

3 M A C T 158/22

SURESH KUMAR Vs. KAMAL KUMAR SHARMA AND ORS

15.03.2024

Present: Sh. Aditya Yadav, Ld. counsel for petitioner.
R1 and R2 already proceeded ex-parte.
Sh. V. K. Gupta, Ld. counsel for R3.

The disability certificate of petitioner has been received. Same is taken on record. Copy supplied to the parties.

Written statement on behalf of R3 has been filed. Same is taken on record.

On the basis of pleadings, documents and material on record following issues are framed as under:-

- 1. Whether petitioner Suresh Kumar, S/o Sh. Hazari Lal suffered injuries in road traffic accident on 15.01.2021 at about 11:18 am, Before the Prine Hotel, Raghunathpura, Jaipur, Rajasthan due to rash and negligent driving of offending vehicle bearing registration no.RJ-32-PA-2892 which was being driven by driver Kamal Kumar Sharma S/o Sh. Chaturbhaj Sharma on the said date, time and place? OPP.***
- 2. Whether the petitioner/injured is entitled for compensation, if so, to what amount and from whom? OPP.***
- 3. Relief.***

No other issue arises or pressed upon.

Lately, Central Motor Vehicle Rules, 1989 have 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. Recently, the Hon'ble Supreme Court of India has directed that MACTs shall record the evidence through Local Commissioner in cases where the Insurance Company disputes its liability and fee and expenses of such Local Commissioner is to be borne by the Insurance Company concerned. (Please see : ***Gohar Mohd. Vs. UPSRTC, Civil Appeal No. 9322/2022***; date of decision : 15.12.2022).

In the light of the above, so as to achieve timely and expedient decision in this case, it is directed that evidence may be recorded by a Local Commissioner, whose fees and expenses shall be borne by Insurance Company. **Sh. Vivek Gautam, Advocate Enrl No.D/259/2010, Mob. no.98733-39533** is hereby appointed as LC and he shall file the report within 10 weeks from first appearance before Ld. Local Commissioner. 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. Assignment of case by court for recording of evidence-

Schedule of Evidence- Evidence shall be recorded preferably on the same day fixed by Local Commissioner. If it is not possible on the same day, then on the next day. Evidence shall continue on day to day basis, till conclusion. Any alteration in schedule for recording of evidence if needed shall be decided by the Ld. Commissioner as per convenience of all concerned.

B. Recording of evidence by the Commissioner-

1. Place and Time - Court Commissioner shall record evidence either in the sitting space available in the Court Room within the

Court Complex as mutually agreed by both sides. Evidence shall be recorded between 10.00 AM to 4.00 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.

2. Oath to Witnesses- Ld. Commissioner shall administer oath to the witnesses under examination as a delegate of the Court as per Oaths Act.

3. Chronology of Recording- Claimant shall lead the Evidence First, followed by Respondents chronologically - Ld. Commissioner shall proceed to record evidence of litigating party first before examining any other summoned witnesses.

4. Recording of Evidence- The evidence shall be preferably typed on a computer.

5. 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.

6. 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.

7. Original Documents to be Retained by Parties- Ld. Commissioner shall make an observation in the record of evidence of all original documents produced and he shall sign the exhibits with an endorsement OSR wherever necessary.

8. English Language- Ld. Local Commissioner, shall proceed to record evidence in English language only.

9. *Adjournments-* Once started the examination of a witness shall be continued on a day to day basis. In case of any hardship viz. ill health etc. the case can be deferred for a day or two but not more than one week. If witness of a party is present and is available for examination in chief and cross-examination but opposite party or their Counsel is not available for evidence, only one adjournment for a witness may be granted by LC subject to the condition that cost of hearing of that particular day is to be borne by the party who is seeking adjournment and that too if LC is satisfied that there are reasonable grounds for seeking adjournment for evidence that particular day. No second adjournment for cross-examining of the same witness shall be granted by LC in any circumstances. If no adjournment is sought and opposite party is absent, the LC shall close the right of cross-examination of that particular witness and proceed further with evidence as per law.

10. *Question-Answers-* On the request of ld. Counsel cross-examining the witness, portions of deposition may be recorded in question-answer form and questions shall be numbered for each witness.

11. *Recording of Objections-* All the objections raised during cross-examination/re-examination shall be recorded in the deposition under titled objections and shall be left open for the decision of the Tribunal at the stage of final arguments. Witness shall not refuse to the answer the question raised.

12. *Questions to be allowed-* In case Ld. 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.

13. *Assisting the Witness-* In case witness is unable to understand the question put to him, Ld. Commissioner shall elaborate the same in an easy to understand manner in an impartial way.

