Application for which urgency is claimed should be submitted to the Deputy Registrar before 11 a.m. and will ordinarily be laid before the Judge appointed to dispose the applications of this class with his petitions on the day following that on which the application is presented.

The application may, however, if specifically requested and the reasons for the request stated, be submitted for orders on the day of presentation. In no case, however, will an application received after 11 a.m. be submitted for orders on the day of presentation.

IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 573 of 2021

To

cm-5491, 5493, 5494-01/21

The Addl. Registrar, High Court, Chandigarh. Title of case

Cholamandian mis Grunal Ire Petitioner/Applicant

Suyect kumar and others

Respondent.

Sir,

Will you kindly treat the accompanying petitions as an urgent one in accordance with the provision of Rule 9, Chapter 3-A, Rules and Order High Court, Volume V.

2. The grounds of urgency are—

As prayed for

Dated: 07-07-2021.

Yours faithfully,

Vishal Agreenwal?

Advoacate
P 729/2004

der

## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No 573 OF 2021

			OF 2021									
Cholamandalam MS General Insurance Company Ltd.												
				Appellant								
Versus												
Suje	et Kumar and others		Respondents									
INDEX												
S. No	o. PARTICULARS	DATED	PAGES	COURT								
				FEE								
 A.		 17.02.2020		3.00								
1.	Application for Delay	28.02.2020	A-B	3-00								
2.	Affidavit	28.02.2020	C-D	_								
3.	Application for Exemption		1	3-00								
4.	Affidavit	28.02.2020	2-3	_								
5.	Application for stay	17.02.2020	4-5	3-00								
6.	Affidavit	17.02.2020	6-7	_								
7.	Grounds of Appeal	17.02.2020	8-12	<del></del>								
8.	Affidavit	17.02.2020	13-14	. <del>-</del>								
9.	Memo of parties.	17.02.2020	15-16	5-25								
10.	Copy of judgment passed by Ld. Motor Accident Claims Tribunal, Jind	02.11.2019	17-36	13-00								
	- market and grade the same	JE. 11.2010	17-00	13 -5								

01.042019 37-38

11. Resolution

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Total

34/

Note: - Whether any caveat has been filed in the present petition or no? No.

- a) The present appeal is being filed by the insurance Company. It is a Death case.
- b) Banker's Cheque No.327043 Dated 29.01.2020 in the sum of Rs. 25000/- in favour of Registrar Punjab & Haryana High Court is being deposited along with.
- c) Any other case: None

Chandigarh:

Vishal Aggarwal) (Rajan Bhargava) (Aayush Goyal)

**Advocates** 

Dated: 28.02.2020

Counsel for the Appellant

P/729/2004

P/2962/2014

P/3726/2018

## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No

573

of 202/

Cholamandalam MS General Insurance Company Ltd.

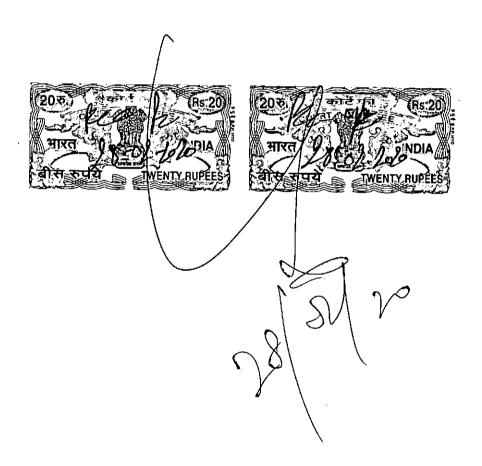
.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Total Court Fee 35



Chandigarh:

(Vishal Aggarwal) (Rajan Bhargava) (Aayush Goyal)

Advocates

Dated: 17.02.2020

Counsel for the Appellant

A

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No. 5491-C/I OF 2021

In FAO. No. 573 OF 2021.

Cholamandalam MS General Insurance Company Ltd.

.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Application under Section 5 of the Limitation Act with Section 151 of the Code of Civil Procedure for condonation of delay of 28 days in filling the appeal.

#### **RESPECTFULLY SHOWETH:-**

1. That the limitation for filling the above noted appeal was upto 02.02.2020.

That however the appeal could not be filed in time due to the procedural delays and in collecting necessary documents for filling the appeal.

approval and then forwarded it to the legal office at Chandigarh which in turn sent it to the undersigned. The appeal was drafted and sent to the office and after approval the same is being filed. Accordingly the delay has occurred.

4. That the delay in filling the appeal is neither intentional nor motivated and is for the reasons stated above and, as such, deserves to be condoned.

It is, therefore, respectfully prayed that application be allowed and the delay of 28 days in filling the appeal may kindly be condoned.

Chandigarh:

(Vishal Aggarwal) (Rajan Bhargava) (Aayush Goyal)

**Advocates** 

Dated: 28.02.2020

Counsel for the Appellant

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No. 5491-91 OF 2021.

In FAO. No. 573 OF 2021.

Cholamandalam MS General Insurance Company Ltd.

.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Affidavit of Pradeep Pathak, Dy. Manager,
Cholamandalam MS General Insurance
Company Limited, SCO 2463-64, Sector22-C, Chandigarh-160022

- I, the above named deponent, do hereby solemnly affirm and declare as under:
- 1. That the limitation for filling the above noted appeal was upto 02.02.2020.
- 2. That however the appeal could not be filed in time due to the procedural delays and in collecting necessary documents for filling the appeal.

That in fact the same was sent to the head office who gave its approval and then forwarded it to the legal office at Chandigarh which in turn sent it to the undersigned. The appeal was drafted and sent to the office and after approval the same is being filed. Accordingly the delay has occurred.

.

4. That the delay in filling the appeal is neither intentional nor motivated and is for the reasons stated above and, as such, deserves to be condoned.

Chandigarh.

Dated: 28-02-2070



#### **VERIFICATION:**

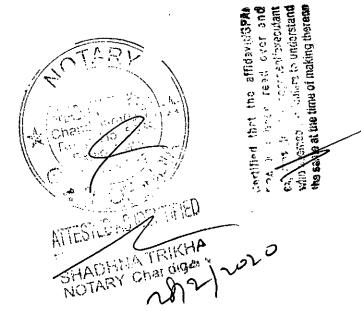
Verified that the contents of paras 1 to 4 of my above affidavit are true and correct to my knowledge; no part of it is false and nothing has been kept concealed.

Chandigarh.

Dated: 28.02-2020

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### IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 5493 OF 2021 F.A.O. No 573 OF 2021

Cholamandalam MS General Insurance Company Ltd.

.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Application under Section 151 of the Code of Civil Procedure for exemption from filing of certified copy as well as typed copy of Award Dated 02.11.2019.

#### **RESPECTFULLY SHOWETH:**

- 1. That the above mentioned petition has been filed in this Hon'ble Court.
- 2. That at present the appellant does not have the certified copy of the award dated 02.11.2019 which has been challenged on various grounds in this appeal. Two appeals are being filed against the same award. However, the appellant has only one certified copy and therefore, is praying for exemption from filing the certified copy as well as typed copy in the present appeal.

