

XVI
IMPORTANT JUDGEMENTS FOR GUIDANCE OF
MOTOR ACCIDENT CLAIMS TRIBUNALS

A. Disbursement of Compensation in Motor Accident Claim Cases Settled through Lok Adalats

This matter was discussed during the Second Annual Meet of the State Legal Services Authorities held at Hyderabad on 9-10-1999 at which time the following resolution was passed:-

“The House was of the unanimous view that no amount could be paid to Advocates out of the compensation awarded to the victims in Motor Accident Claim Cases. In terms of Section 20(4) of the Legal Services Authorities Act, the Lok Adalats Judges are to be guided by the principles of justice, equity, fair play and other legal principles. The legal principles include the judgements of the Apex Court as well as High Courts in regard to the deposit and disbursement of compensation.”

The judgment of the Apex Court in the case titled **Lilaben Udesing Gohal Vs. Oriental Insurance Co. Ltd.** Reported in 1996 Accidents Claims Journal 673 reiterates its appreciation of the guidelines laid down in the case titled **Muljibhai Ajrambhai Harijan Vs. United India Insurance Co. Ltd.** Reported in 1983 ACJ 57 (Gujrat) as approved by the Apex Court in its earlier judgments in the cases titled **Union Carbide Corporation Vs. Union of India** reported in (1991) 4 SCC 584 and **General manager, Kerala State Transport Corporation Vs. Susamma Thomas**, reported in 1994 ACJ 1(SC). The guidelines as now existing read as hereunder:-

- (i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor to be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn.
- (ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedures set out in sub para (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaws, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;
- (iii) In the case of semi/literate persons the Tribunal should ordinarily resort to the procedure set out in sub para (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some property as mentioned in sub para (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

- (iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in sub para (i) above, subject to the relaxation set out in sub para (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other consideration, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so order;
- (v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in sub para (i) above;
- (vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment.
- (vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;
- (viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one fixed deposit so that if need be one such FDR can be liquidated.
- (ix) We are also told that in claims that are settled in or outside the court or Tribunal, including Lok Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between parties, the court/Tribunal must apply these guidelines.
- (x) We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the court/Tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be upto 80 percent of the amount invested and thereby defeating the very purpose of the order. We do hope that the courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. We are sure that the courts/Tribunals will realize their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to

protect the claimants from exploitation by such elements will be equally shared by the court/Tribunals.

B. In the case titled **New India Assurance Company Versus Kamla** reported in (2001-1) P.L.R. 831, it was held by the Hon'ble Supreme Court as under : -

- (i) **Motor Vehicles Act 1988 (59 of 1988) Section 149-** Driving Licence cannot get its forgery outfit striped off merely on account of same officer renewing the same with or without knowing it to be forged.
- (ii) **Liability of Insurance Company-** When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance, the burden is on the insurer to pay the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions, the insurer had no liability to pay such sum to the insured.
- (iii) **Amount paid by Insurance Company-** Now the Claims Tribunal has to decide the next question whether the insurance company is entitled to recover that amount from the owner of the vehicle on account of the vehicle being driven by a person who had no valid licence to drive the vehicle-For that purpose, we remit the case to the Claims Tribunal.
- (iv) **Policy of Insurance-** If the insurance company succeeds in establishing that there was a breach of the policy condition the claims Tribunal shall direct the insured to pay that amount to the insurer-In default, the insurer shall be allowed to recover that amount from the insured person.
- (v) **Driving Licence-** Contention that insured made all due enquiries and believed bonafide that the driver employed by him had a valid driving license, in which case there was no breach of the policy condition- As we have not decided on that contention, it is open to the insured to raise it before the Claims Tribunal.

C. **Liability of Insurance Companies in validly renewed driving licence cases.**

In case titled **National Insurance co. Ltd. Vs. Santro Devi and others** reported in 1997 (9) Judgements Today, at page No. 197 AR 1998 SC 1485 it was held by the Hon'ble Supreme Court as under :-

- (i) The insured bonafidely believing in the validity of a forged driving licence employing the holder of a fake driving licence renewed by a competent authority would not amount to violation of the conditions of contract or of the insurance policy. It would not be violating either conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability. (Para 2 of Judgement)

(ii) The insurance company cannot refuse to meet its liability qua third party for any act or omission bonafidely or otherwise committed by the insured or its liability in as much as third party for whose benefit the insurance has been provided, is not a privity to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability qua third party. (Para 4 of Judgement)

(iii) The insurance company can neither refuse to indemnify nor is discharged from its liability to the insured or the claimants for an act of fraud committed by the third party qua the insured though it has a right to recover any loss suffered by it from the person, who committed the fraud or from any other authority, as permissible either under tort or any other statute. (Para 6 of Judgment)
