

National Judicial Academy



**ANNUAL NATIONAL SEMINAR ON WORKING OF THE MOTOR
ACCIDENT CLAIM TRIBUNALS IN INDIA**

21st Jan -22nd Jan, 2017

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Annual National Seminar on working of the Motor Accident Claim Tribunals in India

21st – 22nd Jan, 2017

A one and a half day Seminar was organized on working of the Motor Accident Claim Tribunals in India by National Judicial Academy from 21st to 22nd Jan, 2017. The seminar provided a forum to participant Judges to discuss the inadequacies in settlement of Motor Accident claim disputes and the ways in which the Motor Accident Claim Tribunals should work and how should they overcome the lacunas with the help of laws provided in Motor Vehicle Act to achieve the objective behind establishing these Tribunals. District and Session Judges from across the states of India participated in the seminar. The programme was divided into 7 sessions.

Justice J.R. Midha, Justice Mridula R. Bhatkar, Justice Indira Banerjee, Justice U. Durga Prasad Rao, Justice M. Seetharama Murthi, Justice K.J Thaker, Ms. Sonia Mathur, Mr. Y.V. Ramakrishna, Mr. S. Srinivasa Raghavan and Prof. S.P. Srivastava participated as Resource person in these various sessions and guided the participants.

Day 1.

- Session 1 – Compensation and the Administration of Justice.
- Session 2 – Interplay between sections 140, 163A and 166 of the Motor Vehicles Act.
- Session 3- Determining Compensation in Cases of Injury.
- Session 4- Determining Compensation in Cases of Death.
- Session 5- MACT Agreed procedure formulated by Delhi High Court

Day 2.

- Session 6- Assessment of Disability
- Session 7- Liability of Third Party Insurance in MACT cases

Day 1

21stJan, 2017

Session 1

(10:00 AM – 11:15 AM)

Compensation and the Administration of Justice

The session was commenced by Professor S.P. Srivastava extending a warm welcome to the Resource persons & participant Judges present. Hon'ble Justice J.R Midha then took over the session discussing the various aspects of Motor vehicle claims. He shared some of his experience with judges of UK who visited India. Justice Midha shared a question he posed to the judges of UK about the MACT law in their country. He was amazed when the judges told that there are no special courts required in their country to settle MACT disputes. They said whenever there is an accident the insurance company surveyor visits the place, assess the law and pay the claim. They said only 1% of such cases comes to the court. He also shared one experience of his friend who met with road accident in Canada. Police took out the data of that vehicle and immediate message was sent by the police to the insurance company informing about the accident and within an hour the injured got half of his claim.

Justice J.R. Midha said it is very easy to settle the MACT cases. He said that if we do not dispose the cases on time the entire country would be choked with MACT cases. He suggested some points to dispose the cases quickly. He said if in the case of death, age, family members and the income of the person is known it will only take 3 minutes to solve the case.

Justice Midha then focused on the discovery of truth. He said discovery of truth is very important in settling a case as it is very difficult to discover the truth in matrimonial cases but in MACT cases truth can be discovered very easily.

He discussed the judgments on discovery of truth. The two judgments that were pointed by him were

- Ved Prakash Kharbanda vs Vimal Bindal on discovery of truth.
- Mr. Manoj Bhandari vs. Mr. J.K Bhaiya

Professor S.P Srivastava then took over the session explaining the concept of Compensation and the Administration of Justice in MACT cases. He focused on the basis of liability and that the negligence must be proved. He said it is very important for the Motor Accident claim Tribunal to adjudicate if there is any liability on the part of owner or not. If there is no liability on the part of owner then there is no liability on the part of insurer too.

Professor S.P Srivastava then discussed some cases with the participant judges. The cases discussed by Professor S.P Srivastava are as follows :

Minu B Mehta Vs Balkrishan (1977) 2 SCC 441

- Basis of liability is negligence
- Road Traffic Act, 1930, The Third Parties (Rights against Insurers) Act, 1930 and the Road Traffic Act, 1934 were enacted in England.
- System of compulsory insurance was enforced.
- In India we have borrowed the same system.

Pushpabai P Udeshi Vs Ranjit (1977) 2 SCC 745

- Liability of master for acts done by servant in the course of employment. Liberal interpretation is adopted.
- 'Third party' would not cover all persons except insured person and the insurer.
- Section 95 of 1939 Act says:- 'except where the vehicle is a vehicle in which passengers are carrier for hire or reward...'

Oriental Ins.Co Vs Meena Variyal (2007) 5 SCC 428

- A regional manager of the company was using the car given by the company. He expired in an accident.
- Whether manager is treated as owner of car or employee of the company, he will not be covered by a statutory police.
- Unless a person is a 'third party' insurance company cannot be made liable by resorting to Swaran Singh's case.
- Section 149(1) cannot be invoked to enlarge the liability is not there under Section 147.

Gujrat Srvc Vs Ramabhai Prabhatbhai (1987) 3 SCC 234

- Provisions of Chapter VIII are not merely procedural.
- Provisions of Fatal Accident Act 1855 has been substantially modified by provisions of Motor Vehicle Act in relation to cases arising out of motor accidents.
- Observations of Supreme Court to the contrary in Minu B Mehta are obiter.

Today, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. The motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives should be entitled to recover damages if the principle of social justice should have any meaning at all.

Smt. Kaushnuma Begum And Ors Vs New India Assurance Co. Ltd 2001 ACJ 428

- Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles.
- Like any other common law principle, Rule in Rylands vs. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently.
- Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

Professor S.P. Srivastava then requested Ms. Sonia Mathur to proceed with the session. She continued on the same topic i.e. Compensation and Administration of Justice. She started her session describing the various types of claims.

- Health claims
- Personal claims
- Matrimonial claims
- Equity claims
- Insurance claims
- Accidental claims.

She said that the India is the only country with the maximum number of accidents even more than china. The recent research found that there were 6 lakhs accidents this year in India. She also discussed the meanings of accident, claim and accidental claims. The broad points discussed by Ms. Mathur are-

(i.) Meaning of Accident

Accident means any unintentional act, an act which is just by chance and without any premeditation. Claim means an assertion, declaration, statement etc. of belongingness/ right. It means a claim of right with respect to accident caused due to act of negligence of other. Act of negligence have become actionable wrong.

Ms. Sonia Mathur then discussed about the compensation, assessment of compensation in death cases, injury cases providing the different case laws. She described the meaning of compensation as payment of damages; making amends; that which is necessary to restore an injured party to his former position. An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person indemnified may receive equal value for his loss, or be made whole in respect of his Injury. She also discussed about the non taxation of Compensation. Compensation not income as intention in awarding compensation is to retribute and rehabilitate. Circular of 14.10.2011 directing deduction of Income Tax on the award amount and the interest accrued on the deposits made under

the order of the Court in Motor Accident Cases, quashed. Court on its Motion Vs. H.P.State Co-operative Bank Ltd & Ors 2014.

She described the assessment of compensation is very necessary by discussing the case of **Raj Kumar v. Ajay Kumar (2011) 1 SCC 343** and also providing the steps involved in assessment of compensation.

(ii.) Steps involved for ascertaining the compensation in death cases

Ms. Mathur discussed the case Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 121

Step 1 - Income per annum to be ascertained. Deduction of expected personal and living expenses. The balance is contribution to the dependent family and constitutes the multiplicand.

Step 2 - Having regard to the age of deceased and active career, the multiplication method should be selected.

(iii.) Deviation from Sarla Varma case

Ms. Mathur discussed the case Santosh Devi v National Insurance Company Ltd. (2012) 6 SCC 421. In this case the Court disagreed with observations in Sarla Verma's case. Rule can be deviated where income of the deceased was bound to increase.

(iv.) Assessment in the case of Death of House wife

Ms. Mathur discussed the case Sher Singh v Raghubir Singh 2006 (1) Cr.L.J (HP) 15. In this case, the Tribunal assessed Rs.600/- per month. The High Court estimated Rs.1500/- per month. In this case the Court held that in absence of any definite criteria, reasonable to rely on the criteria in clause 6 of second schedule then apply appropriate multiplier.