It is therefore, respectfully prayed that in view of the facts and circumstance of the present case and in the interest of justice, filing of the certified copy as well as typed copy of award dated 02.11.2019 may kindly be dispensed with  $\wedge$ 

Chandigarh:

(Vishal Aggarwal) (Rajan Bhargava) (Aayush Goyal)

Advocates

Dated: 28.12.2019

Counsel for the Appellant

## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

CM No. 5493-41 of 2021

F.A.O. No 573 OF 2021

Cholamandalam MS General Insurance Company Ltd.

.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Affidavit of Pradeep Pathak, Dy. Manager, Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022

I, the above named deponent do hereby solemnly affirm and declare as under:-

- That the above mentioned petition has been filed in this Hon'ble
   Court.
- 2. That at present the appellant does not have the certified copy of the award dated 02.11.2019 which has been challenged on various grounds in this appeal. Two appeals are being filed against the same award. However, the appellant has only one certified copy and therefore, is praying for exemption from filing the certified copy in the present appeal.

Chandigarh:

ىلا. ۋە . Dated:ئىلا.

DEPONENT PATHAN

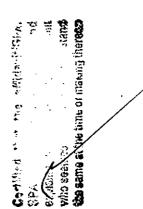
Verified that the contents of para 1 and 2 of my above affidavit are true and correct to my knowledge; no part of it is false and nothing has been kept concealed there from.

Chandigarh:

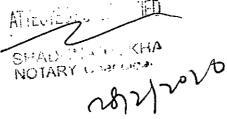
Dated: 28.02.2020

PARDEEP PATHAIL)

Creament in any Agantual)







### IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA

#### AT CHANDIGARH

CM No. 5494-41 of 2021.

F.A.O. No 573 of 2021

Cholamandalam MS General Insurance Company Ltd.

.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Application under Order 41 Rule 5 read with Section 151 of the Code of Civil Procedure for staying the operation of the impugned award dated 02.11.2019.

#### RESPECTFULLY SHOWETH:-

- That the above noted appeal is being filed in this Hon'ble Court and as per grounds of appeal the appellants have every likelihood to succeed in their appeal.
- 2. That the appellant Insurance Company is in no way liable to pay the compensation for the reasons mentioned in the grounds of appeal.
- 3. That the appellant has been held to be jointly and severally liable to pay the compensation and if the appellant is made to pay the said compensation then it would be difficult to recover the same later.
- 4. That it would be in the interest of justice equity and fair play that the application be allowed and operation of the impugned award be stayed.

It is, therefore, respectfully prayed that application be allowed and till the final disposal of the above noted appeal the operation of the impugned award may kindly be stayed.

Chandigarh:

Vishal Aggarwal) (Rajan Bhargava) (Aayush Goyal)

Advocates

Dated: 17.02.2020

Counsel for the Appellant

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA

C.M. No. 5 494-41 of 2021.

F.A.O. No

573

OF 2021

Cholamandalam MS General Insurance Company Ltd.

.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Affidavit of Pradeep Pathak, Dy. Manager, Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022

I, the above named deponent, do hereby solemnly affirm and declare as under:-

31 3

That the above noted appeal is being filed in this Hon'ble Court and as per grounds of appeal the appellants have every likelihood to succeed in their appeal

That the appellant Insurance Company is in no way liable to pay the compensation for the reasons mentioned in the grounds of appeal.

- 3. That the appellant has been held to be jointly and severally liable to pay the compensation and if the appellant is made to pay the said compensation then it would be difficult to recover the same later.
- 4. That it would be in the interest of justice equity and fair play that the application be allowed and operation of the impugned award be stayed.

Chandigarh.

Dated. 17.02.2020



#### **VERIFICATION:**

7

Verified that the contents of paras 1 to 4 of my above affidavit are true and correct to my knowledge; no part of it is false and nothing has been kept concealed.

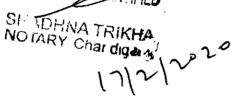
Chandigarh.

Dated: 17/2/プ

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### **OPENING SHEET FOR CIVIL APPEALS**

(ORDER 41, RULE 1, CIVIL PROCEDURE CODE, 1908)

### IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

#### JUDICIAL DEPARTMENT

CIVIL APPELLATE SIDE

Regular_	FAO		Appeal No			· · · · · · · · · · · · · · · · · · ·	573	of 20 <b>2</b> 10.		
	•						. <del>-</del> 		••	
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Instituted	Decided		Instituted		Decided		t t	os do	Ses	fee
Court Date	Court	Date	Court	Date	Court	Date	Date of filing appeal in High Court	Value for purposes of jurisdiction	Value for purposes of Court fee	Amount of Court fee on appeal
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Appellar Respon- Order of Appellat Confirm	first Court a e Court a ing or mo	for defe intiff or d rt and da ind date difying	efendant	Chole Suje	ansol	Name Lan Uner Jack	of Party, Ad MS and with	Cia.	<b>4</b> . /\	Lag. 36 of on o2-
	od 1c	J. J.	n Lijin	Conf	Syst	ia aine	July to	g dry	25 25 lest 1	lecs

#### **GROUNDS OF APPEAL**

- 1. That the Ld. Tribunal vide its Award dated 02.11.2019 acted illegally, arbitrarily, erroneously by holding the appellant insurance company liable for the payment of compensation payable to the claimants/respondents by complexly ignoring the law and the evidence on record.
- 2. That fact of the case are that on 23.05.2016 Sharvan Kumar (since deceased) along with his wife Poonam and nephews Sushil Kumar and Sujeet Kumar sons of Ram Krishan Parshad was coming back from Delhi to Jind in swift desire car no. Temp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667 (here-in-after referred as fatal car) which was being driven by deceased. At about 7:15 PM when they had gone ahead of village Pauli, near a closed factory, then a Tata 407 No. HR-64A-0027 (here-in-after referred as offending Tata 407) which was being driven in rash and negligent manner by Mani Ram (respondent no. 2) came from opposite side and gave direct hit to the fatal car as a result of which driver of fatal car died at the spot and other occupants also received injuries. The police registered FIR No. 123 dated 24.05.2016 under sections 279/337/304A IPC at P.S. Julana against respondent no. 2 Mani Ram.
- 3. That accordingly the claimant Sujeet Kumar filed the claim petition before the Motor Accident Claims Tribunal, Jind for compensation on account of the injuries sustained by him in the accident.
- 4. That it would be relevant to mention here that as per the version so mentioned in the FIR itself it is clearly evident that the accident took place due to rash and negligent driving of driver of offending vehicle i.e HR-64A-0027. Moreover the claimant has also stated in its

petition that the driver of offending vehicle i.e HR-64A-0027 was driving the vehicle in rash and negligent manner due to which the accident took place and there is no fault of driver of Swift Dzire Car i.e HR-56B-8667 insured with the appellant in which the claimant was travelling.

