

ITEM NO.2

Court 6 (Video Conferencing)

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 534/2020

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY PRIVATE LTD.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

IA No. 52588/2020 - EX-PARTE AD-INTERIM RELIEF)

Date : 27-01-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

Mr. N. Vijayaraghavan, AC
Mr. Vipin Nair, AOR

For Petitioner(s) Mr. Siddharth, AOR
Ms. Mamata Meghwal, Adv.
Mr. Amit Kumar Agrawal, Adv.

For Respondent(s) Mr. Jayant K. Sud, Ld. ASG
Ms. Garima Prasad, Sr. Adv.
Mr. Navanjay Mahapatra, Adv.
Mr. Bhuvan Mishra, Adv.
Mr. Manish, Adv.
Mr. Sughosh Subramanyam, Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. Amrish Kumar, AOR

Mr. Mahfooz Ahsan Nazki, AOR
Mr. Polanki Gowtham, Adv.
Mr. Shaik Mohamad Haneef, Adv.
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Mr. Abhimanyu Tewari, AOR

Mr. Manish Kumar, AOR

Mr. Arjun Garg, AOR
Ms. Sagun Srivastava, Adv.
Mr. Aakash Nandolia, Adv.

Mr. Sourav Roy, Adv/ DAG (Chhattisgarh)

Mr. Mahesh Kumar, Adv.
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Mr. Prabudh Singh, Adv.
Ms. Devika Khanna, Adv.
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Mr. V. N. Raghupathy, AOR
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Mr. Mukul Singh, DAG
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Mr. Prakhar Srivastav, Adv.
Ms. Sneh Bairwa, Adv.
Mr. Aakash Sinha, Adv.

Mr. Rahul Chitnis, Adv.
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Mr. Karun Sharma, Adv.

Mr. Avijit Mani Tripathi, AOR
Ms. Tarini K. Nayak, Adv.
Ms. P.S. Negi, Adv.
Mr. Daniel Lyngdoh, Adv.

Mr. Siddhesh Kotwal, Adv.

Ms. Ana Upadhyay, Adv.
Ms. Manya Hasija, Adv.
Ms. Pragya Barsaiyan, Adv.
Mr. Akash Singh, Adv.

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Ms. K. Enatoli Sema, AOR
Ms. Chubalemla Chang, Adv.

Mr. Som Raj Choudhury, AOR

Mr. Milind Kumar, AOR

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Ms. G. Indira, AOR

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Impleader

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Ms. Archana Pathak Dave, AOR
Ms. Vanya Gupta, Adv.
Mr. Avnish Dave, Adv.

Mr. Gourab Banerji, Sr. Adv.

Mr. Ashish Kumar Tiwari , AOR
Mr. Rakesh Talukdar, Adv.

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Ms. Kavita Jha, AOR
Mr. Aditeya Bali, Adv.

Mr. Nishe Rajen Shonker, Adv.
Ms. Anu K. Joy, Adv.
Mr. Alim Anvar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We must begin by reminding parties once again of the importance of time schedules to be kept. We are spending valuable judicial time to streamline the system only because a very large part of pendency of litigation is in the field of motor accidents claims compensation and the beneficiaries do not get the amounts in time. What is really the administrative tuning required between different stakeholders, has come in the lap of the Court and the Court is only endeavouring to coordinate and give a nudge to the stakeholders to ensure that system works in an efficient manner. We say so as once again the report filed by the learned ASG is not on record and one of the aspects pointed out by him is that everything comes a day before. We cannot, but castigate all concerned persons for believing they have

a walk in time anytime they want to give inputs. we expect the inputs to be given in time stipulated by the learned ASG and not a day before the Court hearing so that we have the benefit of the report. Our patience on this issue is running thin and thus we make it clear that henceforth if time schedules are not followed, they will be visited with exemplary costs which will not be small amounts. We in fact call upon learned ASG on the next date to point out with every report henceforth as to who are the parties who have not responded in time and we will accordingly impose exemplary costs on them. So all stakeholders please take notice of this fact.