In Arun Kumar Agarwal v National Insurance Company AIR 2010 Supreme Court 3426 the court held that the loss of personal care and affection cannot be measured.

In 1994, the Legislature fixed notional income of non earning person at Rs.15,000 per annum and in case of spouse $\frac{1}{3}^{\text{rd}}$ of income of surviving spouse for computing compensation.

(v.) Ascertaining the compensation in injury cases

The damages may vary as per gravity and nature of disability or of injuries suffered. The damages can be pecuniary as well as non pecuniary. But all this has to be converted into rupees and paisa. It is desirable that so far as possible comparable injuries should be compensated by comparable awards.

(vi.) Contributory negligence

Expression implies, the person who has suffered damage, is also guilty of some negligence and has contributed towards the damage.

(vii.) Composite negligence

Negligence on the part of two or more persons. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them.

(viii.) Distinction between the two

“Contributory negligence” applies solely to the conduct of a plaintiff. “Composite negligence” means both the parties can be held liable for compensation.

(ix.) Deposit of compensation

In *General Manager , KSRTC, Trivandrum vs Susamma Thomas*, (1994) 2 SCC 176 Hon’ble Supreme Court has laid down guidelines that in cases of minors, women and illiterate persons, as a matter of abundant precautions, the amount should be invested in long term deposits. Interest should, however, be paid on monthly or quarterly basis to the claimants to meet their day to day expenses. In *A V Padma & Ors vs R Venugopal & Ors*, 2012 (2) SCALE 1, sufficient discretion should be given to the Tribunal not to insist on investment of the compensation amount in long term fixed deposit and to release even the whole amount in the case of literate persons.

(x.) Workmen’s Compensation Act and Motor Vehicles Act

Ms. Mathur discussed Section 167 of the Motor Vehicles Act and the principle of election of remedies. Section 140, imposes a liability on the owner of vehicle to pay compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Section 143 re-emphasizes what is emphasized by Section 167 that the provisions of Chapter X of the Motor Vehicles Act, would apply even if the claim is made under the Workmen’s Compensation Act. Section 144 of the Act gives provisions of Chapter X of the Motor Vehicles Act, overriding effect.

(xi.) Section 357 and 357A Cr.P.C: Compensation to the victim(s) of the offence

Ms. Mathur discussed the provision for compensation under Section 357 Cr.P.C and the power of the Court to award compensation to the victim(s) of the offence in respect of the loss/ injury suffered. Ms. Mathur also discussed Section 357A wherein the court can recommend the case to the State/ District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund.

The first session was concluded by the Ms. Sonia Mathur describing compensation/ Blood money under Islamic Law. She put an example of the case of Salman Khan where Salman Khan was convicted in 2002 hit-and-run case with five years in jail. Salman wanted it further reduced in exchange for better compensation to the victims. The actor told the court that he is willing to substantially hike the compensation to the four victims of the accident who are alive, and the family of the one killed. In January 2017, a Nizamabad man, who was sentenced to death for murder in Saudi Arabia returned home after spending 8 years in jail, as a local businessman paid Saudi Riyals 1.3 million (approximately Rs. 1.80 cr) as “blood money” on his behalf to get him pardoned. Ms. Mathur concluded the session by posing a question as to whether a convict be allowed to exercise money power to get a milder sentence.

Session 2

(11:45 AM – 01:00 PM)

Interplay between sections 140, 163A and 166 of the Motor Vehicles Act.

Ms. Shruti Jane Eusebius commenced the session welcoming Hon'ble Justice Mridula R. Bhatkar and Mr. Y.V. Ramakrishna. Justice Mridula R. Bhatkar started the session explaining the participant Judges that when victim has come before us, it is the duty of each Judge to construct, find out, where is the truth. Justice Bhatkar discussed the interplay between sections 140, 163A and 166 of the Motor Vehicles Act. She said that the only sections where a claimant can seek compensation in the MACT cases are sections 140, 163A and 166. The application is finally decided under Section 166 and under section 140 the interim order can be made. She distinguished between section 163 A and Section 140 stating that Section 163 A is an final adjudication while under Section 140 the interim order is made. This was held in the case of Deepal Girishbhai Soni And Ors vs United India Insurance Co. Ltd, on 18 March, 2004 by the Supreme Court. She said that the application under Section 163 A and 140 cannot go together while under Section 166 and Section 140 of MV Act the applications can go together. She highlighted that when you go through Section 166 you also need to consider Section 155 of MV Act that states that the accident must occur due to the use of motor vehicle and no other accidents can come under Motor Vehicle Act. Section 163 A and section 140 deals with no fault liability while section 166 deals with fault liability. She asked the participant Judges to read the case of Yadu Sambhaji More vs Shivaji Dayanu Patil And Ors. She also discussed a little bit about this case and the judgement of Supreme Court. Justice Bhatkar discussed about the Section 140 and Sections 163 A of MV Act

While discussing section 163 A she gave an example of U.P. State Road Transport vs Trilok Chandra & Others on 7 May, 1996 in which the Supreme court expressed that the schedule is faulty and there are so many mistakes in the schedule and Supreme Court advised to the Legislature to correct those mistakes.

She requested the participant Judges to go through the case of National Insurance Co.Ltd vs Gurumallamma & Anr on 23 July, 2009 and highlighted some points in which the Supreme Court expressed that Multiplier stricto sensu is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the Note 5 appended to the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs.3,300/- per month, the amount of compensation payable would be somewhat between 6,84,000/- to Rs.7,60,000/-. As the Second Schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which is otherwise necessary for a proceeding arising out of a claim petition filed under Section 166 would not arise. The Tribunals in a proceeding under Section 163A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

Justice Bhatkar discussed the computation of compensation under the Second Schedule. Justice Bhatkar also discussed the computation of loss of income in injury accident cases and in fatal accident cases.

Justice Bhatkar then discussed the notional income for compensation to those who had no income prior to accident. The following cases were also cited by the speaker :

- *Mallawwa & Ors v. Oriental* 1999 (1) SCC 403
- *New India v. Satpal Singh* 2000 (1) CTC 370 SC
- *New India v. Asha Rani* 2003 (1) ACJ page 1 SC
- *National v. Baljith Kaur* 2004 (2) ACJ page 428 SC
- *National v. V.Chinnamma* 2004 (3) ACJ page 1909 SC
- *National v. Challa Bharathamma* 2004 (8) SCC page 517
- *National Insurance Co.Ltd vs Sinitha & Ors* on 23 November, 2011

The session was then handed over to Mr. Y.V. Ramakrishana. He discussed Fault Liability. He defined the meaning of fault in simple words and said the major burden comes to prove the fault. He also discussed some aspects of faults highlighting vicarious liability, composite negligence and contributory negligence defining contributory negligence as the negligence contributed by victim. He explained it better by referring to some cases -

- **Municipal Corporation of Greater Bombay v. Laxman Iyer.** - Where an accident is due to negligence of both parties, substantially, there would be contributory negligence yet even in such a case, whichever party could have avoided the consequence of other's negligence would be liable for the accident. The omission what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is negligent act.

- **Sudhir Kumar Rana v. Surinder Singh.** Where a minor scooterist who had no driving licence, collided with mini truck and sustained injuries, it was held that the scooterist could not be held guilty of contributory negligence merely because he had no licence.

He also focused on the topic the Act of God citing a case **M/S. Dhanrajamal Gobindram vs M/S. Shamji Kalidas And Co.** Mr. Ramakrishna discussed the case **Puttamma v. K.L. Narayana Reddy.** Application of Structured Formula and Multiplier. In absence of any specific reason and evidence on record, Tribunal or Court should not apply split multiplier in routine course and should apply multiplier as per decision of Supreme Court in case of *Sarla Verma v. Delhi Transport Corporation*, (2009) 6 SCC 121.

There was a question raised by the participant judge asking what about the liability of the owner of the vehicle which has been stolen and met with an accident? The question was answered by Mr. Y.V. Ramakrishna saying there is no fault on the part of the owner, only he can claim under Section 163 A.

