A

JAI PRAKASH

v.

NATIONAL INSURANCE CO. LTD. & ORS.

(SLP (C) No. 11801-11804 of 2005)

B

DECEMBER 17, 2009

[R.V. RAVEENDRAN, DR. MUKUNDAKAM SHARMA AND K.S. RADHAKRISHNAN, JJ.]

Motor Vehicles Act, 1988 – ss. 158(6), 166(4), 196 – C *Central Motor Vehicle Rules, 1950 – r. 150 – Motor accident – Compensation – In cases of hit and run unidentified vehicles; uninsured vehicles; gratuitous passengers; passengers in goods vehicles; procedural delays in adjudication/settlement of claims; and where compensation* D *amount does not reach the claimants, directions issued and suggestions made by the Court – Directions to the police authorities and claims tribunals for implementation of provisions u/ss. 158(6), 166(4), 196 and r. 150 – Direction to Insurance companies to lodge complaint in cases of forged* E *driving licences – Suggestions made for legislative/executive interference to amend and enact more comprehensive law – Suggestions also made to Insurance Companies.*

In the instant Special Leave Petition, the Court F **addressed four problems generally faced in motor accident cases –**

(i) Victims who do not receive compensation in cases, that is

G **(a) hit and run vehicles which remain unidentified.**

(b) offending vehicles not having insurance cover and

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(c) vehicles with third party insurance carrying persons not covered by insurance (gratuitous passengers and pillion riders etc.).

(ii) Practice of using goods vehicles for passenger transport

(iii) Procedural delay in adjudication/settlement of claims by Motor Accident Claims Tribunal.

(iv) The entire compensation amount not reaching and benefitting the victims and their families.

The Court gave the following initial directions / suggestions:

Suggestions For Legislative and Executive Intervention [Problems (i) and (ii)]:

1.1. To ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to the victims of road accidents, in place of the present system of third party insurance. [Para 22] [732-G]

1.2. An alternative scheme involves the collection of a one time (life time) third party insurance premium by a Central Insurance Agency in respect of every vehicle sold (in a manner similar to the collection of life time road tax). The fund created by collection of such third party insurance can be augmented/supplemented by an appropriate road accident cess/surcharge on the price of petrol/diesel sold across the country. Such a hybrid model which involves collection of a fixed life time premium in regard to each vehicle plus imposition of a road accident cess may provide a more satisfactory solution in a vast country like India. This will also address a major grievance of insurance companies that their

A outgoings by way of compensation in motor accident claims is four times the amount received as motor insurance premia. The general insurance companies may however continue with optional insurance to provide cover against damage to the vehicle and injury to the
B owner. [Para 23] [733-B-F]

1.3. A more realistic and easier alternative is to continue with the present system of third party insurance with two changes: (I) Define 'third party' - to cover any accident victim (that is any third party, other than the
C owner) and increase the premia, if necessary. (ii) Increase the quantum of compensation payable under Section 161 of the Act in case of hit and run motor accidents. [Para 24] [733-F-H; 734-A]

D 1.4. There is an urgent need for laying down and enforcing Road safety measures and establishment of large number of Trauma Centres and first aid centres. It is also necessary to consider the establishment of a Road Safety Bureau to lay down Road Safety Standards
E and norms, enforce Road safety measures, establish and run Trauma Centres, establish First Aid Centres in Petrol Stations, and carry out research/data collection for accident prevention. [Para 25] [734-B-C]

F 1.5. The Central Government may consider amendment of the Second Schedule to the Act to rectify the several mistakes therein and rationalize the compensation payable thereunder. [Para 27] [734-E]

U.P. State Road Transport Corporation v. Trilok Chandra
G **1996 (4) SCC 362**; *Sarla Verma v. Delhi Transport Corporation* **2009 (6) SCC 121, referred to.**

1.6. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit

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an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 in this behalf. [Para 28] [734-G-H; 735-A]

1.7. In place of the provisions relating to Accident tribunals and award of compensation in the Motor Vehicles Act, 1988, and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered. [Para 26] [734-D]

Direction to Police Authorities: [Problem (i)]:

1.8. 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 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. Therefore, it is directed that the Director Generals to issue instructions to prosecute drivers and owners of uninsured vehicles under Section 196 of the Act. [Para 10] [726-E-G]

Direction to Police Authorities [Problem (iii)]:

2. The Legislature tried to reduce the period of pendency of claim cases and quicken the process of

A determination of compensation by making two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month of receipt of first information of the accident, without the claimants having to file a claim
B petition. Neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement the mandatory provisions of the Act viz. s. 158 (6) and s. 166 (4). If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident
C and/or their families to get compensation, in a span of few months. There is, therefore, an urgent need for the concerned police authorities and Tribunals to follow the mandate of these provisions. [Para 4] [722-E-F; 734-A-B]

General Insurance Council v. State of A.P. 2007 (12)
D SCC 354, relied on.