Now coming to some of the aspects pointed out to us, which we propose to address:

1) TDS

Learned ASG has pointed out that insofar as our direction (v) of our order dated 16.11 2021 we had dealt with the aspect of Tax Deduction at Source (TDS) in Motor Accident Claims at two different rates from 10% to 20%. Learned ASG points out that uniform system is being brought in place whereby TDS will be uniformly 10% for all categories.

Mr. Vijayaraghavan, learned Amicus Curiae assisting us points out that there are large amounts of TDS deducted at source where the claimants are not fully aware how to obtain that amount. This may be

arising on account of the fact that a number of such claimants may not even be assesseees as they come from different economic strata of the society. Mr. Vijayaraghavan, learned Amicus Curiae points out that amounts in this behalf may be running into hundreds of crores. We thus call upon learned ASG to look into this aspect and work out a system whereby this problem can be dealt with.

A suggestion made by learned Amicus Curiae is that where TDS is applied as per Section 194-A of the Income Tax Act, 1961, the insurance companies/transport corporations/others should file the statutory Form 16-A immediately upon filing the returns of the TDS to the Income Tax Department and the MACTs. should endeavour to handover to the claimants/counsel on proper acknowledgment, the forms to facilitate speedier disbursement.

2) COORDINATION BETWEEN LOCAL POLICE STATIONS AND MACT COURTS

Learned ASG has then taken us to our direction (vi) of the same order to submit that there has been considerable progress with the Registrars General and the DGPs. brought in and most of the nodal officers have been appointed. It is, however, stated to be still a work in progress and we expect that the matter should

stand finally settled with all aspects of our direction (vi) being worked out. We direct that further two months' time is more than sufficient to work this out.

3) MOBILE APP

Our direction(vii) dealt with the aspect of a common Mobile App. We had expressed our grave reservation and the loss of time on account of view expressed before us that common mobile App was a work in progress (our orders dated 16.03.2021 and 03.08.2021). However, on the last date, we were told that the GIC was willing to develop a mobile App. i.e. things were not worked out before as stated and we had granted a period of two months. Learned ASG rightly points out that there were presentations made including to him and there was then a back tracking on the issues by seeking to suggest that the persons who are making the presentations as consultants were not so authorized.

Now, Mr. Atul Nanda, learned senior counsel seeks to represent the GIC which is the nodal agency of all insurance companies. He says that he has experience in developing the necessary App. qua the Delhi High Court. If that be the position, he should be well versed with how to ensure our orders are complied with. The fact remains they have not been complied with till date. He thus seeks to suggest that a development has

been a coordination with the NIC and that as per his instructions almost 90% of the work is over. On our query he submits that two months time should be sufficient to complete the process. He assures us that he will personally coordinate all aspects with the learned ASG and taking this assurance on record we are inclined to grant two months' time, making the significance of the time period absolutely clear to him.

In view of role being played by the NIC, Mr. Jayant Sud will also obtain instructions from the NIC as to what role NIC is playing to incorporate in the part of his report for us to make sure that it is not a red herring.

Mr. N.L. Raja, learned senior counsel who also assists us in this matter submits that as per international practices there is a Chief Technical Officer who helps in sorting out the issues on behalf of insurance companies in different countries and he would understand the technical nuances. He suggests that there should be one Chief Technical Officer to deal with these issues on behalf of all the insurance companies, a suggestion which Mr. Nanda accepts. We thus direct that such a Chief Technical Officer be appointed by the GIC on behalf of all insurance companies within a period of two weeks from today as

accepted by Mr. Nanda. We may notice the submission of learned counsel for the petitioner Bajaj Allianz General Insurance Company Private Ltd. that they have such a technical officer whose services can be made available. However, that is a call which the GIC will take.

(4) FUND POOL FOR NON INSURED STATE VEHICLES

Our direction (viii) dealt with the aspect of the State vehicle not being insured and as a sequitur thereof compensation not being deposited in time as there is lack of sufficient funds to cover the requirement of disbursement of compensation. In this behalf we had issued some necessary directions.