Some Participant Judges also expressed their concern over the delay by the medical officers not deciding the injury in a proper manner.

Session 3

(02:00 PM – 03:00 PM)

Determining Compensation in Cases of Injury.

This session was taken by Justice Indira Banerjee on the topic determining compensation in cases of injury. She said that basic provisions are same in cases of injury or death. Section 140 provided fix compensation of 50000 in case of death, it is 25000 in case of permanent disablement, Section 163A applies to permanent disablement and death and Section 166. In cases of personal injury, it is pertinent to remember that in Section 163A can only be applied in cases of permanent disablement, but it is not the case of Section 166, it speaks about injury, it could be of any kind, death, loss or damage to property. Justice Banerjee stated that when we compute compensation under Section 163A, we proceed on the basis of schedule, although there are various judgments of the Supreme Court that schedule should be used as a guideline. The language of the code suggests that compensation should be in accordance with 2nd schedule. But Supreme Court as time and again detected many mistakes in the 2nd schedule. The schedule provides lower multipliers for younger age and larger no. of years in higher age. Now this was noticed by Supreme Court in case of Sarla Verma, in that case after comparing with earlier judgments, Supreme Court in paragraph 42 of its judgment said what the multiplier should be for respective age group. So now whether compensation is calculated under Section 163A or 166, the multipliers are to be applied as rectified in Sarla Verma's case and this judgment has also been approved by the Supreme Court in subsequent judgments. So far as Section 163A is concerned, it is recognized that the principles of computation of compensation in it are different than Section 166. Unlike Section 163A where it is neither necessary to prove or plead any wrongful act or default on part of the owner, in a claim under Section 166, wrongful act has to be established. Unfortunately, there has been a lot of confusion between these two Sections. In cases of computing compensation, it is often found that principles of Section 166 are applied in claims of Section 163A. The Supreme Court has said Section 163A can be used as a guideline and it can be departed and deviated from, but it does not suppose an award of compensation of Rs.50000 for funeral expenses or Rs.75000 for loss of consortium is not possibly permissible. The reason is Section 163A is in the nature of a no fault liability. It does not require to plead or establish any wrongful act or default on part of owner of vehicle. In Section 166 the key word is "just", the compensation has to be just, adequate, fair. The

principles for computation of damages applied in civil cases and laws are not strictly speaking applied under Section 166 because accident cases are governed under statute. “Just” compensation under Section 166 is in accordance to meaning of compensation which is to make good, it means to restore a person in the position he must have been but for the loss of suffered by him in event that has occurred. In land acquisition act, the market value is assessed and is given, in case of damages to the property, the value can be assessed and compensation be given. The difficulty arises as to restoration of a person in case of accident by way of compensation. No one can really restore the loss incurred in accident like life or lost limb. The attempt is to compensate the person to the highest extent possible in terms of money and for this, damages are categorized as: pecuniary damages and non-pecuniary damages. Pecuniary loss is loss of earning, lively hood, medical treatment, cost of attendant incurred or will have to be insured, and alike. She said Future is unpredictable, but there is a need to standardize somewhere. The compensation awarded has to be just, neither too little nor a lottery. Justice Banerjee stated that Supreme Court decisions are the law of land which applies to all of us and we are bound to it. But there exist many variation in the quantum of compensation, and judges have to apply the precedents when an issue of law is raised. In regard to pecuniary losses, the Supreme Court has said that the structured formula is a reasonable guideline, the principle provided in 2nd schedule. Income of the person is assessed, in case of death –years are calculated and some amount is deducted as personal expenses; in an injury case, it is the ‘percentage’ of injury to be taken in account. Under Section 163A, that disablement has to be permanent disablement within the meaning of Workmen’s Compensation Act by reason of proviso of Section 163A, then the computation is done in accordance to 2nd schedule, subject to the correction in Sarla Verma’s and subsequent judgments. In case of pecuniary loss under Section 166, the same principles applied. The ‘percentage of loss’ applied in cases of injury is to be assessed by assessment of disablement. The test for it is not the disability certificate of medical issued but the functional disability. In Rekha Jain’s case, there was disfigurement of face, she was a TV artist, the Supreme Court said she suffers 100% disablement although she could walk, she could move but face was completely disfigured and there exist many case of such kind which establish the standard as ‘functional disability’. The assessment of actual functional disability is required for computation of compensation, and with them the principles of 2nd schedule.

She said that the next step is to assess the income of person. Question arises is how to assess income of persons who does not file income tax returns, who does not have produce salary certificates, who are not salaried. Vast majority does not have these documents. Reasonable guess work is permissible. Similarly, the functional disablement is to be assessed depending on the kind of work he may be doing or likely to be doing in near future. Under damages, medical expenses are also included which are incurred or may have to be incurred. Cost of attendant and other things in regard to nature of injury is also to be included.

In regards to special damages which are to be awarded it on account mental shock, pain and suffering in past as well as in future, loss of amenities, loss of expectation of life, inconvenience and hardships, loss of prospects of marriage in case of young age, loss of consequence of happy conjugal life even if person married is very badly disabled. Here the Supreme Court has said the tribunal may have wide discussion, the key words are ‘just’, ‘adequate’ and ‘reasonable’. In cases where the injured files compensation of 4lakhs but the just compensation would be 8lakhs, the

judge is covered by a judgment of the Supreme Court, where obligation of court is to award what is just and fair even if it is in excess to the amount claimed.

Under Section 166, the basic things to be considered before granting a compensation in favour of a claimant is –

- Wrongful act on part of owner or driver of vehicle i.e. negligence;
- Damages are actually suffered or not i.e. pecuniary loss.

In case of claimant being a woman and being a home maker, unemployed, claiming under Section 163A will be compensated according to 2nd schedule, but when claimed under Section 166 the assessment is to be done in regards to contribution of her. Other heads covering non pecuniary losses are to be assessed, if the claimant has lost a limb or badly disabled and is unable to live happy conjugal rights or unable to enjoy amenities of life than he shall be compensated just like any other person would have under these heads. When computing compensation, the claimant has to establish default or negligence at the part of owner or any agent of his. For establishing this, the court does not strictly follow the rules laid down in evidence act, it makes an enquiry. The decision must be based on fair hearing of both parties and ultimate decision must be in accordance with law.

Another aspect of compensation is under Section 171 which empowers to award interest. It can be awarded from the date filling of application at rate of 9%, though not provided in statute specifically, but following series of judgment it is calculated with 9%. In a recent judgment of Supreme Court that the Tribunals and High Courts have eared in awarding interest which is less than 9%. There are judgments of Supreme Court awarding 6% interest and also 12%. The fundamental rights do not apply to judiciary but being Judges, they are bound to treat all the parties equally and therefore have some uniform principles for the grant of interest. This principle should not be arbitrary. In Kolkata High Court, a division bench presided over by J. J N Biswas, where it was said that ‘since the language of the statute said that interest to be given from the date of application, it should ordinarily be given from the date of application. If for any other reason, it is not given from the date of application like in case claimant deliberately delaying the proceeding to inflict the interest, there they can give the interest for a lesser period but has to give the reason in writing behind it. Similarly, the rate of interest should also be uniform, it should ordinarily correspond with the interest given by nationalized banks on fixed deposits. But in view of current situation, the Supreme Court has clearly said that you pay 9%, should be accordingly 9%.

She ended the session discussing that today, if an application is made under Section 140 for some payment on summary basis fix amount, then an application cannot be filled under Section 163A. But an application can be filed under Section 166, if the claimant succeeds, then the amount paid under Section 140 will be deducted. Similarly one cannot proceed under both Section 163A and Section 166. If an application is filled under both of these sections, then in such a case Supreme Court has said that any of the applications cannot be rejected outright, the claimant had the right of election between the claims he wishes to proceed with. Once any of the claims are finally allowed, he cannot proceed under the other section. But this judgment was contrary to the judgment delivered by J. S P Sinha in Girish Bhai Soni’s case, decided earlier. If the claimant decides to

proceed under Section 166 but is not able to prove negligence, the person is entitled to receive nothing just because he proceeded under Section 166, according to this law unless changed. Another aspect is under Section 163(A) is concerned, there is an income cap of Rs. 40000, although the statute does not say so, it is only the schedule, but the schedule cannot be unfollowed. The reasoning in the judgment that it is meant for the privilege of the claimant is also not correct because it is the income of the person dying or the income of injured person, and not the claimant. The use of Section 163A and later a claim under Section 166 was earlier allowed but later Section 163b was made to stand in the way of it.

