

Sujata Deb (Gupta) Vs State of Tripura and Another

Court: Gauhati High Court (Agartala Bench)

Date of Decision: Oct. 19, 2012

Acts Referred: Evidence Act, 1872 â€” Section 165

Motor Vehicles Act, 1988 â€” Section 146, 158, 158(6), 160, 166(1)

Penal Code, 1860 (IPC) â€” Section 279, 338, 429

Citation: (2013) 1 GLD 632 : (2013) 2 GLT 377

Hon'ble Judges: Utpalendu Bikas Saha, J; Subhasis Talapatra, J

Bench: Division Bench

Advocate: D.P. Kundu, AG, Mr. N.C. Pal and Ms. R. Guha, for the Respondent

Final Decision: Allowed

Judgement

Subhasis Talapatra, J.

This petition pro bono publico has been filed by Smt. Sujata Deb (Gupta), a practicing lawyer, having persuaded by

the glaring inaction of the Officer-in-charges of various police stations spread over the State of Tripura as regards forwarding of the report u/s

158(6) of the M.V. Act, 1988 to the respective claims Tribunal having jurisdiction and to the concerned insurer and the owner within 30(thirty)

days of receiving the information relating to any road traffic accident involving death or bodily injury to any person, with definite reference to the

direction of the Apex Court as rendered in General Insurance Council and Others Vs. State of Andhra Pradesh and Others, and Jai Prakash Vs.

National Insurance Co. Ltd. and Others, wherein specific directions were given to the Chief Secretaries and the Director Generals of Police of all

the States and the Registrar Generals of all High Courts for compliance of the provision of Section 158(6) of the M.V. Act, 1988. The petitioner

further submitted that the purpose of such direction was to ensure that all accident victims get compensation as envisaged in the M.V. Act. In para-

6 of the petition it has been asserted that the petitioner has some sad experiences as confronted by the unfortunate accident victims:

In some cases after so many years the accidental victims or their family came to know that they can get compensation.

Had the respondents complied the statutory directions as contained in the Section 158(6) of the Motor Vehicles Act and the direction contained in

General Insurance Council (supra) and Jay Prakash (supra) the distress and immense hardships persons of that category had suffered or have to

suffer would not have confronted such sub-human trappings of life. The petitioner sought a direction on all the Officers-in-charge of the police

stations as represented by the Director General of Police (the respondent No. 2) for forwarding the accident information report as provided in

Section 158(6) of the M.V. Act to the respective accident Claims Tribunal having jurisdiction and the copy thereof to the insurer and the owners

concerned within a period of 30 days from the receipt of such information without fail.

2. In response to this allegation of non compliance, the State respondents filed the reply stating that as per order dated 7.3.2012 as passed by this

Court a letter from the office of the Director General of police, Tripura was issued on 07.03.2012 to all the Superintendents of police of all the

districts of the State to furnish the compliance report in terms of the provision u/s 158(6) of the M.V. Act, 1988. All the Superintendent of Police

sent their reply regarding the status of the compliance. In Para-8 of the reply the respondent No. 2 stated that:

8. *** Data have been obtained from the In-charge of every police station of 8 (eight) Districts through the concerned District Superintendent of

Police (for short SsP) as to how many accidents took place within the jurisdiction of each police station since 01.01.2010 and among them, in how

many cases, the officer-in-charge had forwarded the copy of the said information report to the tribunals and also issued the copy of the said report

to the concerned insurer as well as the owner of the vehicle. On perusal of the reports, from District SsP, it is found that in most of the cases the

concerned Officer-in-charge had forwarded the copy of the accident information report to the concerned tribunals and also issued the copy of the

said report to concerned insurer as well the owner of the vehicle. In some cases, where after verification it is found that the case is not true or the

offending vehicle could not be identified, the officer-in-charge had not sent the report. The details of quantified data collected from each Officer-in-

Charge of every police station of Tripura through District SsP are as follows:

