

MACT 615/24
Jag Prasad (deceased)
Vs.
Satwik Nair

28.07.2026

Present: Sh. Omveer Singh and Sh. Pinkle, Ld. Proxy
Counsel for the petitioner.
Sh. Pawan Dhoot, Ld. Proxy Counsel for respondent
no. 1.
Sh. Abdus Sayeed, Ld. Counsel for respondent no.4
through VC.
Sh. Aakash Poddar, Ld. Proxy Counsel for
respondent no. 5.
None for other respondents.

1. Matter is listed today for orders on the respondent
no. 1's application under Order 1 Rule 10 CPC. Notice of this
application was issued to the proposed respondents who
appeared and filed their reply. Arguments have been advanced
by all the parties. I have also gone through the record.

2. The brief facts of the present case as per DAR are
that on the day of the incident, one vehicle bearing No.
UP-23AT-4328 was parked at the spot and the deceased was
unloading some goods from the same. Then suddenly one car
bearing no. UP-78BZ-0477 being driven by the respondent no. 1,
came from behind and collided with the first vehicle and the
deceased came in between and subsequently expired.

3. It is submitted by the Ld. Counsel for the respondent
no. 1 that from the facts as mentioned above, clearly both the
vehicles are involved in the accident. Rash and negligent act of

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the proposed respondent is clear as he had not parked his vehicle properly without any precautions or parking lights. Hence, it is submitted that the rash and negligent act of the proposed respondent is also made out. Hence, the driver, the owner of that vehicle and the insurance company of that vehicle are also liable to pay compensation to the petitioners. They may be impleaded as a party in the present matter.

4. Ld. Counsels for the petitioners have opposed the application. It is submitted that the rash and negligent act can be attributed only upon the respondent no. 1 as he was in an intoxicated state at the time of the accident. Further the petitioner does not wish to implead the proposed respondents.

5. Ld. Counsels for the proposed respondents have opposed the application. It is submitted that in the present matter, the involvement of both the vehicles was known since day one. However, the IO, after completion of the investigation, has chargesheeted only the respondent no. 1. The driver of the other vehicle i.e. the proposed respondent Buniyad Ali was not chargesheeted by the IO. Hence, it is submitted that as per the investigation of the IO, there was no rash or negligent act on behalf of the proposed respondent Buniyad Ali. Even otherwise, it is submitted that from the facts of the DAR it is clear that the rash and negligent act can be attributed only upon the respondent no. 1 who was driving the vehicle rashly and negligently in a drunken state. The proposed respondent Buniyad Ali had parked

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his vehicle at the side of the road. The accident occurred at 5 AM in the month of May when the visibility is good. But still the respondent no. 1 rammed his car in the vehicle of the proposed respondents. Hence, it is submitted that there was no rash or negligent act on behalf of the proposed respondent and the application may be dismissed.

6. Record perused.

7. As admitted above, the involvement of both the vehicles in the accident is not in dispute. It is also an admitted fact that only the respondent no. 1 was chargesheeted by the IO in the present matter. The manner of the accident is also not disputed. The position of both the vehicles is admitted. Hence, the present case is a case of composite negligence. In **Khenyei vs New India Assurance Co.Ltd.& Ors 2015 (9) SCC 273**, the Hon'ble Supreme Court of India has observed that:

“4. It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tort feorsors. In a case of accident caused by negligence of joint tort feorsors, all the persons who aid or counsel or direct or join in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tort feorsors in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by the court. However, in case all the joint tort feorsors are before the court, it may determine the extent of their liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tort feor vis a vis to plaintiff/claimant cannot be bifurcated as it is joint and several liability.

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In the case of composite negligence, apportionment of compensation between tort feasons for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent defendant.

What emerges from the aforesaid discussion is as follows :

(i) ***In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons*** and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award.”

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8. Hence, from the above mentioned observations, it is clear that it is the option of the petitioner to sue or not sue both the tort feasons. In the present matter, the petitioner has clearly chosen not to sue the other tort feason i.e. the proposed respondents. The petitioners have opposed the present application and have stated that the said persons may not be impleaded as a party in the present matter.