Session 4 (3:30 PM – 4:30 PM)

Determining Compensation in Cases of Death.

&

Session 5 (04:30 PM – 05:00 PM)

MACT Agreed procedure formulated by Delhi High Court

Justice JR Midha

In the beginning of the session, Justice J R Midha discussed the procedure evolved by Delhi High Court regarding settlement of issue within 90-120 days. As already been discussed, there is no legal system as is practiced by us. In our country the claims under road accident are not compensated unless awarded by a MSCT. Where all over the world after an accident the surveyor will survey the loss, assess, they'll offer and settle the dispute, and only in case of some dispute, the matter will move to the court and ordinary civil court will entertain this. But in our country, we've witnessed 600000 accident, 150000 deaths every year, 1 accident every four minutes. If we proceed to try every such case it like a normal civil suit, it will be unending. There are 600000 pending cases every year. In normal, every such case needs 5 yrs approx. to be solved. The reason when examined turned out that serving of notices to owners, drivers and witnesses to resolve it, a committee was constituted with insurance companies, secretary law, secretary judicial government, secretary insurance and police to formulate a procedure to get the settlement within 120 days. The committee came out with proposals that, if police perform all its investigation within 30 days and files a challan, so that the negligence is established and the police also collects the evidence in respect to the factors required for compensation for example age, no. of LRs, occupation, income, etc., filling a detailed report. Then the insurance company will give their offer within 30days, if fair, shall be passed and money will be served within 30 days; if not fair, the tribunal can pass the award in 30 days and thereafter.'

Initially, Delhi Police resisted collecting evidence in compensation matter, they are only obliged to work according to CRPC. With regards to some pending case, they agreed to work in this manner for 6 months. Before the expiry of this period, in a session J. Raveendran in the Jayaprakash judgment stated that the police is required to collect the aforementioned details and the necessary evidence. The role of the police as highlighted by Justice Midha is -

- Investigation of the case;
- Filing challan within 30 days;
- Filing a detailed accident report with the MACT within 30 days. At the time of filling DAR, police produces claimant, owner, driver, eye witness and insurance company. The MSCT takes cognizance of the DAR, like that of challan in criminal case and treats that DAR as claim petition.

The insurance company is liable to give a reasoned response within 30 days. They are to appoint a designated officer in name, who'll be responsible for calculation of compensation in accordance to law, making a chart as to calculation and signing it, if found to have wrongly done, an action can be passes against him being put in his service record disabling his promotions. If the amount is fair and accepted by the claimant, a consent award is passed by the court, if not fair or reasonable, the tribunal will complete the enquiry and pass a reasonable award in 30 days, enabling to receive compensation within 120 days.

This was enabled in 2010, in the initial year the cases went down to 10,000 from that of 21,000, receiving money within 120 days. On 13th May 2016, the Supreme Court said to all the High Courts to implement this procedure in all the states. Detailed description as to implementation of this is provided in the 3 formats formulated by Delhi High Court made applicable to all the states by virtue of Supreme Court.

The entire onus shifts to the police to fill up the form. Everything in format comes with a document verified by the certificate of the SHO, requiring no service, the driver being reproduced, owner being reproduced, eye witness being reproduced and insurance company being reproduced. Only the calculation is left with the court.

The problem faced is regarding protection of money awarded to the claimants as the lawyers take a major chunk of it. The lawyers initially keep the cheque with themselves when it is released, then they open a joint account of their clerk with their client, if money is put in FD, they keep the FD with themselves. To deal with this, all the nodal officers of banks were called and an order was passed and henceforth the insurance companies were to issue check in the name of bank, the bank will open a solo saving account in the name of claimant, 10% money be released in the savings account and the remaining 90% in form of FDRs for 10 years, original FDR being with the bank only. The monthly interest of FDs will transfer into the savings bank account of victim, no cheque book or debit card will be given to claimant, cash withdrawal can be done directly from the bank. This scheme of Delhi High Court was approved and followed in Jayaprakash's case by Supreme Court, this being in operation since 2010 to recent cases. But 10 days back, one lacuna in this was when 90% of amount is deposited and interest transfers to saving account for 10 years, every year the interest will keep on reducing. Solution to this was found by converting these FDRs from 10 years period to 100 months period with cumulative interest. In this manner, the victim or his LRs will be able to withdraw money every month with increasing interest, taking care of inflation. Depending on the basic expenditure, as given by the claimant, the amount to be discharged every month and number of FDRs will be amended. For example, RS.500000 are to be deposited in

FDRs, if expenditure of victim is 5000/month, 100 FDRs will be made of Rs.5000 each; if expenditure in Rs.10000/month, 50 FDRs will be made of Rs.10000 each.

Regarding disbursement of the award amount in a faced manner, new decisions based on the new findings, applied in cases after 11th January 2017, the judgments and the procedure were discussed.

In cases of injuries, if any grievous injury is suffered, a picture of the part injured can be added to the judgment so that if the case moves forward to the appellate courts, they can easily understand the scale of judgment and compensation so awarded by the tribunal. The attachment of the photograph is of great use when the case is taken to the appellate court as they can imagine the situation on which the judgment is passed by tribunal. For finding truth, the arguments cannot be completely trust worthy, the photographs give a wider and truthful view.

Compensation in death cases, the multiplier is well settled in Sarla Verma; regarding deduction, the same case provides the scale for calculation. The only question left is about the income of claimant. Where the income of claimant has no documentary evidence, the law tells about applying minimum wages. But when on applying the law, it will be injustice to the claimant as he earns an amount much greater than that specified in schedule, what method is to be followed for calculation. The judgment in Uphaar tragedy solved the issue. In this case, there was a fire in Uphaar cinema, 59 people died in 1997. A writ petition was filed in Delhi High court, stating that the cinema was in a posh colony, all the people who died must be elite people earning Rs.15000 each, therefore awarding 1800000 by applying multiplier of 15 to persons above 21yrs and 1500000 to persons below 21. When this case went to Supreme Court, J. Raveendran upheld the formula of multiplier but the income taken on the higher side, 180000 were reduced to Rs.100000 and Rs.1500000 to Rs.750000. on applying the calculation backward, the income taken for each person above 21 yrs in this case was about Rs.8300. the minimum wages on the day of accident were only Rs.2600.in this case, neither High Court nor Supreme Court applied the minimum wages principle, even when there was no document as to occupation and income of victims. A new principle can be derived from this, 'it is not mandatory for any court to resort to minimum wages, the court will apply his mind and under Section 114 of the Evidence act verifying the information about income provided by the claimant.' Many cases have been awarded compensation following this finding in Uphaar Cinema case. Adding or not adding of future prospects solely lies on the will of the Judge, cases under both the heads can be easily found and thereby cited, but still open for challenge.

In cases where the vehicle is uninsured and the driver is unable to pay the amount, Section 196 of Motor Vehicle Act punishes such person with imprisonment of 3 months, and hence be prosecuted for the same instantly. When an order is passed regarding such imprisonment, in most cases, the driver or owner at fault agrees to pay the compensation to avoid such imprisonment.

On hit and run cases, the Supreme Court has taken up a PIL. But now in every insurance policy now a charge of 5% of the premium is kept as solatium fund which is to be paid in hit and run cases. But when enquired it was found that not a single victim is awarded with such money, in this regards Justice Lokur has done an innovation and made it mandatory to pay Rs.200000 within 30 days of the accident to the victim.

