

MACT No.....
Pinki Tomar & ors Vs. HDFC ERGO Gen. Insurance Co. Ltd.&ors.
FIR No.0665/2022
PS :Baraut Baghpat
U/s.279/304A IPC

05.10.2023

Fresh claim petition has been received from filing section. It be checked and registered.

Present : Sh. Pankaj Kumar Deval, Ld. Counsel for the petitioners through VC

Heard. Perused.

Perusal of the case file reveals that the accident in question took place on **18.09.2023 at 1:50 pm, in front of Mahalakshmi Brick Field, Village, Bijrol, PS Baraut, Baghpat, U.P.**

The petitioner(s) has arrayed the concerned Nodal Officer of the Insurance Company of place of incident as respondent no. 2.

The Central Vehicles Rules, 1989 has been recently amended vide The Central Motor Vehicles (fifth amendment) Rules, 2022. The amended rules came into effect from 01.04.2022 and were published by Ministry of Road Transport & Highways vide its notification dated 25.02.2022. Vide said amendment, new Rule 150A has been inserted which provides the procedure to be followed for investigation of all accident cases arising out of use of motor vehicles in accordance with Annexure-VIII inserted in rules vide said amendment. The Annexure-VIII provides detailed procedure for investigation of the road accident cases.

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As per procedure of the investigation prescribed vide Annexure-VIII, Investigating Officer of the incident has to intimate The Motor Accident Claims Tribunal of area in question within 48 hours of the incident by submitting First Accident Report (FAR) in Form-I. The Investigating Officer has to file Interim Accident Report (IAR) in Form-V before concerned Claims Tribunal of the area in question within 50 days of the accident. The Investigating Officer has to also file Detailed Accident Report (DAR) in Form-VII before the concerned Claims Tribunal within 90 days. As per Clause 21 of Form-VIII, it is incumbent upon the concerned Claims Tribunal to treat the DAR as claim petition filed for compensation under Section 166 (4) of The Motor Vehicles Act, 1988 (*hereinafter referred to as M. V. Act*), if the final report under Section 173 of The Code of Criminal Procedure, 1973 (*hereinafter referred to as Cr. P.C.*) brings a case of rash and negligent driving. However, in cases, where DAR does not brings a case of rashness or negligence, Claims Tribunal has to register the case under Section 164 of The M. V. Act. Hence, in the present case also, IO must have filed First Accident Report (FAR), Interim Accident Report (IAR) and Detailed Accident Report (DAR) before the concerned Claims Tribunal of the area where the incident in question has taken place.

Recently, ***Hon'ble Supreme Court of India*** in matter of ***“Gohar Mohammed Vs. Uttar Pradesh State Road Transport***

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Corporation & Ors.” 2022 SCC Online SC 1769 while taking note of amendments and new regime has held as follows : -

“64. Accordingly, this appeal is decided with the following directions : -

(i) The appeal filed by the owner challenging the issue of liability is hereby dismissed confirming the order passed by the High Court and MACT.

(ii) On receiving the intimation regarding road accident by use of a motor vehicle at public place, the SHO concerned shall take steps as per Section 159 of The M. V. Amendment Act.

(iii) After registering the FIR, Investigating Officer shall take recourse as specified in The M. V. Amendment Rules, 2022 and submit the FAR within 48 hours to the Claims Tribunal. The IAR and DAR shall be filed before the Claims Tribunal within the time limit subject to compliance of the provisions of the Rules.

(iv) The registering officer is duty bound to verify the registration of the vehicle, driving license, fitness of vehicle, permit and other ancillary issues and submit the report in coordination to the police officer before the Claims Tribunal.

(v) The flow chart and all other documents, as specified in the Rules, shall either be in vernacular language or in English language, as the case may be and shall be supplied as per Rules. The Investigating Officer shall inform the victim(s)/legal representative(s), driver(s), owner(s), insurance companies and other stakeholders with respect to the action taken following The M. V. Amendment Rules and shall take steps to produce the witnesses on the date, so fixed by the Tribunal.

(vi) For the purpose to carry out the direction No. (iii), distribution of police stations attaching them with the Claim Tribunals is required. Therefore, distribution memo attaching the police stations to the Claim Tribunals shall be issued by the Registrar General of the High Courts from time to time, if not already issued to ensure the compliance of the Rules.

