

Misc DJ 980/22

SANTOSH Vs. GOKUL RAI @ GAURAV

07.10.2023

Present : Sh. Narender Singh, Ld. Proxy Counsel for
claimants.
Sh. Puneet Rai, Ld. Counsel for R-1 and R-2.

It is submitted that the reply has already been filed
on behalf of R-2 and Ld. Counsel adopts the same reply for R-1
also.

Pleadings are complete. After going through the
pleadings, following issues are framed :-

**1. Whether the deceased Sh. Kalyan Prasad sustained fatal injuries in the accident which occurred on 30.10.2022 at about 08.12 pm, at Delhi Cantt. Flyover, Near Bus Stand Kirbi Place, New Delhi caused by rash and negligent driving of vehicle No. DL-4SBM-0627 being driven by respondent no.1 and owned by respondent no.2 ?
OPP.**

2. Whether the claimants are entitled for compensation? If so, to what amount and from whom?

3.Relief.

No other issue arises or is pressed.

The Hon'ble Supreme Court in recent judgment titled as ***Gohar Mohammad Vs. Uttar Pradesh State Road Transport Corporation, Civil Appeal No. 9322 of 2022 (arising out of Special Leave Petition (C) No. 32448 of 2018)*** has given specific directions as under :-

“.....61. In our view the said contention is as per Rule 30. Where the insurance company disputes the liability, the Claims Tribunal is duty bound to record the evidence through the local commissioner and the fee/expenses of such local

commissioner shall be borne by the insurance company.”

In view of the aforesaid judgment, the evidence be recorded through Local Commissioner at the expense of registered owner.

A joint application was preferred by some counsels appearing regularly before this Tribunal with a prayer to appoint senior Advocates to record evidence as in majority of cases the new enrolled lawyers have problem in recording the evidence of the parties. The same has been considered and preferably lawyers with some experience at Bar shall be appointed henceforth. The fee of Local Commissioner is accordingly enhanced.

Accordingly, **Sh. Piyush Katyal, Advocate, Chamber No. 576, Saket Court, New Delhi-110017, having mobile No. 8700925528**, who is present in the Court and who has volunteered to work as Local Commissioner, is appointed as Local Commissioner to record evidence of witnesses. Fee of the Local Commissioner is fixed at Rs. 5,000/- per witness, which shall be paid by the registered owner. Misc. expenses shall also be borne by the registered owner. Diet money of witnesses shall be paid by the parties calling them. Recording of evidence before the Local Commissioner shall commence w.e.f. **20.11.2023 at 02.00 pm** onwards. Date has been given as per convenience of the parties. After the list of witnesses is provided by the parties, the evidence shall be recorded in post lunch session only. Further dates for recording of evidence shall be given by the Local Commissioner himself. The evidence shall be recorded as per the following Protocol :-

Recording of Evidence by Court Commissioner

1. Preparation for Assignment

i) 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.

ii) 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 from today while sharing an advance 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 - The 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 preferably within Four weeks of initiation. Respondent's Evidence shall be concluded preferably within Two Weeks after conclusion of Claimant's Evidence.

c) Access to Copy of Trial Record - Tribunal shall ensure that the parties as well as the Court Commissioner are provided access to copy of the Judicial Record 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 well in advance.

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 in the Judges Library/Court Room as mutually agreed by both sides. Evidence shall be recorded between 2.00 PM to 4.00 PM.* It can carry on beyond 4.00 PM as well in case both parties agree. However, it shall not carry beyond 4:30 PM.

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 OS&R (original seen and returned) wherever necessary.

viii) Language - Recording of evidence shall preferably be carried out in English.

ix) Adjournments - 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 amounting to Rs.1,000/- 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.

4. Miscellaneous

i) Summoning of Witness

a) Summons by 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.

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 PC 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 registered owner directly for the work carried out by way of cash, cheque or digital mode.

iii. Court Commissioner’s Fee - Fee for recording of evidence is fixed at Rs.5,000/- 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 before 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/RE shall continue unabatedly.

Re-notify for filing of report by the Local Commissioner on **27.05.2024**. Proceeding sheet shall be prepared by the Local Commissioner on every date fixed for evidence and copy be supplied to the parties/Ld. counsels on the same day or the very next day physically or electronically. This directions be adhered strictly.

All the parties are directed to appear before the Local Commissioner on the dates fixed, in person or through counsel. **It is made clear that any adjournment is sought by either party before the Local Commissioner on date fixed, shall entail cost of Rs.1,000/- to be paid to the Local Commissioner, if he/she has come to the Tribunal/Judge's Library for recording evidence at the specified time.**

Copy of the order be given dasti to Local Commissioner as well as Ld. counsel for the parties.

Short date is not possible as there is pendency of more than 3000 cases out of which approx. 400 cases are old matters, which shall be taken up on priority.

(Shefali Barnala Tandon)
Judge / PO, MACT,
New Delhi/07.10.2023 (J)