9. The North District vide their communication dated 07.05.2012 has informed that in the year 2010, 67 cases have been reported as accidents

among which 64 case reports were sent to the MAC Tribunal and same number of reports were sent to the insurance company as well as to the

respective owner of the vehicle. In the year 2011, 68 accident cases were reported in the North District. Among which 66 cases were reported to

the Motor Accident Claims Tribunal (for Short MAC Tribunal) as well as the insurance company and the respective owner of the vehicle. In the

year 2012 till 07.05.2012 total 17 number of cases have been reported among which report of 14 cases have been sent to the MAC Tribunal as

well as insurance company and the owner of their respective vehicle. The explanation regarding the numbers of non-reported accidents are as

follows:-

(i) In 2010 report of 1 case of Dharmanagar P.S. was not sent to MAC Tribunal because during the investigation it transpired that the case does

not fall under RTA. Similarly in 2012, 2 cases under Dharmanagar P.S. have not been sent because offending vehicles are yet to be seized.

(ii) In Panisagar P.S. in 2010 report of 1 case was not sent because the cases ended in final report and in 2011, 2 cases of Panisagar P.S. was not

reported because the vehicle could not be traced.

(iv) In 2010 report of 1 case under khedacherra P.S. was not sent because the case ended in final report.

(v) In 2012 report of 1 case under Churaibari P.S. was not sent because the case does not fall under RTA.

3. It has been further asserted in the said reply that:

10. In the year 2010 total 45 cases were reported as accident to their concerned Police Station in the District of Unakoti. As per the fax message

sent by Additional Superintendent of Police for Superintendent of Police dated 24.05.2012 it reflects that in all the 45 cases reports were sent to

the MAC Tribunal, Insurance Company and to the owner of the respective vehicle. In the year 2011, 42 cases were reported as accidents and in

all of them reports were sent to MAC Tribunal, Insurance Company and the owner of the respective vehicle. In the year 2012 till 31.03.2012 total

16 cases have reported as accidents and police reports were sent to MAC Tribunal, Insurance Company and owner of the respective vehicle in all

the cases. The Unakoti district does not have any report pending to be sent as Section 158(6) of the Act.

11. As per fax message dated 09.05.2012 of Superintendent of Police, Dhalai District total 172 accident cases were reported from 01.01.2010 till

09.05.2012. Reports of all the 172 cases were sent to the MAC Tribunal, Insurance Company and respective owner of the vehicle.

12. As per fax message dated 26.05.2012 from the Superintendent of Police, Khowai it is evident that total 147 cases have been reported as

accident from 01.01.2010 to till 26.04.2012. All 147 case reports were sent to MAC tribunal, 123 reports were sent to the insurance company

and 147 reports were sent to the respective owner of the vehicle. There are 24 case report which are remaining and needs to be sent to the

insurance company. From the fax message of the Superintendent of Police, Khowai it also reveals that the pending 24 cases are being processed

for intimating the concerned insurance company. The aforementioned process is likely to be completed within 31st May, 2012.

13. As per the report of Superintendent of Police, West Tripura district dated 14.05.2012 total 598 Motor Accident Cases were reported to their

concerned police station from 01.01.2010 to 24.04.2012. Among which reports of 578 cases were sent to the MAC Tribunal, 521 reports were

sent to the insurance company and 577 reports were sent to the owner of the concerned vehicle. Superintendent of Police, West Tripura gave the

following explanations for not sending report to the Motor Accident Tribunal or owner of the concerned vehicle or Insurance Company.

i. Reports of total 37 cases of West Agartala P.S. could not be sent to the Insurance Company due to non-availability of Insurance Certificate.

ii. Report of 1 case under Budhjanagar and 2 cases under Sidhai P.S. 1 case under Srinagar P.S. and 2 cases under Ranirbazar P.S. i.e. total 6

cases, could not be sent to the Insurance Company because the cases are under investigation.

iii. Reports of total 14 cases under Jirania P.S. could not be sent to Insurance Company because those vehicles did not have insurance coverage.

iv. Reports of 8 cases under Radhapur P.S. could not be sent to the Insurance Company because Insurance Certificate are not available.

v. Reports of 12 cases under Amtali P.S. could not be sent to the Insurance Company because vehicles could not be detected.

vi. Reports of 20 cases could not be sent to the MAC Tribunal because vehicles could not be traced.

vii. Similarly reports of 21 cases could not be sent to the owners because vehicles could not be traced.