We are faced with applications filed by Andhra Pradesh State Road Transport Corporation and Telangana State Road Transport Corporation being Nos. 11414/2022, 11415/2022, 11124/2022 and 11126/2022 respectively. Mr. Gaurav Banerjee, learned senior counsel appearing for these applicants submits that his concern arises from the direction made on the last date of hearing to create a fund equivalent to an amount on the basis of determination for the last three financial years of compensation so disbursed. He states that in the two states there has never been any problem of seizure of vehicles etc. and the amounts have been paid. It is his submission that the direction would put a burden on the

States to create a fund in addition to the accident relief fund already created in terms of the provisions of Section 146 (3) of the said Act read with Rule 151 of the 1989 Rules. We would call upon the learned ASG to examine this aspect in the conspectus of the submissions of Mr. Gaurav Banerjee, more so that possibly a solution may be to increase the level of the funds which at present is specified at Rs. 20,00,000/- in 1982. This would logically require the amendment of the statutory rules. We expect the learned ASG to get back on this issue and since we had provided a deadline of three months which expires on 15.02.2022 we would like to examine this aspect alone at an earlier date.

We are not inclined to implead the two applicants as a party but have taken note of their concern and dispose of the applications with liberty to the counsel to assist us in this behalf.

ADDITIONAL REPORT OF MR. N. VIJAYARAGHAVAN
DATED 04.01.2022

An additional report has been filed by Mr. N. Vijayaraghavan, learned Amicus curiae expressing some difficulties arising from directions given by us on 16.11.2021 for maintenance of Savings Bank Accounts instead of current accounts. He say so on the basis of some difficulties experienced. These difficulties in

turn have arisen from some unfortunate aspects which have come to notice on enquiry in the State of Tamil Nadu of misuse of funds and Madras High Court is in seisin of the matter.

In view of the inevitable time lag between deposit of the award and actual disbursement, it is stated that accrued interest arising in savings Bank Accounts (something which we intended to benefit the claimants), there appears to be a stated problem in coordinating the exact accrued interest amounts with the claims and it is submitted that the total accrued interest in 328 MACTs in the State of Tamil Nadu and Puducherry is more than Rs. 40 crores. This fund is thus stated to be just lying in the account which is not disbursed and there is lack of proper identification as to whom the amount should be disbursed. Misuse of these amounts has come to light to the extent of 1.5 crores and 33 lakhs in two MACT courts and the matter as stated above is being investigated under the supervision of the Madras High Court.

On the reading of the aforesaid suggestion it thus appears that the MACT Court seems to be seeking to wash their hands off because of the amounts being deposited in the Courts. That itself cannot require a change of direction as responsibilities have to be performed. However, the alternative suggestion made is

that if the amounts can be kept in a current account but with general directions that they should be placed in FDR initially for 91 days to be kept renewed (practice followed in many Courts), it will be easier to identify the interest with the claimants amount. This is an aspect which will be examined by learned ASG who would revert to us on the same.

In order to speed up the progress, in para 23 of this report three suggestions have been made by learned Amicus curiae for disbursement of the amounts:

- a) claims settled by way of Lok Adalat or Mediation compromise without any minor's interest, it can be directed that amounts should be directly disbursed to the savings account details of the claimants ;
- b) in case of contested awards where the insurance company/transport corporations/others accept the awards and no appeal is filed, with no minor's interest involved, a direction to deposit the awarded sum by way of Direct Bank Transfer (NEFT/RTGS) the bank accounts of claimants.
- c) Where minor interest is involved or where the MACT is inclined to secure compensation by way of deposits, the MACT may direct deposit of awarded sum in current account of MACT along with standing instructions to place them in a fixed deposit. It is his submission that the aim is to obviate the need for deposit in

accounts with the MACT.

This methodology is something which in the aforesaid conspectus learned Amicus Curiae will examine and come back to us on this issue.

In view of the directions aforesaid, except of creating of a fund, requiring about two months time, list for further directions on 31.03.2022.

As far as directions for the funds is concerned, list for directions on 10.02.2022.

(CHARANJEET KAUR)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)