9. It is submitted by Ld. Counsel for the respondent no. 1 that the Hon'ble High Court of Delhi has dealt with the judgment of the Hon'ble Supreme Court in case titled as ***Go Digit General Insurance Co. Ltd. Vs. Shiv Kumar and ors. CM (M) No.764 of 2022 decided on 08.12.2022***. In that matter, it has been held that once the accident took place on account of collision of two vehicles, the impleadment of the owner, insurer and LR's of the driver of the car in the claim petition filed by the respondents no. 1 to 4 would infact be in the interest of all the parties concerned as this will avoid any objection whatsoever from them at a later stage, regarding the liability as may be fastened on them in the ongoing proceedings before the Ld. Tribunal. Hence, it is submitted that in view of the observations of the Hon'ble High Court, the proposed respondents may be impleaded as parties.

10. Perusal of the judgment relied upon by the respondent no. 1 shows that facts of that case can be differentiated from the facts of this case before this Tribunal. In

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the case before the Hon'ble High Court, the application for impleadment of the driver, owner and the insurer of the other vehicle was moved by the petitioner. In the present matter, the said application is moved by the respondent no. 1 i.e. the driver of the first vehicle. The Hon'ble High Court has referred to the judgment of the Hon'ble Supreme Court in its judgment. It has been impressed again that ***the claimants are entitled to claim entire compensation from all or any of the joint tort feasons.*** Hence, the Hon'ble High Court has reinstated the right of the claimant to choose.

11. As mentioned above, the claimant has chosen to sue only the present respondents. He has clearly stated that he does not wish to sue the other respondents. In view of the same, in the opinion of this Tribunal, the application is not maintainable. Same is dismissed.

12. Issues are already framed vide order dated 09.12.2024. The matter is at the stage of PE.

13. 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. Recently, the Hon'ble Supreme Court of India has directed that MACTs shall record the evidence through Local Commissioner

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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).

14. 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. Varun Rawat, Enrl. No.D/7445/2025, Chamber no.282, Civil Wing, Tis Hazari Courts, Delhi, Mobile no.9810792657** is hereby appointed as Local Commissioner and **he shall file the report within 08 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.

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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 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.
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** – The evidence of a particular witness shall be preferably concluded on the same day or within the shortest time possible.

In case, for any reason the parties are unable to adhere to the time schedule, extension can be sought from the Tribunal.

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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 the diet money of the witness shall 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**

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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 Id. 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.

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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 Official Witnesses-

1. **Summons from the 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 Ld. Commissioner for recording of evidence on scheduled date, time and place.

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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.

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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.

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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.5,000/- per witness(all inclusive), which shall be borne by the insurance company. The same be paid to the Ld. LC within two weeks of the completion of the entire evidence.
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, in case where the parties have arrived at the fixed place and time for recording of evidence. No cost shall be imposed where the date is adjourned prior to the date fixed.

It is further clarified that if any party wishes to cancel any date already fixed, it shall inform the LC two days in advance in writing through email or by way of telephonic message also. Such a request may be refused in case a witness is summoned for the date fixed.

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F. Judicial Intervention during recording of evidence-

1. **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.
2. **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 with the help of Reader of 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.

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Ld. Local Commissioner is directed to fix date for recording of evidence of witnesses as per the convenience of all the parties at the earliest.

Be awaited for the Report of Ld. Local Commissioner after conclusion of evidence of parties till the next date of hearing.

A digital/dasti copy of this order be forwarded to counsel for both the parties. A copy be also forwarded to Ld. Local Commissioner. 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. Ahlmad shall be paid a sum of Rs. 500/- by the party concerned which seeks the judicial file.

Put up for report of Ld. LC as well as for filing of duly filled Form XIII/XIV, recording of financial statement and final arguments for **01.12.2026**.

(Ruchika Singla)
Presiding Officer, MACT-01 (Central)
THC/Delhi/28.07.2026