14. As per fax message dated 24.05.2012 from Superintendent of Police Sepahijala district total 294 cases were reported as accidents from

01.01.2010 to 23.05.2012. Reports of all the 294 cases were sent to MAC Tribunal, Insurance Company and owner of the concerned vehicle.

15. As per the report dated 14.05.2012 of Superintendent of Police, Gomati District total 310 accidents took place from 01.01.2010 to

14.05.2012. Total 308 case reports have been sent to the MAC Tribunal as well as Insurance company along with the owner of the concerned

vehicle. Superintendent of Police, Gomati District gave the following explanations for not sending reports of 2 cases to the Motor Accident

Tribunal or owner of the concerned vehicle or Insurance Company:

(A) During investigation of R.K. Pur P.S. Case No. 459/11 u/s 279 /338 IPC it revealed that it was not a case of RTA. The victim fell from a tree

in house and received injuries. I/O submitted RR as misstate of fact in this case.

(B) Report of Killa P.S. Case No. 2 of 2012 u/s 279 /429 IPC was not sent to MAC Tribunal because identify of the offending vehicle is yet to

be established. In this case one cow died allegedly being dashed by unknown vehicle.

16. As per fax message dated 26.04.2012 by the Superintendent of Police, South Tripura it appears that 246 cases of accidents have been

reported in the south Tripura District from 01.01.2012 to 20.04.2012.

Reports of all the 246 cases have been sent to the MAC Tribunal, Insurance Company as well as the owner of the concerned vehicle.

4. In a nutshell, by the said reply respondent No. 2 denied the allegation of inaction. This Court by the order dated 07.03.2012 asked for as under:

The respondent No. 2, the Director General of Police of Tripura may call for information in this regard and furnish a report to his Court. The

Registrar of this Court may call for similar reports from the Motor Accident Claims Tribunal in the State of Tripura.

After receipt of the reply this Court passed the order dated 16.04.2012, where it has been observed:

It appears from the record that in terms of the order, dated 7.3.2012, the Director General of Police, Tripura, has submitted his report. The

learned Tribunals have also submitted their respective reports.

Upon going through the report of the Director General, we are of the considered opinion that the specific information sought for by this Court.

In view of the above, the Director General of Police, Tripura, the respondent No. 2 herein, is directed to obtain information from the Officer-in-

charge of every police station, inter alia, as to how many accidents took place within the jurisdiction of each police station since 1.1.2010 and

among them, in how many cases, the officer-in-charge had forwarded the copy of the accident information report to the Tribunals and also issued

the copy of the said report to the concerned Insurer as well as the owner of the vehicle and submit a fresh report by way of an affidavit within

28.05.2012.

By the order dated on 28.05.2012 this Court clarified that in the order dated 16.04.2012 a part of the order was not printed and that portion

would be read in conjunction with the printed part:

Upon going through the report of the Director General, we are of the considered opinion that the specific information sought for by this Court was

not made available in the report by the Director General of Police.

The order dated 16.04.2012 is to be read with the order dated 28.05.2012. On 29.05.2012 on the basis of those reports respondent No. 2 filed

the affidavit. On 04.06.2012 this Court was constrained to observe that:

In terms of the order dated 28.05.2012 of this Court, the Director General of Police, Tripura, Agartala has filed an affidavit wherein he mentioned

that in all the Districts, the Police Stations informed the accidents took place from 01.01.2010 till the date. Accident Information Reports (AIR)

have been sent to the concerned Motor Accident Claims Tribunal, Insurance company and the owner of the offending-vehicle.

We have examined the affidavit and on conjoint reading the report of the Motor Accident Claims Tribunal, submitted to the Registrar of this Court

and the Affidavit of the Director General of Police, Tripura, Agartala, it appears that there are major discrepancies. Thus, the Registrar, of this

Court, is directed to send a copy of the affidavit filed by the Director General of Police to the Motor Accident Claims Tribunal for furnishing a

fresh report after going through the affidavit filed by the DGP, Tripura, along with the photocopies of the accident information report registers to

the Registrar of this Court and the entire exercise shall be completed within a month from today.

