

**BEFORE THE COURT OF MS. MAYURI SINGH, PO MACT- EAST,
KARKARDOOMA COURTS, DELHI**

MACP No.667/22

Anita Trikha & Anr. Vs. Gaurav Jain & Ors.

04.09.2023

Present : Ms. Kshama Soni, Ld. Counsel for petitioner.
Sh. Sachendra Kumar, Ld. Counsel for R-3 / insurer.

It is submitted by counsel for R-3 that vakalatnama shall be filed within 2 days.

Heard. File perused. On the basis of pleadings and supporting documents, following issues are framed:-

(i) Whether Captain Kumar Trikha, husband of petitioner No.1 and father of petitioner No.2 died in a motor vehicular accident happened on 19.05.2022 at 07.30 a.m., at Hapur flyover service lane, Hapur, U.P. within jurisdiction of PS Hapur, due to rash and negligefnt driving of car bearing registration No. DL-3CCT-2440 driven by respondent No. 1 / Gaurav Jain ? (OPP)

(ii) Whether the petitioners are entitled to compensation on account of said death and if yes, to what extent and from whom? (OPP)

(iii) Relief.

In view of the judgment of Hon'ble Supreme Court of India in Gohar Mohammad Vs. Uttar Pradesh Road Transport Corporation & Ors. 2022 SCC Online SC 1769, evidence shall be recorded through Local Commissioner.

The cost of evidence shall be borne by the insurance company i.e. Rs.3,000/- per witness.

Lately, Central Motor Vehicle Rules, 1989 has been amended by way of Central Motor Vehicles (5th Amendment) Rules, 2022 effective from 01.04.2022. By way of inclusion of Rule 150A in MV Rules, 1989, concept of Recording of Evidence by way of Local Commissioner has been introduced.

The evidence shall be recorded as per under-mentioned Protocol drafted for this purpose.

**'Protocol for Recording of Evidence through
Court Commissioner in MACT'**

A. Statutory Provisions:

1. Motor Vehicles Act, 1988

Section 169. Procedure and powers of Claims Tribunals -

- (1) In holding any inquiry under Section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
- (2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter 26 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.
- (4) For the purpose of enforcement of its award, the Claims Tribunal shall also have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908 (5 of 1908), as if the award were a decree for the payment of money passed by such court in a civil suit.

2. Central Motor Vehicle Rules, 1989

Rule 150A. Procedure for investigation of road accident* - The procedure to be followed for investigation of all accidents arising out of the use of motor vehicles shall be in accordance with Annexure-XIII and in the manner of submission and form, including electronic submission on such Portal as may be specified.

**(Inserted vide Central Motor Vehicles (5th Amendment) Rules 2022 effective from 01.04.2022)*

3. Annexure XIII – Procedure for investigation of Motor Vehicle Accidents -

Clause 29 - In case of non-settlement, the Claims Tribunal shall conduct an enquiry and pass an award within thirty (30) days*

If the offer of the Insurance Company is not fair or is not acceptable to the claimant(s) or if the Insurance Company has any defence available to it under law, the Claims Tribunal shall proceed to conduct an inquiry under Sections 168 and 169 of the Motor Vehicles Act, 1988. The claims Tribunal shall pass an award after hearing the parties, within nine months from the date of accident.

Clause 30 – Cases where the Insurance Company disputes the liability*

If the insurance company disputes the liability to pay the compensation, it shall disclose the grounds of defence in Form-XI. If the Claims Tribunal considers the recording of evidence necessary, the Claims Tribunal shall conduct an inquiry in terms of Sections 168 and 169 of Motor Vehicles Act, 1988 to be completed within one year from date of accident. If the Claims Tribunal is unable to complete the inquiry within one year, it shall record reasons thereof in the award. The claims Tribunal may direct the recording of the evidence by the Local Commissioner, if the Insurance Company is willing to bear the fees of the Local Commissioner.

**(Inserted vide Central Motor Vehicles (5th Amendment) Rules, 2022 effective from 01.04.2022)*

B. Recording of Evidence by Court Commissioner

1. Preparation for Assignment

- i) **Recording of evidence in Cases where insurance company disputes the liability-** Recording of evidence in cases where Insurance Company disputes liability shall be carried out by the Local Court Commissioner appointed by the Presiding Officer of the Tribunal
Explanation: For reasons to be recorded, Tribunal may retain the case for recording of evidence before itself.
- ii) **Appointment of Court Commissioner** - As per the protocol, on the date of identification of issues, the Tribunal shall pass the order for appointment of Court Commissioner.
- iii) **Copy of order be shared with parties and Court Commissioner** - Copy of the order of framing of issues, appointment of Court Commissioner and the schedule of recording of evidence shall be supplied to the parties as well as the Court Commissioner.
- iv) **Parties to cooperate** - It is expected of both the sides that they will cooperate with Court Commissioner as well as with each other in recording of evidence and carry out proceedings in a cordial manner.

