OFFICE OF THE DISTRICT & SESSIONS JUDGE (S-W): DWARKA COURTS, NEW DELHI

NO.2983-2988**/GENL/Endst/DWK/2018** **Dated** 5/4/18

As directed, copy of the letter No. 383/RG/DHC/2018 dated 03.04.2018 along with copy of order dated 09.03.2018 passed by Hon'ble Mr. Justice J. R. Midha, Hon'ble High Court of Delhi in FAO 842/2003 titled as Rajesh Tyagi & Ors Vs. Jaibir Singh & Ors" received from the Registrar General, Hon'ble High Court of Delhi, New Delhi & O/o the District & Sessions Judge(HQs) vide their endst. No. 10640-653-I/Genl./Judgmnt. MACT/HCS/2018 dated 03 April, 2018 is forwarded for information & immediate compliance/necessary action to :

1. The Ld. Presiding Officer, Motor Accident Claims Tribunal, South West District, Dwarka Courts, New Delhi
2. The Branch-In-Charge, Computer Branch(South-West), Dwarka Courts with a request to upload the same on the Website of District Court Dwarka.
3. The Branch-In-Charge, Judicial Branch(South-West), Dwarka Courts for information.

Branch Incharge (Genl. Branch)
O/o Ld. District & Sessions Judge (S-W)

7276
4.4.18

HIGH COURT OF DELHI AT NEW DELHI

No.383 /RG/DHC/2018
Dated 03-04-2018

To

1. The District & Sessions Judge (HQ), Tis Hazari Courts, Delhi.
2. The District & Sessions Judge (North-West), RohiniCourts, Delhi.
3. The District & Sessions Judge (South), Saket Courts, Delhi.
4. The District & Sessions Judge (South-West), Dwarka Courts, Delhi.
5. The District & Sessions Judge (West), Tis Hazari Courts, Delhi.
6. The District & Sessions Judge (North), Rohini Courts, Delhi.
7. The District & Sessions Judge (South-East), Saket Courts, Delhi.
8. The District & Sessions Judge (East), Karkardooma Courts, Delhi.
9. The District & Sessions Judge (New Delhi), Patiala House Courts, Delhi.
10. The District & Sessions Judge (Shahdara), Karkardooma Courts, Delhi.
11. The District & Sessions Judge (North East), Karkardooma Courts, Delhi.

Subject: - Compliance of directions passed by the High Court of Delhi vide order dated 09.03.2018 in FAO 842/2003 & CM Nos. 32859/2017, 41125-41127/2017 titled "Rajesh Tyagi & Ors. Vs Jaibir Singh & Ors."

Dear Sir/Madam,

I have been directed to forward the copy of order dated 09.03.2018 passed by Hon'ble Mr. Justice J.R.Midha in FAO No.842/2003 & CM Nos. 32859/2017, 41125-41127/2017 titled ***"Rajesh Tyagi & Ors. Vs Jaibir Singh & Ors."*** with request to circulate the same to Motor Accident Claims Tribunals in your respective districts for immediate compliance and necessary action.

Yours sincerely,

Dinesh
(Dinesh Kumar Sharma)
Registrar General

O/C Gen. Branch
Be circulated to the court of MACT

D&SJ (SW)
04.04.18

BRIJESH SETHI
District & Sessions Judge, (S-W)
Dwarka Courts, New Delhi

Be circulated to the Ld. PO MACT for information and necessary compliance & Computer Branch for uploading the same on Distt. Court Dwarka's Judicial Branch for information

Officer Incharge (General Branch)
District Courts Dwarka

718
4.4.18

OFFICE OF THE DISTRICT & SESSIONS JUDGE (HQs): DELHI

No. 1040-653-I Genl./Judgmnt. MACT/HCS/2018 Dated, Delhi the 03 APR 2018

Copy of the letter along with order dated 09.03.2018 passed by Hon'ble Mr. Justice J.R Midha, Hon'ble High Court of Delhi ***in FAO 842/2003 tilted as 'Rajesh Tyagi & Ors Vs. Jaibir Singh & Ors"*** be circulated for information and necessary action to:-