(vii) In view of The M. V. Amendment Act and Rules, as discussed here-in-above, the role of the Investigating

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Officer is very important. He is required to comply with the provisions of the Rules within the time limit, as prescribed therein. Therefore, for effective implementation of The M. V. Amendment Act and the Rules framed thereunder, the specified trained police personnel are required to be deputed to deal with the motor accident claim cases. Therefore, we direct that the Chief Secretary/Director General of Police in each and every State/Union Territory shall develop a specialized unit in every police station or at town level and post the trained police personnel to ensure the compliance of the provisions of The M. V. Amendment Act and the Rules, within a period of three months from the date of this order.

(viii) On receiving FAR from the police station, the Claims Tribunal shall register such FAR as Miscellaneous Application. On filing the IAR and DAR by the Investigating Officer in connection with the said FAR, it shall be attached with the same Miscellaneous Application. The Claims Tribunal shall pass appropriate orders in the said application to carry out the purpose of Section 149 of The M. V. Amendment Act and the Rules, as discussed above.

(ix) The Claim Tribunals are directed to satisfy themselves with the offer of the Designated Officer of the insurance company with an intent to award just and reasonable compensation. After recording such satisfaction, the settlement be recorded under Section 149 (2) of The M. V. Amendment Act, subject to consent by the claimant(s). If the claimant(s) is not ready to accept the same, the date be fixed for hearing and affording an opportunity to produce the documents and other evidence seeking enhancement, the petition be decided. In the said event, the said enquiry shall be limited only to the extent of the enhancement of compensation, shifting onus on the claimant(s).

(x) The General Insurance Council and all insurance companies are directed to issue appropriate directions to follow the mandate of Section 149 of The M. V. Amendment Act and the amended Rules. The appointment of the Nodal Officer prescribed in Rule 24 and the Designated Officer prescribed in Rule 23 shall be immediately notified and modified orders be also notified time to time to all the police stations/stakeholders.

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(xi) *If the claimant(s) files an application under Section 164 or 166 of The M. V. Amendment Act, on receiving the information, the Miscellaneous Application registered under Section 149 shall be sent to the Claims Tribunal where the application under Section 164 or 166 is pending immediately by the Claims Tribunal.*

(xii) *In case the claimant(s) or legal representative(s) of the deceased have filed separate claim petition(s) in the territorial jurisdiction of different High Courts, in the said situation, the first claim petition filed by the claimant(s)/legal representative(s) shall be maintained by the said Claims Tribunal and the subsequent claim petition(s) shall stand transferred to the Claims Tribunal where the first claim petition was filed and pending. It is made clear here that the claimant(s) are not required to apply before this Court seeking transfer of other claim petition(s) though filed in the territorial jurisdiction of different High Courts. The Registrar Generals of the High Courts shall take appropriate steps and pass appropriate order in this regard in furtherance to the directions of this Court.*

(xiii) *If the claimant(s) takes recourse under Section 164 or 166 of The M. V. Amendment Act, as the case may be, he/they are directed to join Nodal Officer/Designated Officer of the insurance company as respondents in the claim petition as proper party of the place of accident where the FIR has been registered by the police station. Those officers may facilitate the Claims Tribunal specifying the recourse as taken under Section 149 of the M. V. Amendment Act.”*

(xiv) *Registrar General of the High Courts, States Legal Services Authority and State Judicial Academies are requested to sensitize all stakeholders as early as possible with respect to the provisions of Chapters XI and XII of The M. V. Amendment Act and The M. V. Amendment Rules, 2022 and to ensure the mandate of law.*

(xv) *For compliance of mandate of Rule 30 of The M. V. Amendment Rules, 2022, it is directed that on disputing the liability by the insurance company, the Claims Tribunal shall record the evidence through Local Commissioner and the fee and expenses of such Local Commissioner shall be borne by the insurance company.*

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(xvi) The State Authorities shall take appropriate steps to develop a joint web portal/platform to coordinate and facilitate the stakeholders for the purpose to carry out the provisions of M. V. Amendment Act and the Rules in coordination with any technical agency and be notified to public at large.”

Hence, the petitioner(s) is given time to apply to the concerned Tribunal to send the statutory petition under Section 166(4) of The M. V. Act (along-with documents/FAR/IAR/DAR) to the present Tribunal and to comply with the other directions mentioned in paragraph no. 64 (xii) of above cited judgment of ***Hon’ble Supreme Court of India***, if required in present matter. Copy be given dasti.

Put up for further proceedings on **13.12.2023**.

(This Tribunal is satisfied qua the audio & video connectivity of video conferencing hearing).

(Ashutosh Kumar)
Presiding Officer, MACT-01 (Central)
THC/Delhi/05.10.2023(r)