

Hit & Run Cases: Kerala High Court Explains Procedure To Claim Compensation Under 1989 Solatium Scheme

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

P.V.KUNHIKRISHNAN; J.

W.P.(C) No. 16367 of 2022; 28th October, 2022

V.K. BHASI versus STATE OF KERALA

Petitioner/s by Advs. P. Sanjay, A. Parvathi Menon, Biju Meenattoor, Paul Varghese (Pallath), P.A. Mohammed Aslam, Kiran Narayanan, Prasoon Sunny, Rahul Raj P., Amrutha M. Nair

Respondents GP Jimmy George

J U D G M E N T

A latest study on the major causes of road accidents shows that out of the total cases of 4,03,116 road accidents during the year 2020-21, 59.7% of the road accidents has occurred in rural areas (2,40,660) and 40.3% has occurred in urban areas (1,62,456). Among this, there are several hit and run accidents. 'Hit and run motor accident' means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose. The Motor Vehicles Act, 1988 (for short, Act, 1988) provides compensation for hit and run motor accidents. Sections 161 to 163 are the relevant provisions which deals with the compensation payable for hit and run accident cases. Based on Sec.163(1), Solatium Scheme of 1989 was framed by the Central Government. I think the general public is not aware about this scheme and they are ignorant about the competent authority to whom application is to be submitted for getting compensation in 'hit and run' cases. Therefore, a detailed discussion about Sections 161 to 163 of the Act, 1988 and the Solatium Scheme, 1989 is necessary.

2. The brief facts of the present case can be narrated first. The petitioner is a victim of 'hit and run'. On 2.11.2021 at 7 pm, the petitioner was riding a motor cycle/scooter (Honda Activa bearing No. KL 41 Q 5627) and was returning from work. On his way from Edappally, when the petitioner reached the flyover located just after the Apollo Junction, Kalamassery a car hit the rear side of his scooter and left without stopping. The petitioner fell down on that impact and sustained serious injuries. Exts.P1 to P4 are the medical records. The petitioner submitted a complaint before the Kalamassery Police station as evident by Exts.P5 and P6. Even though, the case was not registered originally, subsequently, Crime No. 1697/2021 was registered as evident by Ext.P7. After investigation, the Police informed the petitioner that they have not been able to identify the vehicle. Accordingly, Ext.P8 was sent by the Police informing that the case is undetectable.

3. The petitioner approached the authorities for getting compensation under the Solatium Scheme, 1989 and there was no response. Hence, this writ petition is filed with the following prayers :

"i. Issue a writ of mandamus directing the 1st respondent to take steps to appoint Claim Enquiry Officers in every Taluk in Kerala for the purpose of settling claims under Section 161 of the Motor Vehicles Act;

ii. Issue a Writ of mandamus directing the 1st respondent to grant compensation to the petitioner;

iii. Issue a writ of mandamus directing the 2nd respondent to consider Ext P10 representation of the petitioner within a time frame fixed by this Hon'ble Court.

iv. Issue any other writ, direction or order which this Hon'ble Court deems fit in the facts and circumstances of this case." (SIC)