1936
04/04/18

1. *All the Ld. District & Sessions Judges, Delhi, New Delhi (except Central District) with a request to issue the necessary directions to the officials concerned to circulate the same amongst the all the Ld. Presiding officers, Motor Accident Claims Tribunal under your control.* S/W
2. *The Ld. Presiding Officers, Motor Accident Claims Tribunal, Central District, Tis Hazari Courts, Delhi.*
3. *The Chairman, Website Committee, Tis Hazari Courts, Delhi with request to upload the same on the Website of Delhi District Courts.*
4. *PS to Ld. District & Sessions Judge (HQs) Tis Hazari Courts, Delhi.*

3/4/18
(BHUPESH KUMAR)
Officer-In-Charge (Genl. Branch),
Addl. District & Sessions Judge,
Central District, Tis Hazari Courts, Delhi.
03/04/18

Encl.: As above.

No. 10654-I **Genl./Judgmnt.MACT/HCS/2018** **Dated, Delhi the** 03 APR 2018

Copy to:

Sh. Sanjeev Jain, Member Secretary, DSLSA, Patiala House Court, New Delhi for information.

3/4/18
Officer-In-Charge (Genl. Branch),
Addl. District & Sessions Judge,
Central District, Tis Hazari Courts, Delhi.
03/04/18

OIC Genl.

DASJ (S-W)
4.4.18

Be circulated to the Ld. PO MACT for information and necessary compliance and Computer Branch for uploading the same on Distt Court Dwarka & Judicial Branch for information.

5/4/18

(2)

DELHI STATE LEGAL SERVICES AUTHORITY

(Constituted Under the 'Legal Services Authorities Act, 1987', an Act of Parliament)

Under the Administrative Control of High Court of Delhi

Central Office, Patiala House Courts Complex, New Delhi - 110001
Ph. : 23384781, Fax : 23387267, Email : legalaidwing-dslsa@nic.in
www.edslsa.org 24x7 Toll Free Helpline No. 1516

सत्यमेव जयते

ACCESS TO JUSTICE FOR ALL

File No. : 050/DSLSA/LAW/Judl.Dir./2017 / 4077 - 4088 Dated : 27.03.2018

To

The Ld. District & Sessions Judge/
Chairperson Central DLSA,
Tis Hazari Courts, Delhi.

888
31/3/2018

Ref. : Order dated 09.03.2018 passed by Hon'ble High Court of Delhi in FAO No. 842/2003 titled Rajesh Tyagi & Ors. vs. Jaibir Singh & Ors.

Subject: Directions for assessment of functional disability by the Claims Tribunal

Respected Sir,

May I apprise your goodself that this Authority is in receipt of an order dated 09.03.2018 passed by Hon'ble High Court of Delhi **(copy attached as Annexure-'A')** in the matter referred above wherein the Hon'ble Court has issued directions for assessment of functional disability by the Claims Tribunal.

In this context, may I request your goodself to issue the necessary directions to the officials concerned to circulate the aforesaid order dated 09.03.2018 amongst all the Ld. MACT Courts/Tribunals for their kind perusal and further necessary action.

With Regards,

Yours Sincerely,

28/3/18
(Sanjeev Jain)
Member Secretary

Encl.: As above.

Copy to:

1. All the Secretaries, District Legal Services Authority, Delhi/New Delhi for information and follow-up.

28/3/18
(Sanjeev Jain)
Member Secretary

DJ & SJ (HQs.)
02/04/18
Ld. OIC. Genl.

Urgent

D2

IN THE HIGH COURT OF DELHI AT NEW DELHI

Next date of hearing
01-05-2018
copy of order

No. 9724-26 Dt. 24-3-18

The Registrar General,
Delhi High Court,
New Delhi.

(3) To

Delhi State Legal
Services Authority
Patiala House Courts
New Delhi

The National
Legal Services Authority-12/11,
Jam Nagar House,
New Delhi.

~~MAC APP.~~ FAO. No. 842/2003 & CM Nos. 32859/2017, 41125-41127/2017

Rajesh Tyagi & ors

Appellants

Vs.

Jaibir Singh & ors.

Respondent

against the order dated 18-5-2009

by Mr. Suresh Chand Rayan - Judge MACT, Patiala House Courts New Delhi

No. 1159/2007

I am directed to forward herewith for information and immediate compliance/necessary action a the order dt. 9-3-2018 passed by **Hon'ble Mr. Justice** JR. Midha **of this court** in the oted case. The next date of hearing is fixed i.e. 01/05/2018

Dy. circulate as contained in Para 24 of order.