The respective Tribunals submitted their reports within the time as stipulated in the order dated 04.06.2012 and thereafter those reports were

made available to the respondent No. 2. But there had been no supplementary affidavit as regards the statements as furnished by the Accident

claims Tribunals.

5. We have heard Ms. S. Deb (Gupta), petitioner in person who stated that the affidavit filed by the respondent No. 2 is not at all reliable as the

averments made therein are at variance with the registers of motor Accident Information Reports of the respective years and those are stage

managed to mislead this Court. This speaks volumes about the conviction and commitment of the police administration and in-charges of the police

station in particular. It further appears that the superior authorities are also equally insensitive to the motor accident victims. Such inaction as

unfolded ultimately strikes at the root of the legislative object as found eloquence in the provisions of Section 158(6) of the M.V. Act. This Court

should take a serious view of this conduct and pass appropriate order to achieve the legislative object as stated and to wipe out tears of the

accident victims. Ms. S. Deb (Gupta) the petitioner in person, has taken aid from the reports, which are supported by the photocopies of the

accident information register filed by the Accident Claims Tribunal. She has referred in particular the report furnished by the Motor Accident

Tribunal, South Tripura:

(a) Till the date of 23.03.2012 i.e. the first report of the undersigned submitted before the Hon"ble High Court, the Motor Accident claims

Tribunal, Udaipur and the motor Accident claims Tribunal, Belonia received only 77 information from police stations. After that, this Tribunal has

received a huge number of information of motor accidents from different police stations of Gomati Administrative District and the number has

reached to 302 as on 28.05.2012 i.e. the day of swearing affidavit by the Director General of Police, Tripura. And, it is clear that after

23.03.2012 i.e. the date of information furnished by the undersigned to the Hon"ble High Court, different police stations have submitted

information of accident of the year, 2010, 2011 and 2012. For example, Birganj P.S. Case No. 14 of 2010, the date of accident is 25.03.2010

and the Officer-in-charge of Birganj P.S. signed on the report on 08.05.2012; Birganj P.S. Case No. 29/2010 of which the date of accident is

24.02.2010 and the officer-in-charge of Birganj P.S. signed on the report on 08.05.2012 and R. K. Pur P.S. Case No. 325/2010 of which the

date of accident is 06.09.2010 and the Officer-in-Charge signed on the report on 22.04.2012. As such, it is clear that police stations not used to

submit report of all the cases to the Tribunal.

(b) It appears from the above captioned 3 reports that copy of information have been supplied to the Insurance Co. and owner of the offending

vehicle. Prior to that, although this Tribunal received 77 information from different police stations, but in most of the cases information was not

supplied to the Insurance Co. and the owners of the offending vehicles. Such as, Sabroom P.S. Case No. 57/2011, subsequent case No. T.S.

(MAC) 137/2011; Manubazar P.S. Case No. 6/2011, subsequent Case No. 22/2011 and Manubazar P.S. Case No. 5 of 2011, Subsequent

Case No. T.S. (MAC) 25/2011, as the information reports do not disclose that information was supplied to the Insurance co. and the owner of

the offending vehicles.

I enclose herewith the photo copy accident information reports of Birganj P.S. case No. 14 of 2010, Birganj P.S. Case No. 29 of 2010 and R. K.

Pur P.S. case No. 325 of 2010 as Annexure-"A" series and Sabroom P.S. Case No. 57 of 2011, Manubazar P.S. Case No. 6 of 2011 and

Manubazar P.S. Case No. 5 of 2011 as Annexure-"B" series.

(c) With effect from 01.01.2010 to 28.05.2012, this Tribunal has instituted 143 cases on the basis of police reports. However, those cases have

been entered in a common register with other cases instituted on the basis of petition filed by the claimant petitioners. It is a fact that, this Tribunal

has not yet instituted specific case of all the police reports received because very recently this Tribunal has received a huge number of information

of accident of the year 2010, 2011 and 2012. However, the registration process is going on.