14. *No Third Person Intervention-* Ld. Commissioner shall ensure that the witness is not assisted by his Ld. Counsel or any other third party while under cross-examination.

15. Recording of Demeanor of Witness- Ld. Commissioner shall record the demeanor of the witness where ever it is found pertinent and necessary for sharing with the Court.

16. Witness to sign all pages- Ld. Commissioner shall obtain signatures of both the sides on each and every page of recording of evidence apart from signing them himself.

17. Copy of Evidence- All interested parties shall be provided uncertified copy of the evidence recorded, free of cost.

18. Safe keep of Original Deposition- Ld. Commissioner shall keep the original depositions in his safe custody till such time they are filed in the Court in original upon completion of each witness individually.

19. Miscellaneous Proceedings- Ld. Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court with the report.

20. Hostile Witness- In case a witness is sought to be declared hostile, than Ld. LC shall refer both the parties to Court within three days for exercising powers U/s. 154 Evidence Act.

C. Summoning of Witness(es) / Records-

1. Summons from the Court- In case a litigating party is desirous of summoning witness(es)/ records, it shall obtain summons from the Court with an endorsement that witness/ Authorised Person shall appear before Ld. Commissioner for recording of evidence on scheduled date, time and place.

2. Diet Money- Diet money shall be paid to such witness by summoning party as per rules.

D. Advisory to Court Commissioner - While recording the evidence on commission, the Court Commissioner shall ensure the following:

1. Impartial - Court Commissioner shall conduct himself in an impartial way and behave in an indiscriminate manner while recording of evidence.

2. Polite - Court Commissioner shall be polite with the witness and other stakeholders while recording of evidence.

3. *Confidentiality* - Court Commissioner shall maintain confidentiality during the whole process.
4. *Keeping professional distance* - Court Commissioner shall not solicit professional work from the parties.
5. *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.
6. *Non-judgmental* - Court Commissioner shall not criticize the professional conduct of lawyers and litigating parties on their understanding of law.
7. *Punctuality* - Court Commissioner shall adhere to time schedules and shall not make excuses like being engaged in some personal or Court work etc.
8. *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.
9. *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.
10. *Inspection* - Court Commissioner shall not allow any party to inspect the recorded proceedings in his absence.
11. *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.

E. Remuneration of Ld. Commissioner-

1. *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.
2. *Mode of Payment*- Such remuneration shall be paid by the party directly for each day's work either by way of cash, cheque/ draft or digitally against due receipt.
3. *Fee to be paid*- Remuneration fee for recording of evidence is fixed at Rs.3,000/- per witness(all inclusive). Counsel for the insurance company shall make the payment for evidence recorded on each date.

4. LC Fees on days of adjournment- Though fees of LC is to be borne by the Insurance Company as discussed above, however, if either or all the parties seek or cause/ lead to an adjournment without any effective work/ hearing, the party or parties (as the case may be) due to whose conduct adjournment had to be made shall pay a sum of Rs. 1,500/- as expenses/ TA-DA to the Ld. Local Commissioner. It is further clarified that if any party wishes to cancel any date already fixed, it shall inform the LC three days in advance in writing through email and by way of telephonic message also.

F. Judicial Intervention during recording of evidence-

5. Parties to Cooperate- It is expected that both sides will cooperate with Ld. Commissioner as well as each other and record evidence in a peaceful manner.

6. Court Intervention- However, in case of any unforeseen situation requiring judicial intervention, Ld. Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediment.

G. Miscellaneous Applications-

1. Moving the Application- In case either of the parties is desirous of moving any miscellaneous application, they shall share an advance copy with the opposite side and reply thereof, if any, shall be prepared within seven days.

2. Date of Hearing- Upon receipt of reply, both the sides shall get the application fixed for disposal in the Court in with the help of Reader of the Court and shall not wait till next date fixed for hearing.

3. Evidence not to be stalled- It is clarified that, unless Ld. Counsel is of the view that the application is such that evidence cannot be recorded before its disposal, the recording of PE/DE shall continue unabatedly.

Ahlmad shall share the mobile numbers of all the parties/ their counsel, as available on record, with the Ld. Local Commissioner, if so requested. Ahlmad shall provide access to the

judicial file to a party on demand in the presence of Ld. Local Commissioner.

The parties have submitted that there are chances of settlement.

To come up for settlement, if any/report of Ld. Local Commissioner on 31.05.2024.

(Shivaji Anand)
ADJ-1+ MACT, N/W, Rohini Courts,
15.03.2024