In regards to execution of award, a case should not be closed on awarding of compensation, it should be kept for compliance, not if otherwise it is moved to appellate court, to disperse the money. In case of nonpayment of compensation by the party, judgment in Bhandari case to be considered as it deals with 'how to execute decrees and even ordinary civil decrees'. The principle laid down in it is, 'on the very first day, the court should direct the judgment debtor to file the affidavit in form 16A under order 21, rule 41(3), from this the assets of debtor can be realized. In case this affidavit is not filed, the rule provides provision of imprisonment of person to filing for 3 months in case of non-compliance within 30 days. If the affidavit filed is not satisfactory, the court may direct to file a detailed report to his incomes, assets and expenditures.' By applying this and the guidelines in Bhandari's case, the procedure for execution can be established and followed where the wrong doer is not ready to pay.

Justice U Durga Prasad Rao.

Justice U Durga Prasad Rao then took over the session discussing the judgment in the same line given by the Supreme Court in 2010 in Jayaprakash's case. The delay in disposition of Motor Accident claims is also because the police are not filing the evidence in reasonable amount of time. Though law has ordained in Section 166 that within 1 month, they have to file the accident report and all necessary particulars as laid down in form 54, but there is violation of it throughout the country. In Tyagi's case as well as in Supreme Court judgment, a direction was given that the police should file all necessary particulars to the jurisdiction.

In a case, the insurance company said they are not coming in the way of court passing a just compensation but their only contention under Section 149 which they are allowed to raise is that the said vehicle was not the part of the accident. Police has manipulated the evidence and produced the said insurance vehicle as the one by which the accident took place. The police had made chargesheet, implicating an insured vehicle not part of accident. The company pointed out that, had the information reached them in a reasonable point of time, they may have appointed an officer for following case. The fact in question was that whether the vehicle was insured or not. This made the jurisdiction loose a chance of justice.

On surveying as to the role played by police in the state after the judgment in Jayaprakash's case, the speaker expressed his utter shock, that except 2 districts, all the courts had complaints regarding non receipt of AIR copies by the police with regards to Motor Vehicle accidents. To mould this and bring police into momentum, Justice Rao extended the guidelines given by Supreme Court and Delhi High Court by adding another guideline that the Judicial Magistrates are directed to accept the chargesheets, concerning to Motor Vehicle Accident cases. If any motor accident occurs, and if the police failed to supply the copy of all the details within 1 month period as narrated in that particular section; the Magistrate shall not receive the chargesheet thereafter. They have to enclose a certificate issued by the principle District Judge that within 1 month the required particulars have been furnished. Only with that certificate a chargesheet can be filed and then only the concerned Magistrate can register the chargesheets. Even a principle District Judge can issue a circular in his district to the SP that if your police fails to give particulars in given time, I will

direct my Magistrates not to receive the chargesheets. This will eliminate the laid back behavior of police and lead to proper compliance with guidelines issued by Supreme Court and Delhi High Court.

With regards to computation of compensation death cases, a question arises as to 'who are entitled to claim compensation', under Section 166, all his or some of his LRs can claim for compensation. An elaboration as to who is a legal representative as no definition of LR is given in Motor Vehicle's Act, falling on Section 2(11) of CPC, the answer to who shall be considered LRs is given. The direction to follow the provisions of CPC was provided by Supreme Court in Gujarat State Road Transportation case, 1987. In this case, to death of a 14 year old boy, his two major brothers, earning an income of their own, not depending on the younger brother. The boy was hit by a vehicle of Gujarat State Road Transportation and died. His two brothers filed a case, the only contention of RCD was that these brothers or not dependent on the deceased. Supreme Court in this context stated that, Section 2 (11) is borrowed from CPC and applied in this. It the legal representatives who are entitled to claim not the dependent, not the class of people entitled in Fatal Accident Act. The word 'legal representative' used in Section 166 has further been given a broader meaning, not defined by legislature, to the term by decision of this case. Legal representative refers to any person who represents the estate of deceased and file a claim petition. In this context, a second wife cannot be considered as a LR when a claim is filed by the first wife, though the child of 2nd wife is a LR under the law, Srimati Parvatamma v. Shri Subramaniyam and Ors., 2001. Father of deceased is also LR under the law, though he may or may not be dependent on deceased but is his legal heir, B Subraydu v. State of AP, 1994. Only in context of deduction of expenses, it is considered that a father being not dependable on deceased son, does not affect the evaluation of deduction, Sarla Verma case. In Manjuri Baira's case, it was held that even married sisters and married daughters are LR with reference to this act and are liable to file claim, though held under Section 149 but will also be applied under Section 166 and same was decided in Manu Orissa's case. In the Montford Brother's case, the deceased renounced the world, joined a Christian Church and worked as a head master in a school, met with an accident and died. On his death the Church filed a claim petition, the tribunal awarded them with compensation; High Court reversed it and held that in favour of insurance company holding that, 'he himself has renounced the world admittedly, leaving no heirs behind, hence the Church cannot claim under the definition.' Supreme Court held that Church is eligible to claim and receive compensation, reversing the decision by High Court, (**Montford Brothers of St. Gabriel and others v. Union of State**). In Oriental Insurance v. Mother Superior, 1994, the nun was teaching in a school belonging to the church died in an accident, the Mother Superior filed the claim petition, the Kerala High Court observed that abdication of the world in so far as that community is concerned, is civil death; further the church will take care and will be responsible for their people. In this case, even when there existed some blood relatives of the nun, the church was considered as her legal representative. Another aspect is that a subsequent marriage of deceased's wife will not divest the accrued right of compensation on death of her husband, Mona Girish's case, Mumbai High Court. Same judgment was passed in Delhi as well as AP High Court.

Justice Rao highlighted the fact that in fatal accidents the victims can either be salaried person or non salaried persons like wage earners or non earning persons or can be children or house wives.

In case of salaried persons, the calculation is easy. In respect to death of a salaried person, a salary certificate will be filed specifying the loss to be paid off. But the only cause of concern here is the undue amount deducted by the tribunals while awarding the compensation. In salary certificate, income is specified under all the heads along with some deductions like loan recovery, contribution in provident fund or advance from organization, etc. These deductions are applied in monthly salary. But applying these deductions while awarding compensation is not correct. All these deduction in form of PPF, GPF are in contribution to his future saving and shall not be deducted from the gross earnings. Same applied in case of deduction under repayment of load. The law is that only statutory income can be deducted, i.e. tax. In Hellen Rebello case, the Supreme Court pointed out that when any benefit is received by the family of deceased due to his death like insurance money, the deduction of such amount will not be right while computing compensation. The ratio in this cases was that, the benefit received does not have any direct nexus to the accidental death then the deduction of such amount cannot be done. The amount calculated under future prospect must be calculated after deduction of tax.

The law regarding self-employed person is the same as that of salaried person. This was established in Santosh Devi's case. The persons falling under the categories derived by wage board have their income calculated as provided by the board itself. In case of persons not falling under these categories, a calculated guess work is to be done. In Ram Chandrappa v. Royal Sundaram Alliance Insurance Company, 2011, by fact, the Supreme Court approved the tribunal to take into account the income of injured, a coolie as Rs.4500/month. The Supreme Court said that the tribunals need not accept the claim of the claimant in absence of supporting material, it depends on facts in each case.

Now in regards to children cases, the ratio by J. Chandrachud in Lata Wadhwa's case can be applied, not ipso facto applied because it was not a case Motor Accident case. In Manju Devi Case (2005), it was held that we can take into consideration both Lata Wadhwa's case and 2nd schedule where children can be classified under non earning persons. In regarding future prospects and its applicability in case of children, Supreme Court in R K Malik v. Kiran Paul held that we cannot imagine what would be the future of the children was and therefore we have to apply a slab rate (in this case Rs.75000) as future aspects as a lump sum. If the claim regarding children is under Section 163A, a straight rule given in Puttama v. KL Narayan Reddy (2013) by Supreme Court can be followed.

With concern to house wives, judgment in Lata Wadhwa's case was, 'the services rendered by a house wife ca not be mitigated to that of a servant, her services are very useful to the family and upbringing of children to the management, at least Rs.3000 must be added'; another case was of Arun Kumar Agrawal and other (2010) can also be followed.