(d) This Tribunal could not institute specific case on the basis of 19 nos. of police reports because of insufficient name and address of the

injured/deceased.

(e) On the basis of a specific circular and a judgment circulated by the Hon"ble High Court, a separate register has been opened w.e.f. 3rd July,

2012 by registering Misc. Case of the accident information reports. Photo copy of the register is enclosed herewith as Annexure-"C" series.

6. Mr. D. P. Kundu, learned Advocate General, Tripura has made a statement that from a conjoint reading of the reports of the Superintendents of

Police and the Accident Claims Tribunals it has emerged that the officers-in-charge of the police station did not take required action for forwarding

Accident Information Report within a month as provided in Section 158(6) of the M.V. Act. He candidly submitted that henceforth the State will

not spare any stone unturned for compliance of the statutory prescription as provided u/s 158(6) of the M.V. Act as well as the directions of the

Supreme Court in their letter and spirit.

7. For appreciation of the respective submissions of the counsel appearing for the parties it would be beneficial if the Section 158(6) of the M.V.

Act which has been incorporated by the Amendment Act 54 of 1994, be reproduced:

158(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is

completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of

recording of information or as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the

concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to

such Claims Tribunal and Insurer.

The said Section 158(6) has acquired a greater importance in the statute in view of Section 166(4) of the M.V. Act, which provides as under:

166(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for

compensation under this Act.

Section 166(4) of the M.V. Act has given authority and jurisdiction on all the accident claims tribunal to treat the accident information report as an

application for compensation under the M.V. Act for purpose of inquiry and determination of just and proper compensation as required u/s 168 of

the M.V. Act, 1988.

8. The Apex Court in General Insurance Council (supra) has elaborately dwelled upon this issue while a writ petition seeking direction to the

various State Governments and the Union Territories to ensure that the mandate of Section 158(6) of the M.V. Act, 1988 is complied with without

exception. For purpose of achieving the legislative object as stated, Rule 150 of the Central Motor Vehicles Rules, 1989 provides as under:

150. Furnishing of copies of reports to claims Tribunal.--

(1) The Police report referred to in sub-section (6) of Section 158 shall be in Form 54.

(2) A registering authority or a police officer who is required to furnish the required information to the person eligible of claim compensation u/s

160, shall furnish the information in Form 54, within seven days from the date of receipt of the request and on payment of a fee of rupees ten.

For purpose of the further reference the Form-54 as provided under Rule 150 of the Central Motor Accident Rules, 1989 is reproduced

hereunder:

FORM 54

[See Rules 150 (1) and (2)]

Accident Information Report

1. Name of the police station:
2. CR No./Traffic accident report:
3. Date, time and place of the accident:
4. Name and full address of the injured/deceased:
5. Name of the hospital to which he/she was removed:
6. Registration number of vehicle and the type of the vehicle:
7. Driving licence particulars:
 - (a) Name and address of the driver:
 - (b) Driving licence number and date of expiry:
 - (c) Address of the issuing authority:
 - (d) Badge No. in case of public service vehicle:
8. Name and address of the owner of the vehicle at the time of the accident:
9. Name and address of the insurance company with whom the vehicle was insured and the particulars of the Divisional Officer of the said insurance company:
10. Number of insurance policy/insurance certificate and the date of validity of the insurance policy/insurance certificate:
11. Registration particulars of the vehicle (class of vehicles):
 - (a) Registration No.:
 - (b) Engine No.:
 - (c) Chassis No.:
12. Route permit particulars:
13. Action taken, if any, and the result thereof:

The object of the Section 158(6) of the M.V. Act, 1988 is also to weed out the false claim petitions filed in the Tribunal, which has become a

menace by design of the unscrupulous persons. Apart that, the delayed submission of the claim petition does sometimes cause serious predicament

both in inquiry and in determination of the just compensation.