- 5. That it would be relevant to mention here that the Ld Tribunal on appreciating the entire evidence while deciding the issue no 1 clearly held that the accident had occurred due to rash and negligent driving of driver of offending vehicle i.e HR-64A-0027 while driving the offending vehicle in rash and negligent manner. Moreover the Ld. Tribunal also rejected the contention of Ld counsel of driver of offending vehicle that accident occurred due to rash and negligent driving of driver of fatal car and he has been falsely implicated by stating that no evidence has been led by the driver and owner of offending vehicle to prove this fact and the driver of offending vehicle has also not stepped into the witness box to state his case on oath.
- 6. That moreover the Ld tribunal clearly stated that there is no evidence on the file that driver or owner of offending vehicle i.e HR-64A-0027 ever filed any protest before higher authorities against false implication of driver of offending vehicle or against false involvement of offending vehicle and their silence for such a long period also goes against them.
- 7. That the Ld tribunal has rightly decided the issue no 1 that the driver of offending vehicle i.e HR-64A-0027 was rash and negligent and that the accident had occurred due to the same. However, after deciding the compensation wrongly held the appellant insurance company liable for payment of compensation.

- 8. That as sated above, three claim petitions were filed and while deciding the claim petition qua the death of Sharwan Kumar the Ld held that the compensation shall be payable by the owner and driver of the offending TATA vehicle. However, in the same petition it has wrongly held that the compensation payable to respondent No.1/claimant Sujeet Kumar is payable by the appellant insurance company which is contrary to its own findings.
- 9. That it is submitted that it has duly held the to he vehicle/offending vehicle the TATA 407 was negligent, then the liability to pay compensation ought to have been settled on the owner and driver of the said vehicle and not on the appellant insurance company. Therefore the award is liable to be modified accordingly.
- 10. That the ld. tribunal has not given any reasoning as to why the appellant insurance company has been held liable for payment of compensation when it is the insurer of the vehicle in which they were travelling and not the insurer of the offending vehicle. Thus the order is totally illegal and against law.
- 11. That further even the compensation assessed is quite high. It has been claimed that the claimant suffered injury to its eye amounting to disability of 30%. However, there is no evidence that same is permanent or causes any functional disability. Therefore the compensation granted is quite high and liable to be modified.
- 12. That further the income of the claimant has been wrongly assessed at Rs.4,000/- when the claimant was a student of 13 years of age and further entire income has been taken into account while assessing compensation instead of assessing it @ 30% according to the disability assessed. Thus the award is liable to be modified accordingly.

13. That in line with the said principle it is amply clear that the Ld.

Tribunal has illegally and erroneously passed the present award holding the insurance Company jointly and severally liable for the

payment of compensation to the claimant.

14. That no such or similar petition has been filed by the appellant either

in this Hon'ble Court or the Hon'ble Supreme Court of India.

15. That it is fit case where the judgment/award may be set aside and

the appellant insurance company be exonerated of its liability

altogether.

It is, therefore, respectfully prayed that the appeal may be

allowed with costs, the judgment / award of the Tribunal may be set

aside or in the alternative the appellant insurance company be

exonerated of its liability to pay altogether.

It is further prayed the appellant be exempted from filing the

typed copy of Award dated 02.11.2019 passed by Motor Accident

Claims Tribunal, Jind the matter is of urgent nature while the typed

copy is not readily available, in the interest of justice.

Chandigarh:

(Vishal Aggarwal) (Rajan Bhargava) (Aayush Goyal)

**Advocates** 

Dated: 17.02.2020

Counsel for the Appellant

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No 573 OF 2021.

Cholamandalam MS General Insurance Company Ltd.

.....Appellant

Versus

Sujeet Kumar and others

...... Respondents

Affidavit of Pradeep Pathak, Dy. Manager, Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022

I, the above named deponent, do hereby solemnly affirm and declare as under:-

That the above noted appeal, which has been drafted as per instructions of the appellant and is being filed in this Hon'ble Court.

That paras 1 to 15 of the grounds of appeal petition are true and correct to the knowledge of the appellant; no part of it is false and nothing has been kept concealed there from.

3. That no such or similar petition has been filed by the appellant either in this Hon'ble Court or the Hon'ble Supreme Court of India.

Chandigarh

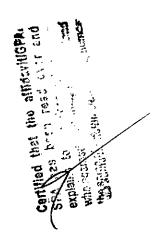
Dated: 17. 02. 2020

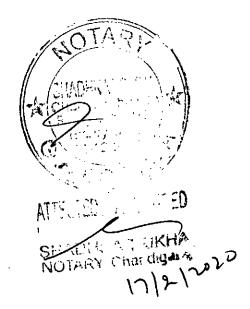
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Verified that the contents of the above affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

Chandigarh









## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No OF 2020

In MACT No. 316/2016

#### MEMO OF PARTIES

Cholamandalam MS General Insurance Company Ltd., Karnal, registered office Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022 through its authorized signatory Mr. Pradeep Pathak aged about 37 years son of Santosh Kumar Pathak Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022

Appellant.

#### Versus

- Sujeet Kumar @ Surjeet Kumar, aged about 17 years s/o Ram Krishna Prasad R/o Village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand) through his mother Uma Devi wife of Ram Krishna Prasad, R/o Village Kukhi Tola Mogaljan, PS Haider Nagar, District Palamu (Jharkhand),
- Mani Ram S.o Mohinder Singh, R/o Raje Ram Patti, R/o Village Andana, District Sangrur (Punjab) (Driver of offending Tata 407 No. HR-64A-0027).
- Jai Karan S/o Budh Ram, R/o Subhash Nagar, Kaithal (Registered owner of offending Tata 407 No. HR-64A-0027).
- 4. Satyawan S/o Sh. Hawa Ram, R/o Village Julani Khera, Tehsil & District Kaithal (Possessor of offending Tata 407 HR-64A-0027).
- 5. Insurer of Tata 407 No. HR -64A-0027 name and address to be disclosed by respondents no1, 2, and 2A.

F.A.Ö. No.

OF 2020

In MACT No. 316/2016

#### **MEMO OF PARTIES**

Cholamandalam MS General Insurance Company Ltd., Karnal, registered office Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022 through its authorized signatory Mr. Pradeep Pathak aged about 37 years son of Santosh Kumar Pathak Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022

.....Appellant.

#### Versus

- Sujeet Kumar @ Surjeet Kumar, aged about 17 years s/o Ram Krishna Prasad R/o Village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand) through his mother Uma Devi wife of Ram Krishna Prasad, R/o Village Kukhi Tola Mogaljan, PS Haider Nagar, District Palamu (Jharkhand),
- Mani Ram S.o Mohinder Singh, R/o Raje Ram Patti, R/o Village Andana, District Sangrur (Punjab) (Driver of offending Tata 407 No. HR-64A-0027).
- Jai Karan S/o Budh Ram, R/o Subhash Nagar, Kaithal (Registered owner of offending Tata 407 No. HR-64A-0027).
- Satyawan S/o Sh. Hawa Ram, R/o Subhash Nagar, Kaithal (Registered owner of offending Tata 407 HR-64A-0027).
- 5. Insurer of Tata 407 No. HR -64A-0027 name and address to be disclosed by respondents no1, 2, and 2A.



### IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. OF 2021

In MACT No. 316/2016

#### **MEMO OF PARTIES**

Cholamandalam MS General Insurance Company Ltd., Karnal, registered office Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022 through its authorized signatory Mr. Pradeep Pathak aged about 37 years son of Santosh Kumar Pathak Cholamandalam MS General Insurance Company Limited, SCO 2463-64, Sector-22-C, Chandigarh-160022

.....Appellant.

#### Versus

- Sujeet Kumar @ Surjeet Kumar, aged about 17 years s/o Ram Krishna Prasad R/o Village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand) through his mother Uma Devi wife of Ram Krishna Prasad, R/o Village Kukhi Tola Mogaljan, PS Haider Nagar, District Palamu (Jharkhand),
- Mani Ram S/o Mohinder Singh, R/o Raje Ram Patti, R/o Village Andana, District Sangrur (Punjab) (Driver of offending Tata 407 No. HR-64A-0027).
- Jai Karan S/o Budh Ram, R/o Subhash Nagar, Kaithal (Registered owner of offending Tata 407 No. HR-64A-0027).
- Satyawan S/o Sh. Hawa Ram, R/o Village Julani Khera, Tehsil &
   District Kaithal (Possessor of offending Tata 407 HR-64A-0027).

5. Satender Mehta S/o Ram Parshad Mehta R/o H.No.254/23, Employees Colony, near District Jail, Jind, (Registered owner of Swift Dezire Car temp No.HR-99X-Temp-9691 now registered with No. HR-56B-8667).

.....Contesting Respondents.

Chandigarh:

(Vishal Aggarwal) (Rajan Bhargava) (Aayysh Goyal)

Advocates

Dated: 17.02.2020

Counsel for the Appellacing

High Court of Pt. & Hrv at Cha.

Rec . At Bank Brat he 377 193 de 19 3 de 19 3

HRJN010047162016



### IN THE COURT OF AJAY PRASHAR, MOTOR ACCIDENT CLAIMS TRIBUNAL JIND (UID No. HR-0107)

#### (Petition I)

Petition No. 143 (RBT)
Date of Instt: 25.11.2016
Date of decision: 02.11.2019
CIS No. 315/2016

Poonam, aged 26 years, widow of late Sharvan Kumar s/o Chanderdeep Mehta, r/o village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand) now r/o H. No. 254/23, Employees Colony, near District Jail, Jind, account no. 0231000104133871 with Punjab National Bank, Jind.

....Petitioner/Claimant.

#### Versus.

- 1. Mani Ram s/o Mahinder Singh, r/o Raje Ram Patti, r/o village Andana, District Sangrur (Punjab) ( Driver of offending Tata 407 No. HR-64A-0027 ).
- 2. Jai Karan s/o Budh Ram, r/o Subhash Nagar, Kaithal (Registered owner of offending Tata 407 No. HR-64A-0027)
- 2-A. Satyawan s/o Sh. Hawa Singh, r/o village Julani Khera, Tehsil & District Kaithal (Possessor of offending Tata 407 No. HR-64A-0027
- 3. Insurer of Tata 407 no. HR-64A-0027 name and address to be disclosed by respondents no. 1, 2, and 2-A.
- 4. Satender Mehta s/o Ram Parshad Mehta, r/o H. No. 254/23, Employees Colony, near District Jail, Jind, (Registered owner of Swift Dezire Car temp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667)
- 5. Cholamandalam MS General Insurance Company Ltd. Through its Branch Manager, Insurer of Swift Dezire Car temp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667 vide cover note No. 3618529 policy no. 3368/00811995/000/00 dated 19.05.2016 effective upto 18.05.2017).

...Respondents.

#### (Petition II)

Petition No. 144 (RBT)
Date of Instt: 25.11.2016
Date of decision: 02.11.2019

CIS No. 317/2016

- 1. Poonam, aged 26 years, widow of late Sharvan Kumar s/o Chanderdeep Mehta, r/o village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand) now r/o H. No. 254/23, Employees Colony, near District Jail, Jind, account no. 0231000104133871 with Punjab National Bank, Jind.
- 2. Arpit, aged 6 years, minor son of late Sharvan Kumar s/o Chanderdeep Mehta, minor through his mother Poonam, aged 26 years, widow of late Sharven Kumar s/o Chanderdeep Mehta, r/o village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand) now r/o H. No. 254/23, Employees Colony, near District Jail, Jind

....Petitioners/Claimants.

#### Versus.

- 1. Mani Ram s/o Mahinder Singh, r/o Raje Ram Patti, r/o village Andana, District Sangrur (Punjab) ( Driver of offending Tata 407 No. HR-64A-0027 ).
- 2. Jai Karan s/o Budh Ram, r/o Subhash Nagar, Kaithal (Registered owner of offending Tata 407 No. HR-64A-0027)
- 2-A. Satyawan s/o Sh. Hawa Singh, r/o village Julani Khera, Tehsil & District Kaithal (Possessor of offending Tata 407 No. HR-64A-0027
- 3. Insurer of Tata 407 no. HR-64A-0027 name and address to be disclosed by respondents no. 1, 2, and 2-A.
- 4. Satender Mehta s/o Ram Parshad Mehta, r/o H. No. 254/23, Employees Colony, near District Jail, Jind, (Registered owner of Swift Dezire Cartemp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667)
- 5. Cholamandalam MS General Insurance Company Ltd. Through its Branch Manager, Insurer of Swift Dezire Car temp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667 vide cover note No. 3618529 policy no. 3368/00811995/000/00 dated 19.05.2016 effective upto 18.05.2017).

...Respondents.

(Petition III)

.

Petition No. 145 (RBT)
Date of Instt: 25.11.2016

Date of decision: 02.11.2019 CIS No. 316/2016

Sujeet Kumar @ Surjeet Kumar, aged about 13 years s/o Ram Krishna Prasad, r/o village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand) through his mother Uma Devi wife of Ram Krishna Prasad, r/o village Kukhi Tola Mogaljan, PS. Haider Nagar, District Palamu (Jharkhand), account no. 31478365901 with State Bank of India, Branch Husainabad Bazar.

....Petitioner/Claimant.

#### Versus.

- 1. Mani Ram s/o Mahinder Singh, r/o Raje Ram Patti, r/o village Andana, District Sangrur (Punjab) ( Driver of offending Tata 407 No. HR-64A-0027 ).
- 2. Jai Karan s/o Budh Ram, r/o Subhash Nagar, Kaithal (Registered owner of offending Tata 407 No. HR-64A-0027)
- 2-A. Satyawan s/o Sh. Hawa Singh, r/o village Julani Khera, Tehsil & District Kaithal (Possessor of offending Tata 407 No. HR-64A-0027
- 3. Insurer of Tata 407 no. HR-64A-0027 name and address to be disclosed by respondents no. 1, 2, and 2-A.
- 4. Satender Mehta s/o Ram Parshad Mehta, r/o H. No. 254/23, Employees Colony, near District Jail, Jind, (Registered owner of Swift Dezire Car temp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667)
- 5. Cholamandalam MS General Insurance Company Ltd. Through its Branch Manager, Insurer of Swift Dezire Car temp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667 vide cover note No. 3618529 policy no. 3368/00811995/000/00 dated 19.05.2016 effective upto 18.05.2017).