Ajmer Singh
2/4/18

Yours faithfully,

Admn. Officer (J) C-IV
For Registrar General

22/2/2018

32

IN THE HIGH COURT OF DELHI AT NEW DELHI

F.A.O. No. 842 OF 2003

IN THE MATTER OF :-

Smt. Rajesh Tyagi & Others

...Appellant

Versus

Jaibir Singh & Others

...Respondent

AMENDED MEMO OF PARTIES

1. Smt. Rajesh Tyagi, W/o Late Sh. Ram Kumar
2. Rahul, S/o Late Sh. Ram Kumar
3. Anshu, Daughter of Late Sh. Ram Kumar

(All Resident of House No.28,
Gulab Vatika Ganga Enclave,
Loni Border Ghaziabad, UP)

.....Petitioners

VERSUS

1. Sh. Jaibir Singh, S/o Sh. Zile Singh
   R/o 216, Bhatnagar Colony
   Rohtak Road, Jind, Haryana
2. Vijender Singh, S/o Zile Singh
   R/o Jain Building, MG Road,
   Rohtak, Haryana.
3. National Insurance Comp. Ltd.,
   Divisional Office, Outer Kund
   Head Office, at Sector – 35B
   Chandigarh

.....Respondents

(Munendra Kr. Singh & A.K. Singh)
Advocates
B-16 Defence Colony,
New Delhi – 110024.

Dated: 29.08.2005
Place : New Delhi

$~3

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

\+ FAO 842/2003 & CM Applns.32859/2017, 41125-41127/2017

RAJESH TYAGI & ORS. ..... Appellants

Through:

versus

JAIBIR SINGH & ORS. ..... Respondents

Through: Mr. Anup J. Bhambhani, Sr. Advocate as amici curiae.
Mr. Satyam Thareja, Advocate for Mr.Sidharth Luthra, Sr. Advocate as amici curiae.
Mr. Lalit Bhasin, Ms.Ratna Dhingra, Ms.Bhavna Dham, Mr.Ajay Pratap Singh, Advocates for Indian Bank Association (IBA)
Mr. D.K. Nag, Advocate for IRDA
Mr. K.S. Parihar, Mr. H.S. Parihar, Advocates for RBI.
Mr. Tushar Sannu, Advocate for Mr.Rahul Mehra, Standing Counsel (Crl.) for GNCD.
Mr. A.K. Soni, Advocate for Insurance Company.
Mr. S.P. Jain, Mr.Himanshu Gambhir, Ms.Amandeep Kaur, Mr. Abhijit Chakravarty, Advocates for Oriental Insurance Company.
Mr. Amit Bajaj, Advocate for NPS Trust
Mr. Navneet Kumar, Mr.Vikas Bhadana, Advocate for Magna HDI GIC Ltd. and Bharti Axa GIC Ltd.
Mr. R. Chandrasekaran, Secretary

General, General Insurance Council
Mr. Pankaj Singh Thakur, Advocate for Mr. Sameer Nandwani, Advocate for Sri Ram General Insurance Company Ltd. in CM Applns. 41126-41127/2017

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **09.03.2018**

1. Mr. A.J. Bhambhani and Mr. Satyam Thareja, learned amici curiae submit that the Doctors assess physical disability percentage without recording any basis and the Claims Tribunals mechanically fix the functional disability. It is submitted that Claims Tribunal do not conform to any uniform practice or criteria. It is further submitted that the Claims Tribunals just accept or slightly modify the disability as certified by the Doctors which is not a healthy practice. It is submitted that the guidelines be framed for the assessment of functional disability by the Claims Tribunal.

2. In ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, the Supreme Court laid down principles for assessment of the functional disability. The principles laid down by the Supreme Court are reproduced hereunder:-

> *"General principles relating to compensation in injury cases*
> *4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy*

those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer v. T. Kunhikuttan Nair – AIR 1970 SC 376, R. D. Hattangadi v. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker v. Willoughby – 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following:-

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses – item (iii) – depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages – items (iv), (v) and (vi) –involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability.