4. Heard the learned counsel for the petitioner and Sri. Jimmy George, the learned Government Pleader.
5. The learned counsel for the petitioner reiterated his contentions in the writ petition and submitted that the respondents are not taking steps for disbursing the compensation amount and no claims enquiry officer is appointed as per the Scheme.
6. The Government Pleader, after getting instructions, submitted that the 2nd respondent, The District Collector received Ext.P10 representation for taking necessary steps to appoint Claims Enquiry Officer in the Taluk for 'Hit and Run cases' and to grant him compensation. The Government Pleader submitted that the law governing the issue is Solatium Scheme, 1989 and it designates Revenue Divisional Officer (RDO) as the Claims Enquiry Officer and the District Collector as the Claims Settlement Officer. The Government Pleader further submitted that the petitioner has not submitted an application seeking compensation as laid down in Form I under the Solatium Scheme, 1989. Hence, it is submitted that the District Collector directed the Sub-Collector, Fort Kochi to examine the issue and to submit a report in the prescribed format along with application in Form 1. It is submitted that the report from the RDO, Fort Kochi is awaited. It is also submitted that necessary orders will be passed once the report is received from the RDO, Fort Kochi.
7. Section 161 of the Act, 1988 deals with special provisions as to the compensation in case of hit and run motor accident. 'Hit and run motor accident' means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose. Section 161 (3) says that in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees will be paid and in case of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees will be paid. As per Section 163 of the Act, 1988, the Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.
8. Based on Section 163(1) of the Act, 1988, Solatium Scheme, 1989 was framed by the Central Government. Clause 2(b) of the scheme defines "Claims Enquiry Officer" and Clause 2(c) defines "Claims Settlement Commissioner". It will be better to extract clause 2(b) and clause 2(c) here:
 2. (b) "Claims Enquiry Officer" means the Sub-Divisional Officer, Tahsildar, or any other officer in charge of the revenue sub-division or a Taluka in each revenue district of a State or such other officer not below the rank of Sub-Divisional Officer or a Tahsildar, as may be specified by the State Government."
 2. (c) "Claims Settlement Commissioner" means the District Magistrate, the Deputy Commissioner, the Collector or any other officer-in-charge of a revenue district in a State appointed as such by a State Government."
9. The procedure for making the claim application is mentioned in Clause 20 of the Solatium Scheme, 1989. As per the same, the applicant shall submit an application seeking compensation under the scheme in Form I along with duly filled in discharge receipt in Form II and undertaking in Form V to the Claims Enquiry Officer of the Sub-Division or Taluka in which the accident takes place. Where the Claims Enquiry Officer

does not accept the grounds advanced by the applicant, he shall record speaking orders and communicate to the applicant reasons for not accepting the claim application. The Claims Enquiry Officer is the Revenue Divisional Officer of the place wherein the accident takes place. The procedure to be followed by the Claims Enquiry Officer is dealt in Clause 21 of the Solatium Scheme, 1989, which is extracted hereunder:

“21. Procedure to be followed by the Claims Enquiry Officer.- (1) On receipt of claims application, the Claims Enquiry Officer shall immediately obtain a copy of the FIR, inquest report, post mortem report or certificate of injury, as the case may be, from the concerned authorities and hold enquiry in respect of claims arising out of hit and run motor accidents.

(2) It shall be the duty of the Claims Enquiry Officer-

(a) to decide as to who are the rightful claimants, where there are more than one claimants;

(b) to submit, as early as possible, and in any case within a period of one month from the date of receipt of application a report in Form III along with duly discharged receipt in Form II and the undertaking in Form V along with his own recommendation.

(3) Where the Claims Settlement Commissioner has returned any report to the Claims Enquiry Officer for further enquiry under sub-clause (2) of clause 22, the Claims Enquiry Officer shall make such additional enquiries as may be necessary and resubmit the report to the Claims Settlement Commissioner within 15 days for final order.”

10. Thereafter, the sanctioning of claims is mentioned in Clause 22, which is also extracted here:

22. Sanctioning of Claims – (1) On receipt of report of the Claims Enquiry Officer, the Claims Settlement Commissioner shall sanction the claim, as far as possible, within a period not exceeding fifteen days from the date of receipt of such report and communicate the sanction order in Form IV along with duly discharged receipt in Form II and the undertaking in Form V to the nominated officer of the insurance company, with a copy to the following:(a) the Claims Enquiry Officer.

(b) the claimant.

(c) the concerned Motor Accident Claim Tribunal (d) the concerned Transport Commissioner

(e) General Insurance Corporation headquarters.

(2) Where the Claims Settlement Commissioner has any doubt in respect of the report submitted by the Claims Enquiry Officer, he shall return the report to the Claims Enquiry Officer for further enquiry, indicating the specific points on which the enquiry is to be made.”