9. The Apex Court in General Insurance Council (supra) has held as under:

8. Use of the expression "as soon as" implies that there has to be promptitude in action. To do a thing "as soon as possible" means to do it within a

reasonable time, with an understanding to do it within the shortest possible time. [Per Dysant, J. in King's Old County Ltd. v. Liquid Carbonic

Can. Corporation Ltd. (1942) 2 WWR 603]. "As and when" and "as soon as" are almost synonymous. Whenever these expressions are used in

respect of time and place, they denote contemporaneous notion. "As soon as" and "forthwith" both are to be normally understood as allowing

reasonable time, but latter is more peremptory than the former. But urgency is the hallmark of both expressions. Expression "as soon as" may be

stretched to mean "as soon as" practicable. It has to be forwarded with promptitude.

9. Since there is a mandatory requirement to act in the manner provided in Section 158(6) there is no justifiable reason as to why the requirement

is not being followed.

In this backdrop and interpretation as provided in General Insurance Council (supra) the Supreme Court formulated the direction in the following

terms:

10. It is, therefore, directed that all the State Governments and the Union Territories shall instruct, if not already done, all police officers concerned

about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54. Periodical

checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is

noncompliance, appropriate action shall be taken against the erring officials. The Department of Transport and Highway shall make periodical

verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the concerned State

Governments/Union Territories so that necessary action can be taken against the officials concerned.

10. Later on similar issue had fallen for consideration by the Apex Court in Jay Prakash (supra) where the Apex Court deliberated on the

provision of Section 158(6) and Section 166(4) of the M.V. Act, 1988 as well as on Rule 150 of the Central Motor Vehicles Rules, 1989 and

approved the direction of the General Insurance Council (supra) in para 11. Thereafter it has been held asunder:

12. But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement these mandatory provisions

of the Act. If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident and/or their families to get

compensation, in a span of few months. There is, therefore, an urgent need for the police authorities concerned and the Tribunals to follow the

mandate of these provisions.

It has been further directed that:

16. 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 ("AIR" for short) in Form No. 54 of the Central Motor Vehicle Rules, 1989 shall be submitted by the police

(Station House Officer) to the jurisdictional Motor Accidents 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 post-mortem report (in case of death) or the injury/wound

certificate (in case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the

Tribunal.

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

It has been observed that:

17. To avoid any administrative difficulties in immediate implementation of Section 158(6) of the Act, we permit such implementation to be carried

out in three stages. In the first stage, all police stations/Claims Tribunals in the NCT region and State Capital regions shall implement the provisions

by end of April 2010. In the second stage, all the police stations/Claims Tribunals in district headquarters regions shall implement the provisions by

the end of August 2010. In the third stage, all police stations/Claims Tribunals shall implement the provisions by the end of December, 2010. The

Director General shall ensure that necessary forms and infrastructural support is made available to give effect to Section 158(6) of the Act.

21. 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 the 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 enquiry 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 categorise 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 enquiry 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, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

(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) u/s

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.

22. 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 u/s 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as

mandated by Section 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

23. 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.

24. 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 the 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.

25. 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 is no reason why the insurance companies in India should not adopt such a procedure.

26. In death cases, the calculation of compensation is now standardized by several decisions of this Court [See for example: Smt. Sarla Verma and

Others Vs. Delhi Transport Corporation and Another, J. 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, that 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.

27. 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 the courts will be reduced and judicial man power can be diverted to more complex cases.

28. 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 a 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.

29. 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 handed 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.

30. 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.

31. Whenever the insurance companies find that the driver of the insured vehicle possessed fake/forged driving license, they should lodge a

complaint with the police concerned for prosecution. This will reduce the incidence of fake licences and increase the road travel safety.

11. The respondent No. 2 has also filed a copy of the Circular under No. 801-09/R-76/DGP/LC/2007 dated. 13.09.2007 as issued to the

Superintendents of Polices of all the districts. But the respondent did not file any circular issued after the directions of the Apex Court as contained

in Jay Prakash (supra) which has expanded the direction of General Insurance Council (Supra) further even beyond the Form-54 as appended to

the Central Motor Vehicles Rules, 1889 and some further directions to be complied with by the Motor Accident Claims Tribunals, the Police

Officer and the Insurer. Even in the affidavit as filed in response to the petition, the respondent No. 2 did not take care of such inaction and

mindless non-compliance. Even the said circular as it appears from the various reports of Motor Accident Claims Tribunals has not been properly

implemented and there has been no mechanism to monitor as regards the compliance of the Apex Court directions as rendered in General