The test to determine the functional disability was laid down as:

> *"8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity."*

The Supreme Court cautioned against mechanically applying the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. The Supreme Court observed the following:-

> *"In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation"*

3. In ***National Insurance Co Ltd v R.Sivakumar***, 2011 ACJ 175 (Mad) (DB), the Madras High Court stressed the need for uniform and consistent practice/procedure in the assessment of permanent disability and functional disability thereof. Relevant portion of the said judgment is reproduced hereunder:-

> *"8. The erratic manner in which disability is assessed for fractures and other injuries which are not as grievous as loss of limbs or amputation is neither fair nor just. We feel that there should be some consistency and some uniformity. It pains us to see extravagant awards, for what is really not a major disability. The pain that the injured feels is not something we are ignoring but what we have to assess is the diminishment of his capacity to work and to the Loss of Earning Capacity.*

9. The starting salary the claimant might be receiving as a Civil Engineer is fixed at Rs. 7,500/-. Since he is a Civil Engineer, he might have to stand for long time in the open on the site and fracture of the tibia might affect him in that regard. But at the same time, it is difficult for us to accept 50% as the disability, since we find in Schedule I, Part II of the Workmen's Compensation Act, 1923, even for amputation below knee with stump exceeding 12.70 cms the percentage of disability is only 50%. In that case, mobility is reduced and they may have to use some other assistance for the loss of limb below the knee. The claimant's predicament in this case is not that serious. Therefore, we are totally unable to justify the Tribunal taking 50% as disability for the fracture of Tibia. But taking note of the nature of his education and his expertise and the possibility that he might have to stand for a long time to pursue his avocation, we fix the disability at 20%.

10. In "A Critique on Motor Vehicles Laws" (by Justice K. Kannan & N. Vijayaraghavan, Advocate, 13th Edition, 2008), it is precisely this predicament that is referred to. They observed that the expert witnesses or Doctors, who appear before the Tribunals are stock witnesses. They know no standards, do not conform to any uniform practices. They do not follow any criteria. The Tribunals are also under work pressure and therefore, they just accept or slightly modify the disability as certified by those Doctors. In M. Jayanna's Case, 2005 ACJ 344 (AP), the unhealthy practices in this field are referred to. In this book, there is a reference to the Notification issued by the Ministry of Social Justice and Empowerment dated 1.6.2001 for applying consistency and uniformity in the assessment of Permanent Disability. Guidelines have been drawn and if it is adopted, the falsification of the degree of disability may be avoided. The authors of this book have made a salutary suggestion which is that, a Medical Board shall be constituted in each District and as a matter of rule, the injured shall appear before the Medical Board and the disability shall be assessed by the Board and the Certificate of Disability by the Medical Board shall normally be accepted as binding on the Tribunal without need for examination of the author of the same. They have also suggested that a clause may be introduced in the Motor Vehicles Act itself so that some uniform practice is achieved. We hope the Parliament will take note of this."

(Emphasis supplied)

4. In ***TATA AIG General Insurance Co. Ltd. v. Prabhu***, 2017 ACJ 285 the Division Bench of Madras High Court noted the arbitrary assessment of

permanent disability by the Claims Tribunals. Relevant portion of the said judgment is as under:-

> *"As pointed out by the apex court in Raj Kumar's case it may not be proper to accept the physical disablement at 45% as is reflective of the medical evidence, without critical examination or construe the functional disability also to be of the same percentage. We find that the Doctors assess percentage without identifying the basis for the same and the claims tribunal mechanically reduce say 5% or 10% and conclude that the reduced percentage was functional disability. This is not a healthy practice. The cause for this problem is the near arbitrary assessment of permanent disability by the set of Doctors who regularly appear before the claims tribunals. We deem it is now time to introduce or usher in a uniform and consistent procedure for such assessment which would rid the need for even examining such Doctors and save time for the claims tribunals to dispose of claims. More importantly, it may rid the jurisdiction of the one 'sore point' which is adding to the pendency and appeals too."*
>
> *(Emphasis supplied)*

5. Rule 19 of ***Delhi Motor Accidents Claims Tribunal Rules, 2008*** empowers the Claims Tribunal to co-opt a medical expert to assist the Tribunal in conducting the inquiry. Rule 25 empowers the Claims Tribunal to obtain supplementary information and documents from police, medical and other authorities necessary for adjudication. Rules 19 and 25 of Delhi Motor Accidents Claims Tribunal Rules, 2008 are reproduced hereunder:-