Day 2

22nd Jan, 2017

Session 6

(10:00 AM – 11:00AM)

Assessment of Disability

Justice JR Midha

The session on the second day was commenced by Hon'ble Justice J.R Midha who discussed the format used in the Delhi High Court, which has been made mandatory to be filled in all the appeals. The format has got all the essential columns, there are columns as to how much money is awarded in claims Tribunal under each head and how much money is demanded. This being mandatory has eased the delivery of judgment in every court. This format can also be used in Tribunals with only difference in the 1st column which says the amount 'amount awarded by the claimant' can be made as 'amount demanded by the claimant' and 2nd column 'amount in claim in appeal' by 'response of the insurance company' and the other columns respectively. Under each head, a readymade material is in the hand of Judge. The 2 formats are made in accordance to cases of death and injury. On being filled up by the claimant and insurance company, the judgment can be straightway passed with regard to demand, response and view of the judge. The format provides with all the essential ingredients required for dictating the award. The use of format and delivery of judgment is delivered with the aid of lawyers especially if case is brought in Tribunal. The scheme as given in Rajesh Tyagi's. In Rajesh Tyagi v Jaybeer Singh the Delhi High Court formulated claims tenure procedure time bound settlements of motor vehicle accidental claims within 90-120 days, which came into force on 2nd April 2010. The claims tribunal agreed procedure provides that:

1. Police to carry out complete investigation and submit a detailed report of the accident to the MSCT within 30 days of accident.
2. The insurance company is required to compute the compensation within 30 days and thereafter and inform the tribunal.
3. If amount fair and acceptable, it is required to be paid in 30 days
4. If not acceptable or tribunal finds it unfair, the tribunal shall pass an award within 30 days giving by that the claims tribunal shall get the award within 90-120 days of the accident.

The claims tribunals agreed procedure has revolutionalised the motor accident compensation law in as much as the claimants get the compensation within 120 days of the accident without in need of filling the claim petition. However successful implementation of this procedure depend upon the implementation of police, insurance company as well as by the claims tribunal. Delhi police has prepared claims investigation manual and has given the training to the inspectors for investigation under the motor accident cases. From 2nd April 2010 to 1st August 2012, 21,820 cases were filled, out of which the claims tribunal awarded compensation by following the procedure in 10,762 cases.

Salient feature of the scheme, how the scheme operates:

1. Intimation of the accident to be given to the claims tribunal and insurance company within 48hrs. The investigating officer shall intimate the factum of the incident to tribunal in the said time. If insurance particulars are available, the investigating officer shall also send intimation to concerned insurance company my email. The factum of the accident shall also be uploaded by Delhi police on its website. The investigation officer shall give the intimation to claims tribunal in form 1.
2. Information carrying documents to be collected by investigating officer, he shall collect the evidence relating to the accident as well as the computation of compensation. Investigating Officer shall take the photographs of scene of accident from different angles. In case of death he shall collect information such as age, occupation, income, number of LR, etc. In case of injury he shall collect information regarding injuries suffered and expenses incurred, shall collect related documents included DL, RC, fitness, permit, death certificate, postmortem, salary slip, certificate of employer, income tax return, MLC, prescription slip, bill of medicines, etc., and verify the genuineness of the said documents. The list of documents given in Form 1A.
3. Verification of these documents by the Investigating Officer.
4. Duty of police to complete investigation within 30 days.
5. Duty of police to file detailed accident report (DAR) along with charge-sheet copy to the claims tribunal within 30 days.
6. Extension of time to file DAR, situations in which it can be extended.
7. Duty of Investigating Officer to produce driver, owner, claimant, eye-witnesses at the claims tribunal at the time of filling DAR.
8. Examination of DAR by the claims tribunal.
9. Claims tribunal to treat it as a claims petition.
10. Registration of the cases under Section 166 on the basis of this.
11. Duty of insurance company to appoint a designated officer to process the claim within 10 days of the receipt of DAR.
12. Duty of DAR insurance company to get DAR verified by the surveyor officer.
13. Duty of insurance company to process DAR and submit the offer of settlement within 30 days, in Format 3.
14. If offer is fair, consent shall be passed. In cases of non settlement, an enquiry shall be conducted.
15. Format 4 to be considered while awarding compensation.
16. Format 5 to be maintained by the claims tribunal. This is done for calculating the interest to be applied while the insurance company is submitting the compensation

The Supreme Court has direct that this procedure formulated by the Delhi high Court should be adopted by the MACTs, making it mandatory to be implemented all over the country. This procedure being comprehensive saves the time of the court. The only situation to be examined is that the Investigating Officer also gets involved with the claimant and file wrong documents is to

be considered cautiously. Whenever found the officer at fault, a report should be filled against the said Investigating Officer and he should be removed from MSCT cases.

Summing up, he hoped that the new era will bring some innovation and will help the poor claimants to get justice in the shortest period of time.

Justice M. Seetharama Murthi

Justice M. Seetharama Murthi then took over the session saying law is dynamic, it keeps changing, particularly in branches like Motor Accident Claims assessment for compensation, the process of assessment requires revisiting from time to time. It has been a long run process since a long time and even Supreme Court is revisiting its cases and giving guidelines to be followed case after case. There are no strict formulas. The presence or absence of a single fact brings a world of difference in each case. Only basic breadlines and necessities are discussed so has to help in discharging of duties in better way.

Assessment of disability depends on facts of the cases, evidences brought in record, perception and the statutory and precedential guidance. In death cases, the law is more or less settled, avoiding complexification. But in injury cases, there is permanent disability, partial disability, permanent partial disability, temporary disability and more. These are the aspects faced in assessing compensation.

Assessing disability compensation, an idea to human anatomy is necessary. For this, reference to diagrams given on the internet and medical journals are of immense help to understand the injury better and visualize the part injured. This helps in understanding the effects on the internal parts of body by an external injury. Before analyzing the reports of doctor, an information of human anatomy is necessary. It is important to understand the nature of injury, its effect on the body, its function and hence in assessing the right compensation. For example, the organ is spleen, a study to what spleen is to be made even before the doctor's examination, on referring to internet or medical journal we can know that it is an upper far left organ to the abdomen on the stomach, generally not visible as it is protected by the rib cage, so in case of injury to spleen there will be damage to rib cage also; role played by spleen when healthy, acts as a filter for blood, support body has part of immune system, fight bacteria. This pro-activeness enables participation in jurisdiction prior to the time where doctor is called to give evidence. In case of loss of spleen, a person is prone to every infection as the immune system is weaker due to removal of spleen. This information effects the assessment of compensation. Likewise, all the internal organs should be studied according to the case in question.

While dealing with injury cases, 2 kinds of compensation are taken in account, as has been discussed previously- pecuniary and special damages. Pecuniary is the material loss, in terms of money; non-pecuniary does not have a scale, some hypothesis, guess work, even conjunctures are permissible. As in the case of Raj Kumar v. Ajay Kumar, in the judgment it was discussed what a disability is. Disability is a lack of ability to perform an act, expected in a normal manner. In permanent disability, despite treatment, physiotherapy and all kind of medication, the person is left with a residuary disability. In case or permanent partial disability, the disability is permanent but not affecting the whole body, like shortening of limb by 2 inches, etc. Temporary disability is

the one which vanishes in the course of time by treatment. Total permanent disability is the one affecting a person to perform his avocation, also otherwise called functional disability 100%. Disabilities are of a wider range when compared to physical disabilities. Some of these are enumerated in 'Persons With Disability (Equal Opportunities Protection of Rights and Full Participation Act, 1995)', some can also be found in Workmen's Compensation Act.

The medical council divides the body into six parts to ease the assessment of permanent disability; both upper limbs, both lower limbs, chest, head and likewise. Example, in case of loss of a limb, it is considered that 1/6th part is permanently disabled, hence at time of computation after computing for the whole body, 5/6th part is reduced.