Insurance Council (supra). As a result, whatever the police officers of the respective police stations have fed the superior authorities they have

relied those baseline data without blink. This definitely portrays a lackadaisical conduct of the police administration. The superior authority cannot

also bail them out from such serious lapse in implementing the statutory provisions as well as the directions of the Apex Court as stated. This Court

is constrained to censure such attitude, as such lackadaisical manner of the administrative approach cannot be accepted with equanimity having

regard to the provision of Section 158(6) and 166(4) of the M.V. Act as well as the directions as contained in General Insurance Council (supra)

and the Jay Prakash (supra). Apart that, in Jay Prakash (supra) it has been observed that:

Section 196 of the Act provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the

provisions of Section 146 shall be punishable with imprisonment which may be extended to three months, or with a fine which may extend to Rs.

1000/-, or with both. Though the statute requires prosecution of the driver and owner of uninsured vehicles, this is seldom done. Thereby a

valuable deterrent is ignored. We therefore direct the Director Generals to issue instructions to prosecute drivers and owners of uninsured vehicles

u/s 196 of the Act.

From the affidavit of the Director General, Tripura it has surfaced that a good number of the offending vehicles had no insurance coverage at the

time of accident. The management of the route, the road safety and the collection of fee, quid proquo and the fine have been entrusted with the

Government. In addition, the Government has been entrusted with further responsibilities of implementing the provision of the M.V. Act. In the

event of negligence in discharging the task they can not be absolved of.

12. In the backdrop as discussed this Court directs the Chief Secretary, Tripura, the Director General of Police, Tripura to ensure that:

(1) All the officers-in-charge of all police stations to forward the Accident Information Report in Form-54 as appended to the Central Motor

Vehicles Rules, 1989 under Rule 150(2) of the said Rules, 1989 within thirty days from receiving the accident information along with the additional

information as catalogued hereunder:

(i) the age of the victim at the time of accident;

(ii) the income off the victim; and (iii) names and ages of the dependents/legal representatives with the occupation.

(2) The Health Department and the Transport Department shall co-operate with the Officers-in-charge of the police stations.

(3) The Accident Information Report shall be accompanied by the attested copies of the FIR, site sketch/photographs of the place of occurrence,

driving licence of the driver of the vehicle involved in the accident, the insurance policy, fitness certificate of the vehicle, post mortem report (in the

case of death), the injury/wound certificate (in the case of injury), the names and addresses of the injured or the dependent family members of the

deceased should also be forwarded to the Tribunal.

(4) Simultaneously, a copy of the Accident Information report with annexures as indicated above would be furnished to the Insurance Company

concerned and the owner to enable them to process the claim. The police has to notify the first date of hearing fixed by the tribunal to the

victim/injured or the dependents/legal representatives of the victim (in the case of death) and the owner and the insurer. If so is directed by the

Tribunal the police may secure their presence on the first day of hearing. To avoid any lapse, the Superintendents of Police of the respective district

shall monitor implementation of the statutory directions as well as directions as given by the Apex Court periodically and to take all possible steps

to ensure implementation of the provision of Section 158(6) of the M.V. Act, 1988. The Form-54 with additional entries as directed in Jay

Prakash (supra) as well as by this Court be entered into a new amalgamated form. This form be made available to all the police stations by the

respective Superintendent of Police of the districts within 31.12.2012. Pending availability of the said form, the Officers-in-charge of all the police

stations shall make their own arrangement for sending the Accident Information Report to the respective Tribunal having the jurisdiction.

(5) The traffic wing of the police shall go for massive hunt for tracing out the uninsured vehicles and prosecuting them in accordance with law. Till

the vehicles are insured and information as regards the insurance is duly furnished to the Transport Department the uninsured motor vehicle be

attached.

(6) The Transport Department shall maintain separate column in the information database in the register for recording the yearly insurance

coverage. The information be updated with inputs from the insurance companies operating in the sector in the State of Tripura. The insurance

companies shall be under liability to apprise the transport Department the information relating to expiry of the insurance forthwith. The Transport

Department shall ensure attachment of such uninsured vehicle with aid from the traffic wing of the police without any amount of delay.