> *"Rule 19 - Co-opting of persons during inquiry.-*
>
> *(1) The Claims Tribunal may if it thinks fit, co-opt one or more persons possessing special knowledge with respect to any matter relevant to the inquiry, to assist in holding the inquiry. (2) The remuneration, if any, to be paid to the person(s) co-opted shall in every case be determined by the Claims Tribunal.*
>
> *Rule 25 - Obtaining of supplementary information and documents.-*
>
> *The Claims Tribunal shall obtain whatever supplementary information and documents, which may be found necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date."*

6. ***Directions for assessment of functional disability by the Claims Tribunal***

6.1. All injuries or permanent disability arising from injuries do not result in loss of earning capacity.

6.2. The percentage of permanent disability with reference to the whole body of a person should not be mechanically assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

6.3. The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence of his medical opinion with regard to the extent of permanent disability. However, the loss of earning capacity is something to be assessed by the Claims Tribunal with reference to the evidence in its entirety.

6.4. The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

6.5. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps:

(i) The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life).

(ii) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age.

(iii) The third step is to find out whether :

a) The claimant is totally disabled from earning any kind of

livelihood, or

b) Whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or

c) Whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

6.6. The Claims Tribunal may consider co-opting a medical expert from any Government Hospital for taking assistance in assessing the functional disability. However, cases in which medical expert is co-opted, should be taken up by a Claims Tribunal at a designated time so that the doctor is not made to wait. The proceedings for assessment of the functional disability of the claimant with the assistance of a medical expert should preferably be conducted in camera and counsel for insurance company and authorised representative of the insurance company be permitted to remain present.

6.7. The photographs of the injured portion should be taken on record in every injury case and a reasoned finding should be recorded in respect of the functional disability in terms of the principles laid down by the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (supra).

6.8. The photographs of the injured portion of the claimant should be annexed to the award to enable the Appellate Court to peruse the same in the event of the award being challenged. However, the photographs should not be uploaded on the website of the Court.

7. The learned amici curiae further submit that in case of amputation of lower limbs, there is no uniformity in awarding the sum under the head of 'cost of artificial limb'. It is further submitted that in many cases exaggerated claims are being awarded without any verification. It is

submitted that guidelines for fixing of artificial limbs to the victims of motor accidents be framed to avoid any exploitation of the claimants by the suppliers. Reference is made to the order dated 19th February, 2018 in MAC.APP. 1134/2017 titled '***Ajay Kumar v. Shyam Sunder***'.

8. In MAC.APP.1134/2017, this Court has formed a Committee to frame guidelines for fixing of artificial limbs to the victims of motor accidents. Relevant portion of the order dated 19th February, 2018 in MAC.APP 1134/2017 is reproduced hereunder:-

> *"1. Prof. (Dr.) R.K. Wadhwa, Physical, Medicine and Rehabilitation Centre, Safdarjung Hospital; Prof. (Dr.) Diganta Borah, Physical, Medicine and Rehabilitation Centre, Safdarjung Hospital; Mr. Sohan Lal, I/C, P&O, Safdarjung Hospital; Dr. Rakesh Rawat, Prosthetist & Orthotist, Pt. Deen Dayal Hospital; Mr. Anand Bhatt, Prosthetist, Bhatt Surgical; Ms. Sanina Khan, Prosthetist and Orthotist; Mr. Rajender Kumar, Regional Manager, Endolite India Limited; Ms. Nupur Bhardwaj, Prothetist & Orthotist, Ass. Rehabilitation Special and Mr. Dhananjay Kumar, Prothetist & Orthotist, Centre Manager, Ottobock Healthcare India Pvt. Ltd.; and Mr. Maan Govind, Manager, Artificial Limbs Corporation Limited are present in terms of the order dated 04th January, 2018.*
>
> *2. Mr. H.D. Sharma, Advocate, representing Artificial Limbs Corporation Limited (ALIMCO) has handed over a note of submissions with respect to the artificial limbs being manufactured by ALIMCO. The note of submissions is taken on record.*
>
> *3. After hearing the persons present in Court today, this Court is of the view that there is need for standardisation of the assessment of functional disability of the victims of the road accidents as well as the procedure for fixing the artificial limb.*
>
> *4. A committee comprising of Dr. K.J.S. Bansal, C.M.O., Delhi High Court; Prof. (Dr.) R.K. Wadhwa, Prof. (Dr.) Diganta Borah; Mr. Sohan Pal, Safdarjung Hospital; Dr. Jagdish Pandey, Prosthetist and Orthotist, AIIMS; Dr. Rakesh Rawat, Prothetist and Orthotist, Pt. Deen Dayal Hospital, Institute of Physically Handicapped and Mr. R. Chandrasekaran, Secretary General, General Insurance Council, National Insurance Building, 5th Floor, 14, J. Tata Road, Churchgate, Mumbai-400020 is constituted to deliberate upon the following issues: -*
>
> *(i) <u>Constitution of a permanent Medical Board to determine</u>*