2.1. 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.
E The Station House Officers of the jurisdictional police stations shall submit Accident Information Report (AIR) in Form No. 54 of the Central Motor Vehicle Rules,1989 to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. The police should
F 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. [Para 8] [725-D-F]

G 2.2. The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or
H the Injury/Wound certificate (in the case of injuries). The

names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal. [Para 8] [725-G]

2.3. Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim. [Para 8] [725-H; 726-A]

2.4. 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. [Para 8] [726-B]

2.5. To avoid any administrative difficulties in immediate implementation of Sections 158(6) of the Act, 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 in the first stage 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. [Para 9] [726-C-D]

2.6. The Transport Department, Health Department and other concerned departments shall extend necessary co-operation to the Director-Generals to give effect to Section 158 (6). [Para 11] [726-G-H]

Directions to Motor Accident Claims Tribunals [Problem (iii)]:

3. The Registrar General of each High Court is

A directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of claim applications by the injured B or by the family of the deceased. The Registrar General shall ensure that necessary Registers, forms and other support is extended to the Tribunal to give effect to Section 166(4) of the Act. [Para 12] [727-A-C]

C 3.1. The Tribunals are required to follow the steps mentioned in para 13 without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by D 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 E the Evidence Act, 1872, to determine the just compensation. [Para 14] [729-B-D]

Suggestions to Insurance Companies [Problem (iii)]:

F 4.1. 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 G determined by the decisions of this Court. [Para 15] [729-D-E]

4.2. In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer H treatment at its cost to the injured, without waiting for an

award of the Tribunal. If insurance companies can meet the bills for treatment of those who have taken a medical insurance policy, there is no reason why they should not extend a similar treatment to the accident victims of vehicles insured with them. [Para 16] [729-F-G]

Suggestion to Insurance Companies [Problem (iv)]:

5.1. To protect and preserve the compensation amount awarded to the families of the deceased victim special schemes may be considered by the insurance companies in consultation with the Life Insurance Corporation of India, State Bank of India or any other Nationalized Banks. One proposal is for formulation of a scheme in consultation with Nationalized Banks under which the compensation is kept in fixed deposit for an appropriate period and interest is paid by the Bank monthly to the claimants without any need for claimants having to approach either the court or their counsel or the Bank for that purpose. The scheme should ensure that the amount of compensation is utilized only for the benefit of the injured claimants or in case of death, for the benefit of the dependent family. [Para 18] [730-F-H; 731-A]

5.2. 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. [Para 19] [732-A-C]

A *Union Carbide Corporation v. Union of India* **1991 (4) SCC 584;** *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas* **1994 (2) SCC 176, referred to.**

B **Suggestion to Insurance Companies [Problem (i)]**

6. Whenever the insurance companies find that the driver of the insured vehicle possessed fake/forged driving license, they should lodge a complaint with the concerned police for prosecution. This will reduce the C **incidence of fake licences and increase the road travel safety. [Para 20] [732-D]**

Case Law Reference:

2007 (12) SCC 354	**Referred to.**	**Para 4**
D		
1991 (4) SCC 584	**Referred to.**	**Para 5**
1994 (2) SCC 176	**Referred to.**	**Para 5**
2009 (6) SCC 121	**Referred to.**	**Para 17**
E		
1996 (4) SCC 362	**Referred to.**	**Para 27**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No(s). 11801-11804 of 2005.

F From the Judgment & Order dated 7.12.2004 of the High Court of Punjab & Haryana at Chandigarh in F.A.O. No. 4845, 4846, 4847 & 4848 of 2003.

Gopal Subramonium, SG (A.C.) Manoj Swarup, Lalita Kohil (for Manoj Swarup & Co.) for the Petitioner.

G

S.L. Gupta, Goodwill Indeevar, Anand Vardhan Sharma, for the Respondent.

The following Order of the Court was delivered

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ORDER

R.V. RAVEENDRAN, J. 1. We propose to address four problems frequently faced in motor accident claim cases under the Motor Vehicles Act, 1988 ('Act' for short).

Problem (i)

2. The first problem relates to a section of motor accident victims who are doubly unfortunate – first in getting involved in an accident, and second, in not getting any compensation. Let us elaborate. There are two categories of victims in motor accidents - those who will be able to get compensation and those who will not be able to get compensation. Victims of motor accidents involving insured vehicles, who are assured of getting compensation from the insurer, fall in the first category. Victims of motor accidents involving the following categories of vehicles, who do not receive any compensation fall under the second category:-

(i) Hit and run vehicles which remain unidentified.