Injuries can either be external or internal. Only by assessment of evidences, a result can be drawn as to the kind of injury and disability being suffered by it. The disability found is later classified under as Permanent or temporary; if permanent, whether total or partial; and if temporary, the time required to remove the disability. In this case, the loss of future income shall not be taken into account.

Functional disability depends upon the age, occupation, effect on working hours with reference to kind of livelihood, loss of amenities; all such are to be calculated. A compensation can be awarded for both on physical and functional disability, as was specifically included in judgment in Rajkumar and Manikam's case (2013), also to be referred in Ramesh Chandra's case. The approach to computation based on the kinds of disability is well expressed in Rajkumar's case. In cases where 100% security to earning of income exists even after the disability, not harming the occupation and earning capacity of claimant, the computation done shall be nominal as only loss of amenities is suffered.

Marking of document is no proof, the medical reports are to be proved. In cases where the claimant meets an accident at some place where he travelled for a specific purpose, in such a case the first treatment or requisites were performed in that specific place and the later treatments are received at claimant's native place. If the medical report was made by the native doctors then the finding as to the immediate condition after accident comes into question. For the solution to this problem, a reference is to be made to Rajkumar's Case (2011) and also Narayan Nathur Nayak v. State of Maharashtra (1956). The sum of substance of the ratios and deficiency is the disability certificate can be given by any expert doctor who may or may not have treated the victim. But the doctor who treated him and the doctor issuing certificate must be variably examined, mere produce of certificate does not mean that disability as mentioned has been suffered, the doctor who treated the patient or the doctor who subsequently examined him and has standard his evidence in court, producing a disability certificate must be tendered for cross examination.

In Rajkumar's case and Sanjaykumar's case (2014), the various heads under which compensations are to be awarded is given. In Manikam's case, when the tribunal awarded Rs.100000 compensation under the head permanent disability including compensation under other heads also, the High court said this some should not be awarded, on this the Supreme Court said that 'a compensation can be awarded under all the three heads'. In case of amputation or permanent disability (physically visible), the court can persuade for marking the document by consent with

reference to be approved, this will help in expeditious disposal of the case and awarding of compensation. In regards to the consent and cross examination of the doctor examining or issuing certificate, the Supreme Court observed the difficulties faced by victim to mark their presence. When the doctor is summoned but does not appear, the victim might take coercive steps out of gratitude towards the doctor, sometimes they are afraid if coercive steps are taken the doctor may prejudice and give improper evidence, but still it is necessary that the doctor should be examined. The Supreme Court also mentions that in summon to the doctor, specific time of hearing is to be mentioned and they should be treated with priority. This step encourages the doctors and official witnesses to be active in court, as was said in para 16 of judgment in Rajkumar's case along with guidelines of treating and examining a doctor. Marking a document in dealt with consent is also recorded in the same case.

In assessing compensation, multiplier method is followed. Assessment as to the physical disability is made, following assessment of functional disability, i.e. the disability percentage, and referring to the Sarla Verma table, take the multiplier depending upon the age of the injured, annual income to be considered and then going with the multiplier method will derive the compensation, this is in the case of permanent disability. In case of partial disability, the proportionate amount shall be reduced depending on the disability, the guideline as provided in Rajkumar's case. The question arises in this method is regarding the amount to be deducted under the head of living and personal expenses and whether to be applied in cases of injuries, the answer to this is no, as has been well explained in Rajkumar's case. For this, the computation of income is straight in case of employees but in cases of vocational workers, there exists no evidence to their income, in such circumstances the year and minimum wages are to be taken in account.

In cases of demand of a certain amount for an artificial limb, these limbs not being of permanent use and subject to replacement in certain course of time raise question as to the amount being demanded under this head. The answer is given in Govind Yadav v. New India Insurance Ltd. Com. of the Supreme Court, decided on 1st November, 2011. In some cases, the compensation was awarded only in relation to the particular limb purchased initially, and in regards to future expenditure on limbs, the court said 'they are recurring expenses as incurred while petition for compensation, as it is a multiplying litigation. When the question was raised again in Govind Yadav's case, the Supreme Court referring to Nagappa's case and P.Satyanarayn's case, laid down legal position as follows:

'a reasonable estimation has to be made. The amount of future expense on artificial limbs to be deposited in a fixed deposit account, never to be released, periodically for the replacement of limb, only interest is to be released.'

There is no ratio in a judgment based completely on the facts. The facts are mentioned, the evidence and facts are examined in just position, on facts a conclusion is arrived that, if a principle of law is applicable to a particular case, the principle is applied to the conclusion and then a result is deduced, that is the ratio of the decision.

In case of a permanent disability caused to a minor child, a non earning person, the permanent disability percentage is calculated with the aid of doctor and facts and evidence of the case brought

on record. The question arises as to the computation of compensation with regards to other heads. For this, a reference should be made with decisions in cases of Kumari Kiran v. Sajjan Singh (2015) and Mallikarjun's case (2014). The ratio derived was:

'though it is difficult to have an accurate assessment compensation in case of children suffering disability on account of Motor Vehicle Accident, having regard to the relevant factors, precedents and approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the expenditure incurred in treatment, attendant, etc., should be if the disability is 10%-30% to the whole body, Rs.300000; up to 60%, Rs.400000; up to 90%, Rs.500000 and above 90%, Rs.600000; for permanent disability up to 10%, Rs.100000 unless there are exceptional circumstances to take it different amount.'

This provided fix compensation as well as a scale of compensation for future evaluations. In this case, two children suffered shortening of limbs by few inches, the Supreme Court awarded in each of them Rs.300000 each (Kumari Kiran's case). These are not uniform yardsticks, after 10 years, the scale may need change, here the wisdom of court is base of dependency.

In hit and run cases, the court may entertain a claim up to the extent of Rs.25000, AP SRTC v. B Konkaratna Bai, 2001. Another decision was rendered by J. Durga Prasad on this aspect, A Prakash v. General Insurance Company, 2015, law was discussed on facts matter was remitted to the tribunal.

In regards to the necessity and applicability of guesswork in evaluation of disability or compensation, reference to Govind Yadav's case can be taken which states that guesswork and hypothesis were said to be permissible for assessment. Regarding victim depending on crutches, precedential guidance is in Sanjay Kumar's case. These are the broad guidelines established by courts and law regarding assessment of disability and compensation, to be sought by the tribunals.

Session 7

(11:30 AM – 01:15 PM)

Liability of Third Party Insurance in MACT cases

Justice K.J. Thaker commenced by explaining the concept of liability of third party insurance in MACT cases. According to him, the motor vehicle laws have been veritable minefield for all specially judges. The mind boggling judgements both of the High Courts and the Apex court partake about 50% of the judicial output covering various aspects of this branch of Tort Codified Law. The casualty in most of the cases is that of poor people. He said it will be relevant for us to examine the role of the insurance companies, as taking of insurance has been made mandatory as per the motor vehicle laws applicable in India. He discussed about section 147 and Section 149.

He also discussed the defences available to insurance companies in MACT cases. He added that the insurer has to prove that there was breach of policy condition and to prove this they have to lead evidence the claimant cannot be expected to prove that the vehicle possessed valid permit. The defences, which are available are circumscribed in section 147 and 149 of the Motor Vehicle Act 1988.

He discussed Smt. Yallamma and others v/s. National Insurance Co. Ltd. And another wherein it was held that insurance company has right to raise defences in the application filed under Section 140 of the Motor Vehicle Act. So that the insurer if is not liable to indemnify the owner of the vehicle and pray to absolve the insurance company from the Liability. He also gave an example of the case of Raj Kumar vs. Ajay Kumar JT 2010 (13) Supreme Court 38.

The other topic discussed by him was the liability of insurance company in case of Gratuitous passengers & Pillion Riders. He said if, the applicant was pillion rider on the motor cycle as per the insurance policy, if no extra premium has been charged for the pillion rider and if the risk is nor covered of the pillion rider, then as per the decision in case of United India Insurance co. Ltd., vs. Tilak Singh and ors. Published in 2006 A.C.J. 1441 and 2006 A.C.J 328 (Rajasthan) in case of Virji and ors v/s. united India insurance Co. Lt. and ors. Pillion rider is not covered under the insurance policy, hence insurance company is not liable as no extra premium was paid.

