

MACT: 875/21

Kanti Devi v. Pankaj Kumar

26.04.2024

Present: Sh. Varun Sarin, Ld. Counsel for claimant.
Sh. Sai Kaushal, Ld. Counsel for insurance company.
None for R-1/driver-cum-owner.

1. R-1 has been served through publication, despite which he has failed to appear. He stands served through publication in newspaper “**Aaj**”, Barailley edition dated 27.03.2024. a copy of such newspaper is filed. As such, he is deemed to have been served.

2. Reply of R-2 is already on record.

3. On the basis of pleadings, following issues are being framed:

1. Whether the deceased suffered fatal injuries in a road traffic accident on 17.07.2021 due to rash and negligent driving of vehicle bearing no. UP-26J-5492 being driven and owned by R-1 and insured with R-2? OPP.

2. Whether the petitioner is entitled to any compensation and if so, to what extent and from whom ? OPP.

3. Relief.

4. In the case of **Gohar Muhammad Vs. Uttar Pradesh State Road Transport Corporation, Civil Appeal no. 9322 of 2022 decided on 15.12.2022**, it has been directed by Hon’ble Supreme Court:

“63. 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.”

5. As such, in view of such provision of law and directions by Hon’ble SC, it is ordered hereby that evidence of claimant/petitioner and his witnesses, as well as that of respondent side and his witnesses, if any,

be recorded through commission.

6. **Sh. Akaash Bhola, Enorl. No. D/13199/2022, Mobile No. 9990744511/8272809498** is appointed as Ld. Local Commissioner in this case for recording of such evidence.

6.1. From the side of the **petitioner/Claimant**, process be coordinated by **Ld. Counsel Mr. Varun Sarin, Enrol no. D/1535/07, Mobile no. 9910160045, office at S-380, LGF, Greater Kailash-I, New Delhi.**

6.2. From the side of the Insurance Company, process be coordinated by **Ld. Counsel Ms. Umesh Kumari Kaushal, Enrol.No. D/2086/99, Mobile No. 9891113971, Chamber No. 923, Lawyer's Chamber block, Rohini Court complex, Delhi.**

6.3 From the side of **driver-cum-owner, no data is available.**

7.1. Assignment of case by court for recording of evidence-

7.1.1. Schedule of Evidence- Evidence shall be recorded preferably on the day & time fixed by Ld. 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 or recording of evidence, if needed, shall be decided by the Ld. Commissioner, after consulting all concerned.

7.1.2. Judicial File not to be sent- It is clarified that the judicial file shall not be sent or summoned for recording of evidence by the Ld. Commissioner.

7.1.3. 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, *including the documents which is already deposited in this court by a party*, an application requesting the same shall be moved before this court expeditiously as per law.

7.2. Recording of evidence by the Commissioner-

7.2.1. Place and Time- Ld. Commissioner shall record evidence only in the Saket Court Complex at the address agreed in writing by both sides within one week of this order. But in case both side parties so agree and give in writing to the Ld. Commissioner, within one week of this order ,then such evidence can be recorded at any other Court complex in Delhi (e.g. Patiala House Court complex, Tis Hazari Court complex). But in any case such place shall not be other than a court complex in Delhi .

7.2.1.1. In case, both the parties failed to agree/furnish a particular place within one week, then LC shall be at liberty to decide the exact place, subject to parameters just mentioned above. And Ld. Commissioner shall intimate suitably both sides ,as well as this court in this regard.

7.2.1.2. 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 stake holder are comfortable and agreeable.

7.2.2. Chronology of Recording- Ld. Commissioner shall proceed to record the examination by first recording the deposition of parties to present claim ,before examining additional summoned witnesses.

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

7.2.4. Recording of Evidence- The evidence shall be preferably typed on a computer or in case of non- availability shall be neatly hand written.

7.2.5. Time Frame:-

7.2.5.1. Petitioner shall supply advance copy of examination in

chief by way of affidavit of claimant (s) as well as his “non summoned” witness (s), if any within two weeks from today to other parties.

7.2.5.2. Likewise, after conclusion of recording of claimants/ petitioner side evidence, within next two weeks thereafter, respondent side shall supply advance copy of examination in chief by way of affidavit of respondent (s) as well as his “non summoned” witness (s), if any to other parties.

7.2.5.3. Ld. Commissioner shall conclude the recording of evidence preferably on the same day or within shortest time possible ,but not later than within **30** days of assignment of a case, which is extendable by the order of this court by another **30** days in case the evidence is not concluded despite best efforts, if application is moved by any of the parties or Ld. LC.

7.2.5.4. Both Claimant/Petitioner’s evidence and respondent’s evidence shall be concluded within 30 days each of initiation. In case there are more than two witnesses for each side, one week per witness may be added to the 30 day period.

7.2.6. Comfortable Sitting Space- All the witnesses and their Ld. Counsel shall be provided comfortable sitting space by coordination with both side counsels .

7.2.7. Exhibition of Documents- Ld. 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 the either side, the objection shall be recorded in some detail and left open ,and admissibility of such document shall be decided by the referral Court at final stage.

7.2.8. 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 (original seen & returned) wherever necessary.

