

21 MACT 16/24

DAR-RAJESH Vs. OMPRAKASH

23.07.2024

Present:- Ms. Shruti Goel, Ld. counsel for the petitioner.
Sh. Ashish Jain, Ld. counsel for respondent no.2.
Sh. Vinod Kumar, Ld. counsel for respondent
no.3/insurance co.

On the basis of pleadings, following issues are framed: -

- (i). Whether petitioner get injured in a motor vehicular accident occurred on 04.10.2019 at 6.50 a.m. near Maujpur Chowk, Red light to Ghounda Chowk, Delhi within jurisdiction of PS Jafrabad, due to rash and negligent driving of offending vehicle i.e. Super Splendor bearing registration No.DL-SCE-8055 and UP-AQ-3407 driven by respondent no. 1 Sh. Om Prakash (driver)? (OPP)
- (ii). Whether the petitioner is entitled to compensation on account of said accident 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 Mohammed v. U.P. SRTC, (2023) 4 SCC 381**, wherein it has been observed that 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 the evidence in the present matter shall be recorded through Local Commissioner as inter-alia, the insurance company has disputed its liability to pay the compensation.

Both sides shall file list of witnesses within seven days from today before the Tribunal while sharing an advance

copy thereof with the opposite parties. Evidence shall continue on a day-to-day basis, till conclusion. 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.

Petitioner's evidence shall be concluded within four weeks of Court Commissioner fixing the date of recording of the deposition. Respondent's evidence shall be concluded within two weeks after conclusion of petitioner's evidence. In case, for any reasons the parties are unable to adhere to the time schedule extension can be sought from the Tribunal.

The Examination-in-Chief shall be filed by way of affidavit. Its copy shall be supplied to the opposite party. 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 made well in advance before the Tribunal.

It is clarified that unless Court Commissioner is of the view that the interim application made by either of the parties is such that evidence cannot be recorded before its disposal, the recording of evidence shall continue unabatedly.

Court Commissioner shall record evidence at a place 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.

Court Commissioner shall proceed to record the examination by first recording the deposition of litigating party before examining additional summoned witnesses.

Court Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to the 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 the final stage. Original documents shall be retained by parties. Court Commissioner shall sign the exhibits with an endorsement OSR (original seen and returned) wherever necessary.

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.

Court Commissioner shall ensure that the witness is not assisted by his counsel or any other person while under examination in answering the questions.

All parties shall be provided uncertified copy of the evidence recorded, free of cost by Court Commissioner.

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 the final report.

In case a litigating party is desirous of summoning a person for deposition or production of documents, it shall obtain a summon from the Tribunal with an endorsement that such person shall appear before the address of Court Commissioner on scheduled date, time and place.

Diet money shall be paid to such witness by the party desirous of summoning as per rules.

The Tribunal may be approached by way of an application in writing for any aspect pertaining to the appointment of Court Commissioner by the parties and/or their counsel or Court Commissioner. However, it is expected that while recording the evidence it shall be kept into consideration by all concerned that the Court Commissioner being the delegate of the Court/Tribunal shall have the same privileges and the limitations as that of the Court/Tribunal for the execution of the commission.

Cost of evidence shall be borne by the Insurance Company i.e Rs.3,500/- per witness.

Advocate Ms. Bhavna Sharma (Enrolment no. D/9740/22), Mobile Phone no.8076426376, Chamber no. F-302, Karkardooma Court Complex, Delhi-32, is hereby appointed as Court Commissioner and she shall file the report on or before the next date of hearing.

Copy of order be given dasti to the parties. A copy of the order be also given to the Ld. Court Commissioner.

Now to come up for PE before Ld. Court Commissioner on 28.10.2024.

(Vijay Kumar Jha)
PO MACT-01/SHD/Delhi
23.07.2024