the physical and functional disability of victims of road accidents in NCT of Delhi for the purpose of computation of compensation.

(ii) Guidelines for fixing of artificial limbs to the victims of road accidents.

(iii) Standardisation of the cost of artificial limbs to the victims of road accidents.

5. Dr. K.J.S. Bansal shall be the Convenor of the Committee and he shall convene the first meeting in the last week of February, 2018 in the Conference Hall of Safdarjung Hospital.

6. All the insurance companies shall submit their suggestions to the Committee. The Committee shall prepare a list of all the suppliers of the artificial limbs in NCT of Delhi and shall invite suggestions from them with respect to the standardisation of the cost as well as quality of the artificial limbs."

(Emphasis supplied)

9. This Court is of the view that, till the Committee appointed by this Court in MAC.APP.1134/2017 submits its report, it would be appropriate for the Claims Tribunals to refer the cases of injured claimant, in which artificial limbs are required, to the Committee appointed by this Court for their opinion with respect to the requirement of the artificial limbs.

10. Learned amici curiae further submit that the insurance companies are not appointing investigators to verify and assess the genuineness of claims in all motor accident cases. It is submitted that the investigation and assessment of the claimants by the insurance companies should be made mandatory in all motor accident matters.

11. In the recent judgement dated 07th March, 2018 in MAC.APP. 802/2017 titled ***ICICI Lombard General Insurance Company Ltd v. Dinesh Kumar***, this Court has observed that it is a duty of the insurance companies to appoint an investigator to verify the claim as well as a surveyor to assess the loss. Relevant portion of the said judgment is reproduced hereunder:-

> *"6. This Court is of the view that the cases like the present one have arisen because of the failure of the insurance companies to*

appoint an investigator to verify the genuineness of the accident and a surveyor to assess the loss. This practice is being regularly followed by the insurance companies in all cases other than motor accident claims. However, in cases of death and injuries arising out of the motor accident claims, the insurance companies do not ordinarily appoint any investigator or surveyor and they file the written statement to deny everything for want of knowledge except the insurance policy. The result of such an approach is that the claimants exaggerate their claims to any extent as it has happened in the present case. If the insurance company, in the present case, had appointed the investigator and surveyor immediately upon receiving the copy of DAR/claim application, this situation would not have arisen. In the present case, the insurance company is not even aware of the correct factual position which they were duty bound to ascertain immediately upon getting the intimation about the accident. Be that as it may, the insurance company is at liberty to appoint an investigator/surveyor even at this stage and to lead additional evidence before the Claims Tribunal. In MAC.APP.821/2017 titled Bajaj Allianz General Insurance Co. Ltd. v. Devi Nandam Kumar, decided on 21st February, 2018, this Court observed as under:

> *"This Court is of the view that the insurance companies are duty bound to verify every claim by appointing an Investigator to verify the genuineness of the claim as well as the material particulars of the claim and a surveyor to assess the loss suffered by the victim. In cases of grievous injuries, the insurance companies should also get the injured examined by an independent medical expert to examine the injured and verify the medical claim of the injured. However, the appellant, in the present case, does not appear to have appointed any Investigator or surveyor to verify and assess the claim of respondent No.1."*

12. Mr. R. Chandrasekaran, Secretary General of General Insurance Council present in Court submits that he shall convene a meeting of all the insurance companies to formulate standard guidelines for appointment of investigator/surveyor in each and every case immediately upon the receipt of intimation of the accident. It is further submitted that he shall consider formulating a format as well as guidelines for the investigation and survey

of the motor accident cases. Let the first meeting be convened by Mr. R. Chandrasekaran in the last week of March 2018 and the report of the GIC be placed before this Court on the next date of hearing.