11. From a combined reading of Clauses 20, 21 and 22, it is clear that the victim of a ‘hit and run’ motor accident case can submit an application seeking compensation in Form I of Solatium Scheme 1989 along with duly filled discharge receipt in Form II and the undertaking in Form V to the Claims Enquiry Officer, namely the Revenue Divisional Officer of the jurisdiction, where the accident takes place. On receipt of the claims application, the Claims Enquiry Officer shall obtain a copy of the FIR, inquest report, postmortem report or certificate of injury as the case may be, from the concerned authorities and hold enquiry in respect of claims arising out of hit and run motor accidents. Therefore, the victim only need to submit Form I application along with duly filled discharge receipt in Form II and the undertaking in Form V to the Claims Enquiry Officer and it is the duty of the Claims Enquiry officer to obtain the copy of the FIR, inquest report, postmortem report or certificate of injury as the case may be, from the concerned authorities. After getting these details, the Claims Enquiry Officer has to hold the Enquiry in respect of claims. It is the duty of the Claims Enquiry Officer to submit the report in Form III along with discharge receipt in Form II and the undertaking in Form V along with his own recommendations. On receipt of the report from the Claims Enquiry Officer, the Claims

Settlement Commissioner shall sanction the claim as soon as possible, within a period not exceeding fifteen days from the date of receipt of such report and communicate the sanctioning order in Form IV along with duly filled in discharge receipt in Form II and the undertaking in Form V to the Nominated Officer of the Insurance Company with a copy to all authorities concerned mentioned in Clause 22.

12. Clause 23 of the scheme states about the payment of compensation. Therefore, a reading of Sections 161 to 163 of the Act, 1988 and the Solatium Scheme, 1989, will show that it is a complete code and a time limit is also prescribed for paying the compensation in 'hit and run' motor accident cases. The victims of hit and run motor accident cases should invoke the above provisions and the statutory compensation available to them should be utilised.

13. As far as the present case is concerned, the grievance of the petitioner is that the Claims Enquiry Officer is not appointed. In the light of the submissions made by the Government Pleader, it is clear that the Revenue Divisional Officer of the jurisdiction where the accident happened, is the Claims Enquiry Officer and the District Collector of that jurisdiction is the Claims Settlement Commissioner.

14. The Government Pleader submitted that all the Revenue Divisional Officers and all the District Collectors are authorised to consider the compensation claim as per the Solatium Scheme, 1989. The only objection raised by the Government Pleader is that the petitioner has not submitted application in Form I. Even then it is submitted that the District Collector has taken necessary steps and directed the Revenue Divisional Officer concerned to get the application in the correct form. If that is the case, the petitioner can submit the application before the 3rd respondent, the Revenue Divisional Officer, Fort Kochi in Form-I along with duly filled discharge receipt in Form II and the undertaking in Form V and there can be a direction to the 3rd respondent to forward the same after conducting the enquiry as per the Scheme to the 2nd respondent and there can be a direction to the 2nd respondent to take necessary action as per the Scheme to redress the grievance of the petitioner.

Therefore, this writ petition is disposed of with following directions:

1. The petitioner is free to submit a proper application as per Form I of the Solatium Scheme, 1989 along with duly filled discharge receipt in Form II and undertaking in Form V to the Claims Enquiry Officer who is the 3rd respondent within a period of one month from the date of receipt of a copy of this judgment.
2. Once such an application is received, the 3rd respondent will conduct necessary enquiry in accordance to Clause 21 of the Solatium Scheme, 1989 and submit the report to the 2nd respondent, the Claims Settlement Commissioner, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of Form I application from the petitioner.
3. The 2nd respondent, who is the Claims Enquiry Officer, will consider the report submitted by the 3rd respondent and will pass appropriate orders in accordance to the Solatium Scheme, 1989, as expeditiously as possible, any rate, within a period of 15 days from the date of receipt of the report from the 3rd respondent.