(ii) Vehicles which do not have any insurance cover.

(iii) Vehicles with third party insurance, carrying persons who are not covered by the insurance (gratuitous passengers in a goods vehicle or a car, and pillion riders on two wheelers etc.)

In hit and run cases, the victim has no one from whom he can claim or get compensation. In regard to vehicles which do not have any insurance or do not have an insurance covering the risks relating to gratuitous passengers/riders, even if the driver/owner may be made liable under an award of the Tribunal, there is little or no chance of recovery of compensation that may be awarded. This is because normally driver and owners of uninsured vehicles will not have the capacity to pay the compensation or would have transferred their assets to escape paying compensation. It is estimated that around 20% of the

A victims of motor accidents fall under the unfortunate categories who do not get any compensation (except some who may get a token amount under Section 161 or 140 of the Act). A person hit by an uninsured vehicle, feels frustrated, cheated and discriminated, when he does not get any compensation, but
B sees another person hit by an insured vehicle getting compensation. The victim does not choose the vehicle which hits him, nor any role in causing the accident. But a victim is denied compensation, if the vehicle which hits disappears without trace, or if the vehicle is without insurance, while a
C similar victim hit by an insured vehicle gets compensation. Should the State, which by law provided for compulsory third party insurance to protect motor accident victims, ignore these 20% victims who do not get compensation or provide them with some effective remedy? Should the State go something to
D reduce the incidence of non-insurance?

Problem (ii)

3. The second problem relates to the widespread practice of using goods vehicles for passenger traffic. Such use is
E primarily due to the following four reasons:

(a) Non-availability of regular mode of passenger transport in several parts of the country, particularly in rural areas, compelling people to use lorries and other goods vehicles
F as modes of transport to reach their destinations.

(b) Non-availability of contract carriages for group travel during special occasions. Consequently, large groups of people use, again mostly in rural areas, goods vehicles (lorries and tractor-trailers) for group travel on occasions
G like marriages, festivals, functions and political rallies.

(c) Frequent break-down of buses/cars/other vehicles (on roads with sparse traffic) due to bad maintenance of roads or the vehicles, or other emergencies forcing the stranded
H passengers to use goods vehicles to reach nearest city

or town from which they can get regular recognized modes of transport. A

(d) The temptation of lorry drivers to make a quick buck by carrying passengers for a fare (with or without the knowledge of the owner) coupled with the attraction of a low fare for the poor and needy. (These passengers though termed as 'gratuitous' passengers, except in a few cases, are fare paying illegal passengers). B

Where persons travel in a goods vehicle either knowing or not knowing that such travel is illegal (gratuitously or by paying an illegal 'fare' to the driver or owner) and such the vehicle is involved in an accident resulting in injuries to such passengers, various legal and moral questions arise. Whether the victims are entitled to compensation? Whether the insurer is liable? Whether the owner, who may be unaware of such illegal carriage by the driver, can be made liable? Whether the owner and driver of goods vehicles should be made liable to pay compensation, even where they were carrying passengers stranded on the road, gratuitously only out of sympathy ? Whether 'illegal' passengers should be denied compensation as a deterrent to discourage unauthorized travel? Should we ignore the harsh reality that as long as the causes necessitating or forcing people to resort to such illegal travel in goods vehicles continue to exist, people will continue to travel in goods vehicles, unmindful of the risk, whether legal or illegal? C D E F

Problem (iii)

4. The third problem relates to the procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals (for short 'Tribunals') and consequential hardship to the victims and their families. In cases where the accident victim dies, the family – usually the widow and children - loses its sole bread winner and are virtually driven to the streets. Many a time, the widow and children are forced to take up unaccustomed manual labour for their survival, the children foregoing their G H

A education. Payment of compensation without delay will help them to sustain themselves and pick up the threads to live with dignity.

(4.1.) Most of the accident victims (who are injured) are not able to access quality medical treatment for want of funds, as their earning capacity is either permanently lost or is put on hold on account of the injuries. They *get* the compensation only *after the treatment and after a contested trial.* Many a time lack of treatment or inadequate treatment for want of funds, itself converts what could have been a temporary disability into permanent disability for the victim, thereby increasing the compensation payable. The Insurance Companies know full well that timely payment of compensation or timely better treatment of the victims can ultimately reduce the quantum of compensation payable by them. The insurance companies also know that they will have to ultimately reimburse the cost of medical treatment of the accident victim with interest. But still they fail to extend timely aid to the injured victims, but wait for the injured to file a claim petition, after completing the treatment at his own cost.