...Respondents.

### Claim petition under section 166 of the Motor Vehicles Act 1988.

Present:

Sh. V.K. Bhardwaj and Sh. V.S. Lather, Advocate for the

petitioners in all the petitions.

Sh. Deepak Dixit, Advocate for respondent no. 1 in all petitions. Sh. B.R. Saini, Advocate for respondent no. 2 in all petitions.

Particular of respondent no. 3 not disclosed.

Sh. V.P. Dharoli, Advocate for respondent no. 4 in all petitions. Sh. P.K. Bhatra, Advocate for respondent no. 5 in all petitions. Respondent no. 2-A exparte vide order dated 13.05.2019.

#### AWARD:

By this common award, I propose to dispose of above titled three claim petitions as they arise from the same incident.

2. Brief facts, for disposal of the above referred claim petitions are that on 23.05.2016 Sharvan Kumar (since deceased) along with his wife Poonam and nephews Sushil Kumar and Sujeet Kumar sons of Ram Krishan Parshad was coming back from Delhi to Jind in swift desire car no. Temp no. HR-99X-Temp-9691 now registered with no. HR-56B-8667 (here-in-after referred as fatal car) which was being driven by deceased. At about 7:15 PM when they had gone ahead of village Pauli, near a closed factory, then a Tata 407 No. HR-64A-0027 (here-in-after referred as offending Tata 407) which was being driven in rash and negligent manner by Mani Ram (respondent no. 1) came from opposite side and gave direct hit to the fatal car as a result of which driver of fatal car died at the spot and other occupants also received injuries. The police registered FIR No. 123 dated 24.05.2016 under sections 279/337/304A IPC at P.S. Julana against respondent no. 1 Mani Ram. Post mortem of the cadaver was conducted at PGIMS, Rohtak. It was further submitted that the accident took place solely due to rash and negligent driving on the part of respondent no.1 Mani Ram, who being driver, respondent no. 2, 2-A being the owners of offending vehicle are jointly and severally liable to pay compensation to the petitioners.

#### Additional facts of petition CIS No. MACP/315/2016:

3. It was further submitted that the deceased Sharvan Kumar was31 years of age and was employed as constable in BSF where his monthly

income was Rs. 33,273 per month. By way of present petition, a sum of Rs. 90 Lacs has been claimed as compensation.

#### Additional facts of petition CIS no. MACP/317/20169:

4. Further, submitted that the petitioner suffered grievous injuries and was shifted to GH, Jind from where she was referred to PGIMS, Rohtak. She spent Rs. 3,50,000 Lacs on her treatment, medicines, attendant etc. Prior to this accident she used to do the work of sewing and knitting and she was earning Rs. 7500/- per month. By way of present petition, a sum of Rs. 25 Lacs has been claimed as compensation.

#### Additional facts of petition CIS no. MACP/316/2016:

- 5. It is further submitted that the injured was only 13 years of age and in the said accident he suffered permanent disability to the extent of 30% on his right eye. He has been deprived of full enjoyment of his life. They had also spent Rs. 5 Lac on his treatment. By way of present petition, a sum of Rs. 25 Lacs has been claimed as compensation.
- All the respondents in their written statement, in all the petitions have opposed the petitions on the grounds of maintainability, cause of action, locus standi. On merits, respondent no. 1 replied that no accident took place due to rash and negligent driving of respondent no. 1. It was submitted that false case has been got registered against respondent no. 1, Denying all the averment, dismissal of the petitions have been sought.
- 7. Respondent no. 2 replied that answering respondent is not owner of the offending vehicle, rather respondent no. 2-A Satyawan is owner of the

offending vehicle since 29.04.2014. Dismissal of the petitions have been sought.

- 8. Respondent no. 4 written statement replied that no accident was caused by answering respondent, rather it was caused by respondent no. 1 driver of offending vehicle Tata 407 and further fatal car was insured with respondent no. 5. Dismissal of the petitions have been sought.
- 9. Respondent No. 5 written statement on merits denied the factum of accident. It was replied that a false FIR has been got lodged by the petitioners in collusion with the local police. Denying all other allegations, dismissal of the claim petitions has been prayed for.
- 10. From the pleadings of the parties, the following issues were framed vide order dated 03.10.2017:-
  - 1- Whether the accident in question took place on 23.05.2016 at about 7:15 PM in the area near a factory ahead from village Pauli, PS. Julana, District Jind on account of rash and negligent driving of Tata 407 bearing no. HR-64A-0027 by respondent no. 1, resulting injuries to Poonam, Sujeet Kumar @ Surjeet Kumar and death of Sarwan Kumar as alleged? OPP
  - 2- If issue no. 1 is proved in the affirmative, what amount of compensation the petitioners are entitled to and from whom ? OPP
  - 3- Whether the respondent no. 1 and 2 have violated terms and conditions of the insurance policy, if so, to what effect?

    OPR

    Relief.
- 11. All the parties have adduced oral as well as documentary evidence in support of their respective claims .
- 12. I have heard the learned counsel for the parties and have gone through the case file carefully. My issue-wise findings with reasons thereof, is as under:-

#### **Issue No.1** in all the petitions

- 13. Under this issue, the petitioners were to prove that the accident in question took place due to rash and negligent driving of offending vehicle by respondent no. 1 Mani Ram, in which Sharvan Kumar died and petitioners Poonam and Surjeet Kumar suffered injuries.
- who tendered affidavit Ex. PW-3/A wherein she deposed that on 23.05.2016, she along with her husband Sharvan Kumar (since deceased) and his nephews Sushil Kumar and Sujeet Kumar sons of Ram Krishan Parshad was coming back from Delhi to Jind in fatal car which was being driven by deceased. At about 7:15 PM when they reached slightly ahead of village Pauli, near a closed factory, then offending Tata 407 which was being driven in rash and negligent manner by respondent no. 1 came from opposite side and gave direct hit to the fatal car as a result of which driver of fatal car died at the spot and other occupants also received injuries. The police registered FIR No. 123 dated 24.05.2016 under sections 279/337/304A IPC at P.S. Julana against respondent no. 1 Mani Ram. Post mortem on the cadaver was conducted at PGIMS, Rohtak. She further deposed that the accident took place solely due to rash and negligent driving on the part of respondent no.1 Mani Ram.
- 15. PW-2 Sushil Kumar was traveling in the said fatal car and has given the same version in his affidavit which has been deposed by PW-3 Poonam.
- 16. Nothing to shatter this veracity could be elicited during their cross-examination and their stand has remained consistent throughout.