7.2.9. English Language- On the first date, when all the concerned parties appear before the Commissioner, he shall proceed to record the cross-examination and re-examination, if any, of a witness in English language.

7.2.10. Adjournments- Once started the cross-examination shall be continued on day to day basis. In case of any hardship viz. ill health etc. the case can be deferred, at the discretion of the Ld. Commissioner.

7.2.11. Question-Answers- On the request of Id. Counsel cross-examining the witness, portions of deposition may be recorded in question-answer form, if the Ld. Commissioner deem it fit and necessary.

7.2.12. 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 Court at the stage of final arguments. Witness shall not refuse to the answer the question raised on this account only.

7.2.13. 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.

7.2.14. 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.

7.2.15. 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 by way of verbal or non-verbal communication.

7.2.16. 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.

7.2.17. 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. In case the witness refuse to sign , the Ld. Commissioner will still himself sign all such pages after noting that witness refused to sign .Ld. Commissioner shall record reasons ,if any, stated by the witness for refusal to sign.

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

7.2.19. 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.

7.2.20. 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.

7.2.21. 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.

7.2.22. Filing of list of witnesses- Both sides shall file list of witnesses preferably within 7 Days but not later than 2 week of identification of issues before the Tribunal while sharing an

advanced copy thereof with the opposite Party/Parties.

7.2.23. *If so desired for the purpose of such evidence only*, the original documents on record, be returned to the parties in lieu of photocopies for such purpose.

7.3. Summoning of Official Witnesses-

7.3.1. Summons from Court- In case a litigating party is desirous of summoning an official witnesses, it shall obtain summons from the Court with an endorsement that witness shall appear before the address of Ld. Commissioner for recording of evidence on scheduled date, time and place.

7.4. Advisory to Ld. Commissioner-

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

7.4.2. Confidentiality- Ld. Commissioner shall maintain confidentiality during the whole process.

7.4.3. Integrity- Ld. Commissioner shall not except remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court.

7.4.5. Non-judgmental- Ld. Commissioner shall not criticize the professional conduct of litigating parties, lawyers on their understanding of law of either of the parties or ridicule them in any manner.

7.4.6. Coordination- In case of any foreseen 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.

7.4.7. No Third Party Sharing- He shall not allow the deposition to be inspected by any third party and shall not share a

copy thereof with anybody stranger without permission of the Court.

7.4.8 Inspection- He shall not allow any party to inspect the recorded proceedings in his absence.

7.4.9. 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.

7.5. Remuneration of Ld. Commissioner-

7.5.1. Quantum- In terms of Rule 30 of **Amended Rule 150 A of the MV Act r/w Motor Vehicle (5th Amendment), Rules, 2022 r/w Annexure XIII relating to procedure for investigation of motor vehicle accidents** the remuneration for the purposes of Commissioner need to be fixed by the Court. Remuneration Of Ld. LC shall be ***Rs.3000/- per sitting for two hours.***

7.5.1(a). Adjournment cost: In case any party takes adjournment on the date fixed for recording of evidence by learned Local Commissioner, such party shall be liable to bear an adjournment cost of Rs.1000/- for such adjournment, payable to learned Local Commissioner.

7.5.2. Mode of Payment- Such remuneration shall be paid by the party directly either by way of cash, cheque or draft against due receipt.

7.5.3. For this purpose, the Ld. Local Commissioner shall provide his bank account / online payment details to the respondent side so that payment through electronic mode can be made by the respondent side, if so desired.

7.5.4. Cost to Parties - If Insurance Company is a respondent, then such respondent Insurance Company shall bear the cost of

leading Petitioner/Claimant's side evidence as well as its own evidence.

7.5.5. But in case Respondent Drive/ Owner wants to lead evidence, he/they, himself/themselves shall bear cost of his/their own evidence.

7.6. Judicial Intervention during recording of evidence-

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

7.6.2. Dissolution of stalemate- In case of any conflicting circumstances they shall resolve issues at their own level with the active help of Ld. Commissioner.

7.6.3. 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.

7.6.4. 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.

7.7. Miscellaneous Applications-

7.7.1. Moving the Application- In case either of the party is desirous of moving any miscellaneous application viz. amending of pleadings, interim injunction etc. they shall share an advance copy with the opposite side and reply thereof, if any, shall be prepared within seven days.

7.7.2. 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.

All such miscellaneous applications shall be separately registered, numbered and indexed as an extension of main suit number.

7.7.3. 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/RE shall continue unabatedly.

7.7.4. Ld. Counsels/or their Parties shall contact the Ld. Commissioner within one week from today. Thereafter, Ld. Commissioner shall fix the date(s) for recording evidence and intimate the parties and/or their counsels suitably, apart from finalizing the place of recording evidence in view of directions mentioned above.

Ld. Counsel for petitioner of this court shall intimate/send copy of this order to Ld. Commissioner through email/electronic mode on the mobile number of the Ld. LC.

A copy of this order be given *free of cost* to the claimant/petitioner side.

Further respondents can collect a soft copy of this order online.

7.7.5. Put up on **08.11.2024** before this tribunal for *Final arguments/further proceeding/appropriate order*.

(Charu Gupta)
PO-MACT -01 (South-East)
Saket Court/ New Delhi/26.04.2024