2. Recording of Evidence

- i) **Filing of list of witnesses-** Both sides shall file list of witnesses preferably within Three Days but not later than one week of identification of issues before the Tribunal while sharing an advanced copy thereof with the opposite Party/Parties.
- ii) **Order of assignment of Case to the Court Commissioner-** While assigning the case, Tribunal may pass an Order covering following aspects:
 - a) **Schedule of evidence** - Recording of evidence shall start within Ten days of identification of issues. Evidence shall continue on day-to-day basis, till conclusion. Claimant shall lead the Evidence First, followed by Respondents chronologically.
Any alteration in schedule for recording of evidence, if needed, shall be decided by the Court Commissioner as per convenience of all concerned, to the extent possible.
 - b) **Time Period** - Claimant's evidence shall be concluded within Four weeks of initiation. Respondent's Evidence shall be concluded within Two Weeks after conclusion of Claimant's Evidence.

In case, for any reason the parties are unable to adhere to the time schedule, extension can be sought from the Tribunal but not beyond additional Two Weeks.

- c) **Access to Copy of the Trial file** - Tribunal shall ensure that the parties as well as the Court Commissioner are provided access to copy of the File/Document on demand.
- d) **Examination-in-Chief** – The Examination-in-Chief shall be filed by way of affidavit. Its Copy shall be supplied to opposite party. However, no adjournment shall be granted for Cross Examination and the same shall be carried out on the day the Affidavit is filed.
- e) **Production of documents for cross-examination** - In case the opposite side is desirous of production of any document by the witness or any other entity for the purpose of cross-examination, an application requesting the same shall be moved well in advance before the Tribunal.

3. Duty of Court Commissioner

- i) **Place and Time** - Court Commissioner shall record evidence either in the sitting space available in the Court Room or Lawyer’s Chamber or Judges/Bar Library or any other public place within the Court Complex as mutually agreed by both sides. Evidence shall be recorded between 10.00 AM to 5.00 PM. It can carry on beyond 5.00 PM as well in case both parties agree. It can even be recorded on a holiday if all the stakeholders are comfortable and agree to the same.
- ii) **Chronology of recording** - Court Commissioner shall proceed to record the examination by first recording the deposition of litigating party before examining additional summoned witnesses.
- iii) **Oath to witnesses** - Court Commissioner shall administer oath to the witnesses under examination as a delegatee of the Tribunal as per Oaths Act, 1969.
- iv) **Recording of evidence** - The evidence shall be preferably typed on a computer.
- v) **Comfortable sitting space** - Witnesses and their Counsel shall be provided comfortable sitting space by the Court Commissioner.
- vi) **Exhibition of documents** - Court Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to exhibition of the documents by either side, the objection shall be recorded in some detail and left open with an assurance that mere marking of such exhibits will not be treated as conclusive proof thereof and that admissibility of such document shall be decided by the referral Tribunal at final stage.
- vii) **Original documents to be retained by parties** - Original documents shall be retained by parties. Court Commissioner shall sign the exhibits with an endorsement OSR (original seen and returned) wherever necessary.
- viii) **Language** - Recording of evidence shall preferably be carried out in English or Court language, as the case may be, unless requested by the parties otherwise.
- ix) **Adjournments** - Once started, the Evidence shall preferably continue on day-to-day basis. In case of any hardship viz. ill health etc. the case can be deferred but preferably not later than a week. In case an evidence schedule is fixed and adjournment is sought by the opposite side, i.e. the side other than who is leading evidence, without 24-hour advance notice, the cost of that day's proceedings shall be borne by the defaulting party.
Explanation: In case a witness scheduled to be examined or under examination is reported to be unwell or unavailable, the party leading the evidence shall produce the next witness in line in the list for recording of evidence.
- x) **Recording of objections** - All the objections raised during cross-examination/re-examination shall be recorded in the deposition under title objections and shall be left open for the decision of the Tribunal at the stage of final arguments. Witness shall not refuse to answer the question asked.
- xi) **Questions to be allowed** - In case Court Commissioner finds any question not related to the fact and issue, he shall record his objection but shall allow the question to be put and witness must answer.
- xii) **No third person intervention** - Court Commissioner shall ensure that the witness is not assisted by his Counsel or any other person while under examination in answering the questions.

- xiii) **Recording of demeanour of witness** - Court Commissioner shall record the demeanour of the witness wherever it is found pertinent and necessary for sharing with the Tribunal.
- xiv) **Copy of evidence** - All parties shall be provided uncertified copy of the evidence recorded, free of cost.
- xv) **Safe keeping of original deposition** - Court Commissioner shall keep the original depositions in his safe custody till such time they are filed in the Tribunal in original upon completion of each witness individually.
- xvi) **Miscellaneous proceedings** - Court Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court at the time of submission of final report.
- xvii) **Hostile Witness** - In case a witness is sought to be declared hostile, then Court Commissioner shall refer both the parties to the Tribunal at the earliest and the Tribunal shall decide the issue within three days.