After brief discussion of the above topics the session was handed over to Professor S.P. Srivastava. He resumed the session with the topic Pay and Recover, he focused on the questions;

- Whether the tribunals can pass any order of pay and recover?
- What is the basis of these orders?
- In which cases Tribunals can pass pay and recover orders?

And answered them discussing section 147 and 149 of the Motor Vehicle Act. He pointed out the importance of Section 147 stating that every insurance must cover all the provisions of Section 147 and Section 147 is the minimum requirement for every insurance to cover the third party compensation.

He further presented the various cases. He deliberated upon the concept of pay and recover. The cases presented by him are as follows;

British India General Insurance Vs Captain Itbar Singh,(1960) SCR 168

- Right to defend being a statutory right, Insurer could take only those defences which are permitted by Section 96(2) of 1939 Act.
- If the Insurer had reserved a right under the policy to defend in the name of assured then all the defences would be available.
- If Insurer is made to pay which he was not bound to pay under the contract, he can recover it from assured under proviso to sub-s 3 and sub-s.4.
- If recovery is not possible from the assured the loss must fall on the insurer as he is carrying on this business of insurance.

New India Assurance Vs Kamla (2001) 4 SCC 342

- Truck driver had a renewed forged document.
- Held- renewal would not robe a forged document with validity.
- Owner argued even if DL was fake that would not absolve Insurance Co.
- Insurance Co.- if breach of any of condition is established that would exonerate Insurance Co.
- Pay and recover order explained.

United India Insurance Co. Vs Lehru (2003) 3 SCC 338

- Supreme Court reconsidered the effect Fake licence on the liability of insurance Company.
- Skandia 's Sohan Lal Passi 's and Kamla 's cases were reaffirmed and approved.
- Supreme Court held that where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii)
- If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive.
- even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.

National Insurance Co. Ltd Vs Swaran Singh & Ors (2004) 3 SCC 297

- Despite the fact that the defence under Section 149(2)has been accepted, the Tribunal has power to direct Insurance Co to satisfy the decree and recovery of the same from the owner.
- The liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.
- ‘The doctrine of stare decisis persuades us not to deviate from the said principle.’

Oriental Ins.Co Vs Meena Variyal (2007) 5 SCC 428

- A regional manager of the company was using the car given by the company. He expired in an accident.
- Whether a regional manager is treated as owner of car or employee of the company, he will not be covered by a statutory police.
- Unless a person is a ‘third party’ insurance company cannot be made liable by resorting to Swaran Singh’s case.
- Section 149(1) cannot be invoked to enlarge the liability is not there under Section147.

Mr. S. Srinivasa Raghavan then took over the session discussing the various aspects of Liability of Third Party Insurance in MACT cases. He framed some issues for discussion so that the doubts of the participant Judges could be cleared -

- a) Whether a wrong doer himself can maintain a claim petition under Section 163-A of the M.V.Act?

- b) Whether an Owner / Insured can maintain a claim petition against his Insurer under Section 163-A of the M.V.Act?
- c) Whether an owner/insured-cum-driver can maintain a claim under Section 163-A of the M.V.Act?
- d) Whether a person who has borrowed a motor vehicle from the owner/Insured and causes an accident by his own negligence can maintain a claim petition against the insurer of the Motor Vehicle under Section 163-A of the M.V.Act?
- e) Whether a person whose annual income is above Rs.40,000/- can invoke Section 163(a) of the M.V.Act?
- f) Whether any person who is otherwise disentitled to invoke Section 166 of Section 140 of the M.V.Act can maintain a claim petition under Section 163-A of the M.V.Act?

He addressed the aforementioned issues discussing the case of Oriental Insurance Co. v. Sunitha Rathi & Ors., reported in 1998 ACJ 121. Inasmuch as Section 149(1) makes it clear that the liability under the provisions of Section 163-A is also covered, it is not correct to state that on invocation of Section 163-A of the M.V.Act, all other provisions of the M.V.Act including Section 147 and 149 would be kept away. In order to adjudge the claim under the M.V.Act, the Tribunals and other courts of law have to resort to the provisions of the M.V.Act only and no mechanism is laid outside the M.V.Act in a claim under Section 163-A.

The liability of the insurance company would emanate only from Section 147 of the M.V.Act, according to which a stranger to the policy of insurance can directly sue the insurance company. A duty is cast upon the insurer to satisfy the judgment and awards in respect of third party risks by Section 149 of the M.V.Act. The defense available to the insurer is enumerated in Section 149(2) of the M.V.Act. All other procedures concerning the Tribunals while adjudicating the third party claim are all governed by Section 149 only.

He extended his presentation explaining the concept of financial cap. A financial cap of Rs. 40,000/- per annum is fixed by the Second Schedule to invoke Section 163 A of the M V Act. What was the rate fixed in 1994 cannot be applied now in view of the change of economic scenario the nation faces. Several directions are issued by the Supreme Court to the Union Government to amend the second schedule to bring it at par with the current financial ambience. But nothing has happened so far for the reasons not made known public. In view of sub section 3 of Section 163 A, a duty is cast only on the Central Government to amend the Schedule and I do not find any reason for an Act of the Parliament to do so. The Govt. of India, as the union executive can very well do so as delegated legislation under rule making power conferred by the Statute.

He also discussed on the topic 'the claim by borrower of vehicles'. He cleared this topic giving an example of the case of Ningamma. The Supreme Court has held in a case called Ningamma's case

reported in 2009 (13) SCC 710 Supreme Court by holding that a person who has borrowed a motor vehicle of another person and causes accident by his own negligence would step into the shoes of owner of the vehicle and thus not a third party. As such, he cannot claim compensation from himself and to pay himself.

“A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein a victim died or whether he was permanently disabled due to an accident arising out of motor vehicle in the event of the liability to make the payment of compensation is on the insurance company or owner, as the case may be, as provided under Section 163(a).

But if it is proved that the driver is the owner of the motor vehicle, in that case, the owner could not himself be a recipient of the compensation, as the liability to pay the same is only on him. This provision is absolutely clear on a reading of Section 163(a) of the M.V.Act. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163(a).”

He ended the presentation providing some conclusions -

- A claim by a wrong doer in Section 163-A of the M.V.Act is maintainable.
- The liability of the insurer or the owner of the vehicle under Section 163-A is not compulsory on no fault basis.
- Such a claim can be defeated by the insurer or the owner when it is proved that the victim himself had caused the accident by adducing evidence.
- The claim under Section 163-A is not maintainable when it is laid by the wrong doer who happened to be the owner of the vehicle (owner-cum-driver).
- The claim by the person or his legal representatives who had borrowed the vehicle from the insured and causes the accident by his own negligence is not maintainable as the victim of the road accident steps into the shoes of the owner himself.
- It is not correct to state that all the provisions of the M.V.Act are kept in abeyance and suspended when Section 163-A of the M.V.Act is invoked.
- The effect of the non-obstante clause would be to determine the quantum of compensation in strict adherence to the Second Schedule and not otherwise.
- The financial cap of Rs.40,000/- stipulated under Section 163-A and the Second Schedule appended thereto has become stale and out dated.
- The financial cap should be enhanced to a higher scale commensurable to the present day living wages.

At the end of the session there were two queries put upon by participant judges

- 1) In a case when driver is not the employee, compensation is awarded against insurance company. What is the principle behind it?

This was answered by Hon'ble Justice K.J Thaker stating that whether the policy covered the driver or not. We have to see the facts and conditions of the policy. Whether the claim where a driver is an employee or was it because he met with an accident. He stated that all the facts and conditions of the policy are to be seen in such case.

2) If the accident has taken place in private place. What should be done?

Hon'ble Justice K.J Thaker answered the question giving the provision of Section 147 of MV Act stating the section 147 clearly talks about public place. He also asked the Participant Judges to go through a judgment given by Apex Court on public place.

Lastly Professor S.P Srivastava concluded the programme thanking all the resource persons and the participant judges.