- 24.05.2016 under Sections 279, 337, 304-A IPC, PS. Julana, Ex. P-12, report under Section 173 Cr.P.C. Ex. P-14, certified copy of charge sheet Ex. P-15. From this exhibit it is revealed that registration number of offending vehicle is mentioned therein. As such, version of the petitioners is also corroborated by the contents of FIR. It is thus proved that respondent no. 1 has been challaned by the police for the offence under sections 279/304A/337 IPC and he is facing trial. It has been held in **Oriental Insurance Co. Ltd. Vs. Meena**Variyal 2007 ACJ 1284 that where the driver of the offending vehicle is facing trial for causing death by driving then it is sufficient proof to reach to the conclusion that driver was rash and negligent in driving and the accident took place due to his rash and negligent driving.
- 18. Stand of learned counsel for respondents no. 1 is that accident occurred due to rash and negligent driving of driver of fatal car and he has been falsely implicated. However, no evidence has been led by the respondents to prove this fact. The driver of offending vehicle has not stepped into the witness box to state his case on oath or to offer himself for cross-examination. In these circumstances, an adverse inference has to be drawn against the respondents that the case set up by them is not true. There is thus no reason to disbelieve the unrebutted testimony of the petitioner. There is also no evidence on the file that respondents no. 1 and 2-A ever filed any protest petition before higher authorities against false implication of respondent no. 1 or against false involvement of vehicle and their silence for such a long period also goes against them. In holding so, I have relied upon

#### 2008(2)RCR Civil 72 Sudama Devi Vs. Kewel Ram.

- 19. The MV Act is a beneficial legislation and the Tribunal shall position itself a la Carbusier's vision of with a flit in favour of the weak/effete/emasculated. In the context of MV Act, proactive approach shall be toward the victim or his family and the Tribunal shall elicit information through police, doctor, insurer or witness any information that will go to help prosecute the claim successfully. There shall be no occasion for a Tribunal to write in its judgment about drawing any adverse inference in any situation for non-examination of any person on the part of claimant. The tribunal shall secure the presence of any witness whom it thinks as most relevant, even if the claimant fails to examine such a person.
- 20. The post mortem report of the deceased Sharvan has been tendered in evidence as Ex.P-6, which shows that the post mortem was conducted at PGIMS, Rohtak on 24.05.2016. It was a dead body of male of 31 years of age. He had suffered a lacerated wound of size 3x1 cm over right side of forehead, vertically which was bony deep and on dissection underlying tissues were encehymosed, a comminuted fracture of size 8x3 cm was present over forehead and other multiple small linear reddish and lacerated wound and abrasion over present. The cause of death in this case was head injury and its complications. The contents of post mortem report have also gone unrebutted and no evidence to prove the contrary has been led by the respondents. From the post mortem report, it is also established that the deceased Sharvan died as a result of injuries suffered by him in the accident.

- 21. It has come in evidence that driver of the offending vehicle while driving the offending vehicle in rash and negligent manner directly caused accident of with fatal car.
- Hence, in this scenario, there is no hitch in holding that accident took place while driving the offending vehicle rashly and negligently by respondent no.1. Accordingly, finding under issue no.1 are returned in favour of the petitioners of all petitions to the extent state above.

#### **Issue No.2 and 3 (in all the petitions)**

- 23. Under these issue, in all the claim petitions, it is to be decided what amount of compensation and from whom the petitioners are entitled to recover.
- 24. First of all, the amount of compensation is to be discussed in claim petition titled as Poonam Vs. Mani Ram etc. CIS No. MACP/317/2016 (Petition II).
- 25. One of the petitioners Poonam while appearing as PW3 has stated that her husband was posted in BSF Unit No. 032 BN as constable and was earning Rs. 33,273 per month. She has proved on file salary statement for the moth of May-2016 of deceased as Mark X wherein his basic pay Rs. 12190 plus DA as Rs. 15238 total Rs. 27428 has been shown, so deceased must be earning Rs. 27,428/- per month.
- 26. In National Insurance Co. Ltd. Vs. Pranay Sethi in SLP(C)

  No. 25590 of 2014 Hon'ble Apex Court held that in case the deceased was self employed or on a fixed salary, an addition of 40% of established income should be the warrant where the deceased was below the age of 40 years. An

addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component. Following the law laid down by Hon'ble Supreme court, a sum of Rs. 10971/- has to be added to the income of the deceased towards future prospects for assessing his monthly income which takes his income to Rs. 38,399/- per month.

- Deceased has left behind two dependents and one third of income has to be deducted towards personal expenses of deceased in view of law laid down in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and anr. 2009(3) RCR ( Civil ) 77 and annual loss of dependency comes to Rs. 3,07,200/-.
- 28. Petitioner has alleged that deceased was 31 years of age. In the Post mortem report, age of the deceased is recorded as 31 years. No evidence to prove to the contrary has been led by respondents and accordingly age as mentioned in PMR is taken to be correct. Taking the age of deceased as 31 years, multiplier of 16 has to be applied in view of law laid down in Smt. Sarla Verma's case (supra) which takes the compensation to Rs. 49,15,200/-. Otherwise also it has been held by Hon'ble Supreme Court of India in Amrit Bhanu Shali Vs. National Insurance Co. Ltd. And others 2012(4) RCR Civil 343 that selection of multiplier is based on the age of the deceased and not on the basis of age of dependents. There may be a number of dependents of deceased whose age may be different, therefore, age of dependents has no nexus with computation of compensation. Further, in case

2015(3) RCR Civil 447 three judges bench of Hon'ble Apex Court has held that "Multiplier is to be used with reference to the age of the deceased and not age of dependents of deceased." This question was again examined by three Judges Banch of the Hon'ble Supreme Court in the case of Reshma Kumari Vs. Madan Mohan 2013(9) SCC 65 in which the decision of Sarla Verma's case ( supra) was considered and it was held that multiplier as given in Sarla Verma's case ( supra) has to be applied. In the said case, Supreme Court applied the multiplier as per the age of the deceased.

- 29. Petitioners are further granted compensation of Rs.40,000/- each towards loss love and affection (love and affetion, filial relationship) in view of citation Gurdev Kaur and others Vs. Surjit Singh and others, FAO No. 511 of 2017 (O&M) decided on 22.10.2018.
- 30. Petitioners are further granted compensation of Rs.15,000/towards loss to estate.
- 31. Petitioners are further granted a sum of Rs.15000/- towards expenses which must have been incurred on transportation and last rites of deceased.
- 32. In this way, petitioners are entitled to compensation of Rs. 49,15,200/-+80,000/-+15000/-+15,000 = 50,25,200/- (Rs. Fifty lac twenty five thousand two hundred only) alongwith interest @ 10% from the date of filing of the petition till realization as per **National Insurance Co. Ltd. Vs. Pranay Sethi's ( Supra)**.

Compensation in respect of petition CIS No. MACP315/2016 (petition I):

33. To prove the injuries suffered by petitioner, she herself appeared in witness box as PW-3 and deposed that she remained admitted in hospital from 24.05.2016 to 04.06.2016 and she has proved follow up and discharge card Ex. P-10. She further deposed that she spent Rs. 5,00,000/- on her treatment, however, no bill etc. has been produced in file to support her claim.