4. Miscellaneous

i) **Summoning of Witness**

- a) **Summons from Tribunal** - In case a litigating party is desirous of summoning a person for deposition or production of documents, it shall obtain summons from the Tribunal with an endorsement that such person shall appear before the address of Court Commissioner on scheduled date, time and place.
- b) **Diet Money** - Diet money shall be paid to such witness by the party desirous of summoning as per rules.

ii) **Advisory to Court Commissioner** - While recording the evidence on commission, the Court Commissioner shall ensure the following:

- a) **Impartial** - Court Commissioner shall conduct himself in an impartial way and behave in an indiscriminate manner while recording of evidence.
- b) **Polite** - Court Commissioner shall be polite with the witness and other stakeholders while recording of evidence.
- c) **Confidentiality** - Court Commissioner shall maintain confidentiality during the whole process.
- d) **Keeping professional distance** - Court Commissioner shall not solicit professional work from the parties.
- e) **Integrity** - Court Commissioner shall not accept remuneration or any favour in cash or kind from the parties over and above the honorarium fixed by the Tribunal.
- f) **Non-judgmental** - Court Commissioner shall not criticize the professional conduct of lawyers and litigating parties on their understanding of law.
- g) **Punctuality** - Court Commissioner shall adhere to time schedules and shall not make excuses like being engaged in some personal or Court work etc.
- h) **Coordination** - In case of any unforeseen circumstances warranting change of dates of hearing, for his own case or the request of other side, he shall apprise the other side in advance via phone call, email, SMS etc.
- i) **No third-party sharing** - Court Commissioner shall not allow the deposition to be inspected by any third party and shall not share a copy thereof with any stranger without permission of the Tribunal.
- j) **Inspection** - Court Commissioner shall not allow any party to inspect the recorded proceedings in his absence.
- k) **Recusal** - In case either of the parties or Counsel for the parties are related or closely known to Court Commissioner, he/she shall recuse self from the case and inform the referral Tribunal.

iii) **Remuneration of Court Commissioner** –

- i. **Remuneration** - In terms of Clause 30 of 'Procedure for Investigation of Motor Vehicle Accidents' under Rule 150A of Central Motor Vehicle Rules read with Order 18 Rule 4 of the CPC read with Order 26 of the CPC, Court Commissioner shall be paid remuneration for the work carried out.
- ii. **Mode of payment** - Such remuneration shall be paid by the Insurance Company/Claimant directly for the work carried out by way of cash, cheque or digital mode.
- iii. **Payment by Insurance Company** - The cost of Recording of Evidence by both the sides shall be borne by the Insurance Company, in cases where Offending Vehicle is Insured.
- iv. **Court Commissioner's Fee** - Fee for recording of evidence is fixed at Rs.3,000/- per Witness, all inclusive.

5. Judicial Intervention during recording of Evidence -

- i. **Dissolution of hindrances** - In case of any conflict resulting into hindrance recording of evidence, it shall be resolved amicably by the parties at their own level with the active help of the Court Commissioner.
- ii. **Closure of Evidence** - In case a Party fails to Examine any Witness despite opportunity, the Court Commissioner or the opposite Party can request the Tribunal to close the right of the defaulting party to lead Evidence.
- iii. **Court intervention** - However, in case of any unforeseen situation requiring judicial intervention, Court Commissioner shall fix date and time for joint appearance of both sides before the Tribunal for removal of any such impediment.

6. Miscellaneous Applications

- i. **Moving the application** - In case either of the parties is desirous of moving any miscellaneous application it shall share an advance copy with the opposite side and reply thereof, if any, shall be filed and shared within seven days.
- ii. **Date of hearing** - Upon receipt of reply, both the sides shall get the application fixed for disposal in the Tribunal with the help of Reader of the Court and shall not wait till next date fixed for hearing.
- iii. **Evidence not to be stalled** - It is clarified that, unless Court Commissioner is of the view that the interim application moved by either of the parties is such that evidence cannot be recorded before its disposal, the recording of PE/DE shall continue unabatedly.

Ms. Neelam Rani, Advocate, Enrol No. D/1649/2010, Chamber No. G-324, G Block, Karkardooma Court Complex, Delhi (mobile No.9315465670), is hereby appointed as Local Commissioner and she shall file the report by the next date. The mobile number of counsel for petitioner is 7303663995, counsel for R-1 and R-2 is 9810570167 and counsel for insurance company is 9718343340.

Copy of the order be given dasti to parties.

Copy of order be also sent to Learned Local Commissioner.

Now to come up for final arguments on **05.02.2024**.

All the parties are directed to examine all the witnesses from petitioner as well as respondent side within the time frame.

(MAYURI SINGH)
PO MACT (East)/KKD
Delhi/04.09.2023