(4.2.) The Legislature tried to reduce the period of pendency of claim cases and quicken the process of determination of compensation by making two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month of receipt of first information of the accident, without the claimants having to file a claim petition. Sub-section (6) of section 158 of the Act provides:

"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". A

Sub-section (4) of Section 166 of the Act reads thus:- B

"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". C

Rule 150 of Central Motor Vehicle Rules, 1989 prescribes the form (No.54) of the Police Report required to be submitted under section 158(6) of the Act.

(4.3.) This Court in *General Insurance Council v. State of A.P.* [2007 (12) SCC 354] emphasised the need for implementing the aforesaid provisions. This Court directed: D

"It is, therefore, directed that all the State Governments and the Union Territories shall instruct all police officers concerned about the need to comply with the requirement E of Section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54, Central Motor Vehicles Rules, 1989. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case F there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Road Transport and Highways 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 State Governments/Union Territories concerned so that necessary action can be taken against the officials concerned."

(4.4.) But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement

A 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 concerned police authorities and Tribunals to follow the B mandate of these provisions.

Problem (iv)

5. Courts have always been concerned that the full compensation amount does not reach and benefit the victims C and their families, particularly those who are uneducated, ignorant, or not worldly-wise. Unless there are built-in safeguards they may be deprived of the benefit of compensation which may be the sole source of their future sustenance. This court has time and again insisted upon D measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation. [See *Union Carbide Corporation v. Union of India* - 1991 (4) SCC 584 and *General Manager, Kerala State Road Transport* E *Corporation v. Susamma Thomas* - 1994 (2) SCC 176]. But in spite of the directions in these cases, the position continues to be far from unsatisfactory and in many cases unscrupulous relatives, agents and touts are taking away a big chunk of the compensation, by ingenious methods.

F **Reports of Amicus Curiae**

6. In this background, to find some solutions, on 9.9.2008, this Court requested Shri Gopal Subramaniam, to assist the Court as Amicus Curiae. The learned amicus curiae with his G usual thoroughness and commitment has examined the issues and submitted a series of reports and has also made several suggestions for consideration. He has also referred to and relied on a series of zealous directions issued by a learned Single Judge of the Delhi High Court to expedite and streamline H the adjudication of motor vehicle claims and disbursement of

compensation.

7. Having considered the nature of the problems and taking note of the several suggestions made by the learned Amicus Curiae and after hearing, we propose to issue a set of directions to the police authorities and Claims Tribunals. We also propose to make some suggestions for implementation by Insurance Companies and some suggestions for the consideration of the Parliament and the Central Government.

Directions to Police Authorities

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

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

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

(iii) Simultaneously, copy of the AIR with annexures thereto

A shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

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

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9. To avoid any administrative difficulties in immediate implementation of sections 158(6) of the Act, we permit such C 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 D 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 Generals shall ensure that necessary forms and infrastructural support is made available to give effect to Section 158 (6) of the Act.

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10. 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 fine which may extend to Rs. 1000/-, or with F 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 under Section 196 of the Act.

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11. The Transport Department, Health Department and other concerned departments shall extend necessary co-operation to the Director-Generals to give effect to Section 158 (6).

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Directions to the Claims Tribunals

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

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

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

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

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result

A 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 B jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categories the claim cases registered, into those where the insurer disputes C 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 D 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 E 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 F the compensation amount is kept in Fixed deposit and disbursed as per the directions contained in *General Manager, KSRTC v. Susamma Thomas* [1994 (2) SCC 176].

G (h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to H assist the Tribunal (either independently or with the

owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.

14. The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by 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

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

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

17. In countries like United Kingdom, the percentage of motor accident claims, with reference to the accidents is very low. This is because immediately after being notified of the accident, the insurer makes its own enquiries and satisfies itself

A 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 insurance companies in India should not adopt such
B a procedure. In death cases, the calculation of compensation is now standardized by several decisions of this court [See for example: *Sarla Verma v. Delhi Transport Corporation* – 2009 (6) SCC 121]. The insurers can either by relying upon the police report (AIR) or by enquiring with the family or the employer of
C 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
D an annuity. Similarly in cases of injuries, the insurers can offer treatment in hospitals approved by it and meet the expenses or pay the bills, or if the victim has already undergone the treatment, reimburse the cost of treatment. It can also reimburse other items of special damages, the damages for pain
E suffering, which is also standardized in several decisions of this Court. By such voluntary payment there will be all round benefits. The insurers save interest and litigation cost and discharge their obligation to the society. The victims will be relieved from financial hardship and benefit from timely effective treatment. Burden on courts will be reduced and judicial man power can
F be diverted to more complex cases.