13. Learned amici curiae submit that more than 50% of vehicles in our country are un-insured and no measures are being taken by police as well as Road Transport Authority to stop the un-insured vehicles from plying on the roads. The police/Road Transport Authority can start the verification of the un-insured vehicles area-wise and they can publish in newspapers that on a given day, they shall verify the vehicles in that area and the vehicle found without an insurance policy shall be locked/clamped to prevent the un-insured vehicle from plying on the road.

14. Mr. Rahul Mehra, learned senior standing counsel shall take up this matter with Delhi Police as well as the Road Transport Authority for implementation of this suggestion in respect of one locality in Delhi before the next date and the status report shall be placed on record on the next date of hearing.

15. Learned counsel from the office of Mr.Rahul Mehra, learned senior standing counsel for GNCTD submits that insurance companies have not yet submitted their suggestions and therefore, Mr.Rahul Mehra has not convened the meeting in terms of order dated 18th January, 2018. Mr. A.K. Soni, learned counsel submits that the suggestions of the insurance companies have not yet been received. It is submitted that the suggestions of the insurance companies shall be submitted positively within four weeks. Mr. Rahul Mehra shall convene the meeting in the second week of April, 2018.

16. Learned amici curiae further submit that the opening of a savings bank account near the place of the residence by the claimants is taking considerable time especially where the claimants resides outside Delhi and

in some cases, it takes more than three months to complete the formalities to open a savings bank account near the place of their residence. It is submitted that the Claims Tribunals be permitted to release reasonable amount to the claimants in their savings bank account in the Court complex to enable them to bear medical, legal, travelling and other expenses.

17. Order dated 18th January, 2018 is clarified to the extent that the Claims Tribunal may consider releasing reasonable amount not exceeding 10% of the total compensation to the claimants to their savings bank account in the Court complex to enable them to meet their immediate requirements.

18. Mr. S.P. Jain, learned counsel for Oriental Insurance Company submits that all the Claims Tribunals have not yet given the particulars of their Branch account to enable the insurance companies to transfer the amount by RTGS/NEFT mode directly to the account of Claims Tribunal. The Claims Tribunal shall ensure the compliance of clause 27 of the order dated 18th January, 2018 within a reasonable time.

19. Mr. Jitender Kamra, learned counsel seeks clarification of clause 8(e) of the order dated 18th January, 2018. It is submitted that the Claims Tribunal are insisting upon a separate letter from the banks apart from the endorsement by the banks on the passbook(s) which is causing immense inconvenience to the claimants as well as causing delay in releasing of the compensation amount. Para 8(e) of the order dated 18th January, 2018 is clarified to the extent that endorsement made by the bank along with the duly signed and stamped by the bank official on the passbook(s) of the claimant(s) is sufficient compliance of clause 8(e).

20. Mr. Lalit Bhasin, learned counsel for Indian Bank Association (IBA) has handed over the minutes of the meeting dated 6th March, 2018 which are taken on record. As per the said minutes, the Indian Bank Association has broadly agreed to the suggestion of this Court to formulate a special scheme

for disbursement of the compensation amount to the victims of the road accidents. The Indian Bank Association has circulated the minutes of the meeting to their member banks and the response of the banks is awaited. The decision of Indian Bank Association, after considering the response of the banks, be placed on record on the next date of hearing.

21. UCO Bank, Delhi High Court Branch has handed over the report according to which they have prepared a prototype of the special scheme which is under trial. The letter dated 9th March, 2018 is taken on record. Let the final report after trial of the software be placed on record on the next date of hearing.

22. List for further hearing on 1st May, 2018 at 2.30 PM.

23. Copy of this order be given *dasti* to counsels for the parties as well as to the counsels of the Insurance Companies, RBI, General Insurance Council, Indian Banks Association, UCO Bank as well as to Mr. Sidharth Luthra, Senior Advocate and Mr. A.J. Bhambhani, Senior Advocate as learned amici curiae, Mr. Rahul Mehra, Sr. Standing Counsel (Crl.) for GNCTD under signatures of the Court Master.

24. Copy of this order be sent to Registrar General of this Court who shall circulate it to all the Claims Tribunals.

25. Copy of this order be sent to Delhi State Legal Services Authority and to National Legal Services Authority.

J.R. MIDHA, J.

MARCH 09, 2018/dk

True Copy
28/3/2018