During the period of treatment and recovery, petitioner must have spent some amount on transportation, special diet and in engaging an attendant to look after her. So petitioner is held entitled to compensation under this head. Taking into consideration the evidence on the file, the compensation to be awarded to petitioner under various heads is assessed as under:-

Pain and sufferings

Rs. 20,000/-

Special diet, attendant charges, loss Rs. 16,000/-earning during treatment & recuperation and conveyance charges for follow ups.

TOTAL

Rs. 36,000/-

35. As a result of above discussion, compensation to be awarded to petitioner comes to Rs. 36,000/- alongwith interest @ 10% P.A from the date of filing of petition till realization.

# Compensation in respect of petition CIS No. MACP316/2016 (petition III:

36. Now it is to be decided as to how much compensation the petitioner is entitled to on account of permanent disability in his right eye to the extent of 30% vide disability certificate Ex. PB.

- 37. The authenticity of this disability certificates cannot be doubted, as no evidence to prove to the contrary has been led by respondents. A perusal of disability certificate Ex. P-B reveal that petitioner Surjeet suffered permanent disability to the extent of 30 per cent in respect of right eye. As such, the disability suffered by him would certainly affect his a vocation as well as earning capability and he is likely to suffer for the same throughout his life. The compensation to be awarded to the petitioner under the head "loss of income" thus has to be assessed keeping in view the percentage by which petitioners' earning capacity has been diminished.
- 38. Since the Sujeet is a child of 13 years of age and because of permanent disability in his right eye he has been deprived of full enjoyment of life, would not be able to get employed in armed forces, police or to undertake any sports activity. In citation **Raj Kumar vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101** the Apex Court had laid down the principles for determining the loss and the affect of permanent disability on the actual earning capacity. It would be useful to refer to the relevant paragraphs:-
  - "9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical

evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry.

On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life,

as otherwise there may be a duplication in the award of compensation. Be that as it may."

- 39. Since the Sujeet is a child of 13 years of age and because of permanent disability in his right eye he has been deprived of full enjoyment of life. So, applying the ratio of the above mentioned judgments, notional income loss of petitioner is assessed at Rs. 4000/- per months. Thus, loss of his annual income comes to Rs. 48,000/-. Taking the age of injured 13 years, multiplier of 15 has to be applied which takes compensation to Rs. 7,20,000/-.
- 40. During the period of treatment and recovery, petitioner must have spent some amount on transportation, special diet and in engaging an attendant to look after him and petitioner is also held entitled to compensation under this head. Taking into consideration the evidence on the file, the compensation to be awarded to petitioner under various heads is assessed as under:-

Permanent disability

Rs. 7,20,000/-Rs. 20,000/-

Pain and sufferings

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Treatment expenses

Rs. 86,000/- (vide medicals bills

Ex. P-18 to Ex. P-63)

Special diet, attendant, stay

and conveyance charges

Rs. 10,000/-

**TOTAL** 

\_Rs. 8,36,000/-

- As a result of above discussion, compensation to be awarded to petitioner comes to Rs. 8,36,000/- alongwith interest @ 10% P.A from the date of filing of petition till realization.
- 42. Now it is to be decided as to who is liable to pay compensation to the petitioner.

- 43. Learned counsel for respondents has tendered DL of the driver of offending vehicle Ex. R-2 and Copy of RC of the offending vehicle Ex. R-1. Further, it has come in the testimony of respondent no. 2 (appeared as RW-1) that he has sold off the offending vehicle to respondent no. 2-A on 29.05.2014. This fact has been so proved in the testimony of RW-2 Mahender Singh, Clerk RTA Office, Kaithal, wherein he has stated in unequivocal terms that RC in their record transferred in the name of Satyawan respondent no. 2-A on 16.06.2014 from the name of previous owner Jai Karan who was none else respondent no. 2. Thus, much prior to the date of occurrence i.e. 23.05.2016 the ownership of the vehicle is in the name of respondent No. 2-A.
- 44. Hence, respondent no. 1 being driver, respondent no.2-A being owner of offending vehicle, are jointly and severally liable to pay the compensation to the petitioners of **petition II** while respondent no. 1 being driver, respondent no.2-A being owner of offending vehicle, respondent no. 4 being owner of fatal car and respondent no. 5 being insurer of the fatal car, are jointly and severally liable to pay the compensation to the petitioners of **petition I and III.** Accordingly, issue no. 2 is decided in favour of the petitioners and issue no. 3 is decided against respondents.

## **Issue No.4 Relief**

45. The net result of my aforesaid discussion is that all these petitions succeed partly in favour of petitioners and against the respondents. In claim petition titled as "Poonam etc. Vs. Mani Ram etc." CIS No. 317 of 2016 (petition II), an award for the sum of Rs. 49,15,200/-+80,000/- +15000/-

+ 15,000 = 50,25,200/- (Rs. Fifty lac twenty five thousand two hundred only) alongwith interest @ 10 % p.a. from the date of filing of the petition till realization payable by respondents no. 1 and 2-A whose liability shall be joint as well as several is passed. The amount shall be equally shared by the petitioners. Out of the awarded amount petitioner no. 1 would be paid a sum of Rs. 3,00,000/- in cash remaining amount of be deposited in a fixed deposit in a scheme fetching maximum interest with any nationalized bank for a period of two year with a note that no loan shall be advanced against the fixed deposit. However, the petitioner shall be entitled to withdraw quarterly interest, if she so desires. After lock in period the Manager of the Bank can make the payment of Fixed deposit directly to the claimant so that she need not come to the court for release of this amount. The share of petitioners no. 2 Arpit (minor) would be deposited in the shape of FDR in some nationalized bank fetching maximum rate of interest to be given to him on attaining the majority. However, guardian of minor can withdraw the interest from the amount so kept in the name of minor for his up bringing and education. On attaining the age of majority, the Manager of the Bank can make the payment of Fixed deposit directly to him so that he need not come to the court for release of this amount.

In claim petition titled as "Poonam etc. Vs. Mani Ram etc. CIS No. MACP No. 315/2016 (petition I), an award for the sum of Rs. 36,000/- (Rs. Thirty six thousand only) alongwith interest @ 10 % p.a. from the date of filing of the petition till realization payable by respondent no. 1 being driver, respondent no.2-A being owner of offending vehicle, respondent no. 4

being owner of fatal car and respondent no. 5 being insurer of the fatal car

whose liability shall be joint as well as several is passed. The awarded amount

be deposited in the account of claimant as the amount is meager.

47. In claim petition titled as "Surject Vs. Mani Ram etc." CIS No.

MACP No. 316 a sum of Rs. 8,36,000/- is awarded as compensation

alongwith interest @ 10% p.a. from the date of filing of the petition till

realization payable by respondent no. 1 being driver, respondent no.2-A being

owner of offending vehicle, respondent no. 4 being owner of fatal car and

respondent no. 5 being insurer of the fatal car whose liability shall be joint as

well as several, is passed. The amount of compensation would be deposited in

a fixed deposit scheme fetching maximum interest with any nationalized bank

with a note that no loan shall be advanced against the fixed deposit. The

amount shall be payable to petitioner on attaining majority. However, the

petitioner shall be entitled to withdraw quarterly interest, if he so desires. On

attaining majority, the Manager of the Bank can make the payment of Fixed

deposit directly to the claimant so that he need not come to the court for

release of this amount.