(7) The Chief Secretary, Tripura shall convene a meeting of the Stake-holders (the Police, the Transport Department and the Insurance

Companies) for placing the mechanism as indicated in order within 30th November, 2012.

(8) Failure of the State in attaching the uninsured vehicles shall fasten them with liability of making payment of the compensation as would be

determined by the Tribunal having jurisdiction to the victims of the road-traffic accident w.e.f. 01.01.2013 (the day included).

(9) In addition thereto, this Court further directs all the tribunals that for purpose of implementing the Section 166(4) of the M.V. Act, 1988, the

Motor Accident Claims Tribunal shall immediately initiate the following steps:

(a) The Tribunal shall maintain the institution register for recording the Accident Information Reports, which are received from the Officer-in-charge

of the concerned police station and register them as Misc. petition. If any private claim petition is directly filed with reference to an Accident

Information Report (AIR) or to the First Information Report they should also be recorded in the separate common register and both the Accident

Information Report and the Private claim petition be tagged together under the appropriate common case registration No. for purpose of inquiry

and determination.

(b) The Tribunal shall inquire and satisfy itself that the Accident Information Report 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.

(c) The Tribunal shall, by a summary inquiry, ascertain the dependent family members/legal heirs. The jurisdictional police shall also inquire and

submit the names of the dependents/legal heirs for aid of the Tribunal's inquiry.

(d) The Tribunal shall categorise distinctly the claim cases where the insurer disputes liability and those where the insurer does not dispute the

liability by a separate index.

(e) If it is found either from the Accident Information Report or from the written statement of the owner of the offending vehicle that at the relevant

point of time of the accident, the offending vehicle was not insured, the Tribunal shall attach the vehicle in the preinquiry stage and proceed to take

inquiry to its logical end without delay. If the disposal gets delayed, the Tribunal may consider of appointment of the receiver in respect of the

attached vehicle.

(f) If after inquiry it is found that the owner has failed to deposit the money within 30 (thirty) days the vehicle be put on sale by auction.

(g) The amount as might be found deficit for satisfying the award after the auction proceeds, would be realized from the State Government. In case

of the surplus, the same shall be returned to the owner after satisfying the award.

(10) The Insurance Companies shall be directed to deposit the admitted amount or the amount determined with the Claims Tribunals within 30

days of the determination.

(11) The Tribunals should ensure that the compensation amount is kept in a fixed deposit and disbursed as per the directions contained in General

Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

(12) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from the proceeding as set in from

an application by the victim(s) u/s 166(1) of the Act, Section 170 will not apply in the former proceeding. The insurers will therefore be entitled to

assist the Tribunal (either independently or with the owners of the vehicles) in verifying the correctness in regard to the accident, injuries, age,

income and dependents of the deceased/victim and in determining the quantum of compensation.

13. It is required to give a reminder to the tribunals that the inquiry as contemplated u/s 168 does not require to conform to the adversarial method

of adjudication as provided in the CPC rather the Tribunals are to follow the summary procedure as the Tribunal are required to innovatively

devise the procedure having regard to the provision of Section 169 of the M.V. Act, 1988 and further the tribunals shall take active role in

expeditious disposal of the information/applications for compensation and shall make effective use of Section 165 of the Evidence Act, 1872 to

determine the just compensation.

14. The Chief Secretary, Tripura, Director General of Police and the Registrar, Gauhati High Court, Agartala Bench are directed to furnish copies

of the judgment to all the officer-in-charge of the police station (by the Director General of Police, Tripura), the Transport Department, the Health

Department (by the Chief Secretary, Tripura) and to all the tribunals (by the Registrar, Gauhati High Court, Agartala Bench) within a period of 15

days from the date of the judgment and order. The Registrar, Gauhati High Court, Agartala Bench shall furnish a copy of this judgment and order

to the Chief Secretary, Tripura and the Director General of Police, Tripura for compliance as per the direction. The petition is accordingly allowed.

Return the records as produced by the respondent No. 2 forthwith.