18. To protect and preserve the compensation amount awarded to the families of the deceased victim special schemes may be considered by the insurance companies in
G consultation with the Life Insurance Corporation of India, State Bank of India or any other Nationalized Banks. One proposal is for formulation of a scheme in consultation with Nationalized Banks under which the compensation is kept in fixed deposit for an appropriate period and interest is paid by the Bank
H monthly to the claimants without any need for claimants having

to approach either the court or their counsel or the Bank for that purpose. The scheme should ensure that the amount of compensation is utilized only for the benefit of the injured claimants or in case of death, for the benefit of the dependent family. We extract below the particulars of a special Scheme offered by a nationalized Bank at the instance of the Delhi High Court :

(i) The fixed deposit shall be automatically renewed till the period prescribed by the Court.

(ii) The interest on the fixed deposit shall be paid monthly.

(iii) The monthly interest shall be credited automatically in the saving account of the claimant.

(iv) Original fixed deposit receipt shall be retained by the Bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.

(v) The original fixed deposit receipt shall be 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.

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

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

SUGGESTIONS FOR LEGISLATIVE/EXECUTIVE INTERVENTION

21. We may next refer to some vital areas where intervention by the legislature and/or executive is called for. The suggestions are intended to draw the attention of the executive and legislature to the several vexed issues, which when properly and expeditiously addressed, will improve the system of compensating the motor accident victims.

Ensuring that all accident victims get compensation

22. To ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third party insurance. For example, in South Africa and some other African countries, Road Accident Funds have been created, managed by Road Accident Fund

Commissions, thereby eliminating the need for third party insurance. A fuel levy/surcharge is collected on the sale of petrol and diesel and credited to such fund. All accident victims, without exception, are paid compensation from out of the said fund by the Commission. But the feedback from operational statistics relating to such funds is that the scheme, while successful in smaller countries, may encounter difficulties and financial deficits in larger countries like South Africa or developing countries with infrastructural deficiencies.

23. An alternative scheme involves the collection of a one time (life time) third party insurance premium by a Central Insurance Agency in respect of every vehicle sold (in a manner similar to the collection of life time road tax). The fund created by collection of such third party insurance can be augmented/ supplemented by an appropriate road accident cess/surcharge on the price of petrol/diesel sold across the country. Such a hybrid model which involves collection of a fixed life time premium in regard to each vehicle plus imposition of a road accident cess may provide a more satisfactory solution in a vast country like India. This will also address a major grievance of insurance companies that their outgoings by way of compensation in motor accident claims is four times the amount received as motor insurance premia. The general insurance companies may however continue with optional insurance to provide cover against damage to the vehicle and injury to the owner.

24. A more realistic and easier alternative is to continue with the present system of third party insurance with two changes:

(i) Define 'third party' - to cover any accident victim (that is any third party, other than the owner) and increasing the premia, if necessary.

(ii) Increase the quantum of compensation payable under Section 161 of the Act in case of hit and run

motor accidents.

25. India has the dubious distinction of being one of the countries with the highest number of road accidents and the longest response time in securing first aid and medical treatment. There is therefore an urgent need for laying down and enforcing Road safety measures and establishment of large number of Trauma Centres and first aid centres. It is also necessary to consider the establishment of a Road Safety Bureau to lay down Road Safety Standards and norms, enforce Road safety measures, establish and run Trauma Centres, establish First Aid Centres in Petrol Stations, and carry out research/data collection for accident prevention.

26. Several countries have comprehensive enactments dealing exclusively with accidents. In place of the provisions relating to Accident tribunals and award of compensation in the Motor Vehicles Act, 1988, and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered.

Rationalisation of II schedule to Motor Vehicles Act, 1988

27. The Central Government may consider amendment of the Second Schedule to the Act to rectify the several mistakes therein and rationalize the compensation payable thereunder, repeatedly pointed out by this Court [See *U.P. State Road Transport Corporation* v. *Trilok Chandra* - 1996 (4) SCC 362, and *Sarla Verma* (supra)].

Securing the compensation to the victims of accidents involving uninsured vehicles

28. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may

be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 in this behalf.

CONSEQUENTIAL DIRECTIONS

29. The Supreme Court Registry is directed to send copies of this order to (i) Chief Secretaries and Director Generals of Police of all States, and (ii) Registrar-Generals of all High Courts, for compliance with the directions. The suggestions made may be placed before the Central Government by the learned Solicitor General. Registry may receive and put up any other suggestions. List for further directions on 7.1.2010.

K.K.T. Matter adjourned.