48. Counsel fee is assessed at Rs.1100/- on both the sides, in each

petition. Memo of costs be prepared accordingly and file be consigned to the

record room after due compliance.

Pronounced in open court

Dated: 02.11.2019

(Ajay Prashar)

Motor Accident Claims Tribunal,

Jind (UID No. HR0107)

Note:

This judgment contains 19 pages and

each page has been signed by me.

# Surjeet Vs. Mani Ram etc.

## MEMO OF COST

# 'APPELLANT(S) RESPONDENT(S)

<ol> <li>Stamp for Appeal</li> <li>Stamp for power</li> <li>Stamp for process</li> <li>Misc.</li> <li>DM</li> <li>Counsel's fee</li> </ol>	Rs. 10.00 Rs. 2.00 Rs. 50.00 Rs. 174.00 Rs.1220.00 Rs.1100.00	Rs. 00.00 Rs. 8.00(2/-each) Rs. 00.00 Rs. 10.00 Rs. 00.00 Rs. 4400.00(1100/-each)
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TOTAL

Rs.2556.00

Rs. 4408.00

Given under my hand and the seal of the Court today i.e. on

02-11-2019.

(Ajay Prashar) Motor Accident Claim Tribunal

Jind. UID Code HR0107

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VISHAL AGRARUAL)
Adv





### TO WHOM SO EVER IT MAY CONCERN

#### **AUTHORISATION**

Authorization No. 2019-20/42

We, Cholamandalam MS General Insurance Company Limited, having its registered office at "Dare House", 2nd Floor, New No. 2, Old No. 234, N.S.C Bose Road, Chennai – 600-001, represented by its Chief Financial Officer Mr. Venugopalan S and Company Secretary Mr. Suresh Krishnan, do hereby jointly authorize Mr. Pradeep Pathak - Dy. Manager - Claims (Legal), to do and exercise the following acts, deeds, matters and things on behalf of the Company in respect of any claim arising out of any Insurance Policy issued by the Company.

- 1. To sign vakalatnamas in favour of the Advocate/s and declare/file Plaint, Written Statements, Reply Statements, Counter Statements, Affidavits, Applications, Memorandum of Appeals, Complaints and any other petitions and connected documents in connection with (the petition/suit/complaint filed by any party, on behalf of the Company as may be necessary or to defend any legal proceedings initiated by any party against the Company) before/in any statutory/Judicial/quasi judicial and other bodies.
- 2. To sign and verify any petition, application, attidavir, undertaking, complaints and pleadings and other connected documents on behalf of the Company and also to represent the Company in any proceedings against any person/s and to produce evidence, documents on behalf of the Company after obtaining the approval of Head of Claims.
- 3. To attend Courts, Tribunal, Forum or any Authority including quasi-judicial authority and represent the Company and to give evidence, produce books, papers and documents and to instruct Advocates in respect of case filed by or against the Company.
- 4. To accept and give discharge in token of acceptance in respect of service of all notices or processes or summons issued by the Court, Tribunal, Forum or any Authority in respect of any case on behalf of the Company.
- 5. To execute any order or other process passed by the Court, Tribunal, Forum or any Authority and to take such steps or proceedings as may be necessary to execute the said order after obtaining written approval from Head Claims.



- 6. To file any appeal or petition against the orders to be passed by the Court, Tribunal, Forum or any Authority after obtaining written approval from Head Claims.
- 7. We hereby agree to confirm and ratify all acts, deeds or things done by the gaid attorney or such persons as may be appointed by the said attorney by virtue of these presents, on behalf of the Company and the same shall be deemed to be done on behalf of the Company and binding on the Company, as if the same had been done or made by us.
- 8. This authority is valid till 31.03.2020 provided the nominated Attorney is in the services of the Company and shall automatically terminate on his tesignation/termination/retigement from the employment of the Company.
- 9. This authority to be exercised by nominated Attorney in the interest of the Company and the Attorney shall not do anything which will prejudice the interest of the Company

Dated at Chennai this the 01" day of April, 2019.

For Cholamandalam MS General Insurance Company Limited

Chief Financial Officer

Suresh Krishnan

Company Secretary

CHOLESTANDALAM WE REVERAL IN SCHANCE COMPANY TO 2nd Floor, Dare House, 2 NSC Bose Boad, Chennai 600.001 PAN AABCC6633K GSTIN ; 33AABCC6633K1ZQ CIN U660303 N2004PLC047977 VISHAL ACCARWAL)

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KNOWN ALL to whom these presents shall come, that I/We the above named Respondent No. i.e. Cholamandalam MS General Insurance Company Limited, S.C.O. - 2463-64, Sector-22 - C, Chandigarh- 160022, do hereby appoint;

Ach. Vishal Aggarwal. I Rajan Shangan S Aagust Reyal Advocalis

Herein after called Advocate(s) to be my/ our advocate(s) in the above noted case and authorized him/them;

- 1. To act, appear & plead in the above mentioned case in this Court or any other Court in which the same may be tried or heard in the first instance, in appeal, Letters Patent Appeal, Review, Revision, Execution or in any other stage of its progress until its final decision.
- 2. To present sign & verify pleadings, appeals, Letters Patent Appeals, Cross-objections or petitions, execution, review, withdrawal, compromise, other petitions, affidavits, other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.

the said case in all its stages.

3. To withdraw or compromise the said case or submit to arbitation of punds a HARYANA dispute that shall arise touching or in any manner relations of the said case or submit to arbitation of change and dispute that shall arise touching or in any manner relations of the said case or submit to arbitation of change and case or submit to arbitation of the said case or submi parties and to do all other acts and things which ma 0632967 for the progress and in the course of the prosecution of the said case.

any other Advocate, authorize him to exercise the power and authorities and to confer upon such advocate, whenever he may /think fit to do so any power to conduct the aforementioned case on my/our behalf.

AND I/WE hereby agree to ratify whatever the Advocate or his substitute shall do in the premises and in this connection.

AND I/WE hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

AND I/WE hereby agree not to hold the Advocate responsible for not intimating the date of hearing of the case & for not applying any certified copy of the judgment on the decision of the case.

AND I/WE here by agree that if the matter is referred to a larger bench or if the case is transferred to any other Court or the Court sits at any place other than its normal place of sitting and if any application or Petition is to be filed in the case, the Advocate will be entitled to fresh free as paid in the case.

AND I/WE hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution from the said cause until the same is paid.

IN WITNESS WHERE OF I/WE hereunder set my/our hands of these presents the contents of which have been explained to and understood by me/us.

Signed and accepted on this  $1 + \frac{1}{2}$  day of 2 = 2020.

Accepted

CHANDIGARH-160018 1-9814690605

Rajuh Bhargara Payno & Egyl (Signature)

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