle accident fund has been created to provide treatment during golden hour in terms of Sub-Section

(2) of Section 162, but the scheme does not exist. Under the Rules framed by notification dated 25th February 2022, in particular, Rule 11(c), it is

provided that the GI Council shall administer the hit and run compensation amount from the motor vehicle accident fund under the supervision of the

Trust. Rule 12 lays down a complete mechanism for disbursement from the fund for cashless treatment. We may also note here that the scheme is to

be implemented by insurers as provided by Sub-Section (1) of Section 162.

8) The provision made in Section 162 for framing a scheme for providing cashless treatment in the golden hour seeks to uphold and protect the right to

life guaranteed by Article 21 of the Constitution. Moreover, it is a statutory obligation of the Central Government to frame the scheme. More than

reasonable time was available to the Central Government to frame the scheme under Sub-Section (2) of Section 162. Once the scheme is framed and

its implementation starts, it will save the lives of several injured persons who succumb to injury simply because they do not receive requisite medical

treatment during the golden hour. We, therefore, direct the Central Government to make a scheme in terms of Sub-Section (2) of Section 162 of the

MV Act as expeditiously as possible and, in any event, by 14th March 2025. No further time shall be granted. A copy of the scheme shall be placed

on record on or before 21st March 2025, together with an affidavit of the concerned officer of the Ministry of Road Transport and Highways

explaining the manner in which the scheme will be implemented.

9) To consider the affidavit, the petition shall be listed on 24th March 2025 at the end of the list.

10) We must also look into the implementation of directions contained in the order dated 12th January 2024. The learned counsel appearing for the

applicant in IA No. 71387 of 2023 has placed on record the data of hit and run scheme up to 31st August 2024. The data shows that between 1st

April 2024 and 31st August 2024, 1662 claimants received compensation under the scheme, but 1026 claims remain pending.

11) The learned senior counsel appointed as amicus curiae has stated that a meeting was held by Shri Ravi Raghunath, the advocate assisting him,

with officers of GIC and its advocate. In the meeting, GIC agreed to process the claims under the scheme for hit-and-run accidents based on seven

documents mentioned in the note submitted by Shri Ravi Raghunath, advocate. The seven documents are as follows:

1. Copy of FIR
2. Copy of Post Mortem Report/ Injury Report
3. Copy of Death Certificate
4. A copy of the Bank passbook/ Bank Statement of the Claimants, which gives details regarding the name of the bank, IFC Code, branch, etc.
5. Copy of ID proof of the claimant
6. Copy of ID proof of the victim
7. Any amount received due to cashless treatment as per Clause 22(2) of the scheme.

We direct GIC to process the claims on the basis of the documents mentioned above. It is pointed out in the note that 921 claims were pending as of

31st July, 2024, as there were deficiencies in the documents submitted. GIC, in coordination with the concerned claim settlement officer, should

contact the claimants and ensure that major deficiencies are cleared so that the claims can be processed.

12) As far as the portal to be developed by GIC is concerned, it is a work in progress. GIC must complete the work at the earliest so that it becomes

easier for the authorities to upload the documents on the portal. The portal can provide for informing the concerned States about the deficiencies in the

documents. If the States are informed about the deficiencies, the victims can get information on the delay in processing the claim. We direct GIC to

complete the work of setting up the portal at the earliest and report compliance to this Court about the work done by 14th March 2025. Further

direction can be issued on the next date after considering the response of GIC. List the petition for directions for reporting compliance with this order

on 24th March 2025.