
(2016) 12 BOM CK 0054

In the Bombay High Court

Case No : Public Interest Litigation No.128 of 2004

Anil Prabhakar Tadmalkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Maharashtra Motor Vehicles Rules, 1989 — Rule 251, Rule 254, Rule 263
Motor Vehicles Act, 1988 — Section 140, Section 163A, Section 166

Citation : (2017) AAC 570 : (2017) 1 AIRBomR 766 : (2017) 2 BCR 192

Hon'ble Judges : A.S. Oka and R.D. Dhanuka, JJ.

Bench : Division Bench

Advocate : Mr. Manish Pabale, AGP, for the Respondent No. 1; Mr. S.R. Nargolkar, Advocate, for the Respondent Nos. 2 and 3; Mr. Avinash Mukund Gokhale, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

A.S. Oka, J. - By this Public Interest Litigation, the petitioner has raised several issues concerning the disposal of claim petitions under of the Motor Vehicles Act, 1988 (for short "M.V.Act") by the Motor Accidents Tribunals in the State.

2. The petitioner is a practicing Advocate. It is his case that he is practicing as an Advocate since 31st January 1986. It is pointed out in the petition that the members of the Motor Accident Claims Tribunals in the State established under the M.V.Act (for short "the Tribunal" or the Tribunals") insist on personal appearance of the claimants at the time of filing of the claim petitions under Sections 140, 163-A, and 166 of the M.V.Act. It is pointed out that the Tribunal at Pune insists upon the production of form Comp.AA to be furnished by the claimants/applicants before the notices are issued on the claim petitions. The attention of the Court is invited to Rule 254 of the Maharashtra Motor Vehicles Rules. Attention is also invited to the provisions of sub-Rule 8 of Rule 254. Attention of the Court is also invited to various difficulties faced in procuring medical certificates certifying the percentage of disability. The petitioner has

contended that the learned Members of the Motor Accident Claims Tribunal are not abiding by several provisions of the M.V.Act as well as the Maharashtra Motor Vehicles Rules,1989 (for short `Maharashtra Rules"). Amended prayer clause (a) made in this petition reads thus:

"(a) The Hon"ble High Court be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction, directing the Learned Members of Motor Accident Claims Tribunal:

(i) not to insist upon presence of Claimants for filing an Application as under Rule 254 (2);

(ii) Police Authority be directed to follow Rule 254(8) scrupulously about Form Comp AA and the office of the Tribunal be directed to follow Rule 253 C;

(iii) not to insist upon filing of true copies of Form Comp AA as Rule 253(C) casts duty upon Tribunal to furnish ones;

(iv) not to insist upon Disability Certificate from first hospital only;

(v) to repeat directions of this High Court in respect of Rule 255 (3) and 260 (3);

(vi) to pass order u/s 140 within 45 days

(vii) Not to make such administrative Rules which defeat are contra to spirit and letter of Section 144 of M.V.Act."

3. Shri Ramesh Shinde the Deputy Secretary of Government of Maharashtra has filed a reply dated 27th January 2005 on behalf of the State Government. It is contended that the presence of the claimant/applicant is not mandatory at the time of filing of the claim petitions. There is another affidavit filed by the same Officer on 8th February 2005. It is contended that the directions have been issued by a letter dated 14th August 1996 to the Director General of Police and also to the Police Commissioners as well as the District Police Superintendents in the State to ensure that form Comp.AA is provided.

4. There is an affidavit filed on 1st March 2005 by the then Registrar (Legal) of this Court. It is contended therein that an Advocate cannot appear in a claim petition as a matter of right. It is contended that the Members of the Tribunal at Pune have not insisted upon production of disability certificate. There is a rejoinder filed by the petitioner inviting attention of the Court to various instances of the cases for showing as to how the cases are being dealt with by the Members of the Tribunal.

Submissions

5. The learned counsel for the petitioner invited our attention to various provisions of the M.V. Act as well as the Maharashtra Rules. He invited our attention to the decision of the Apex Court in the case of Jai Prakash v. National Insurance Company and others (2010)2 SCC 607. He relied upon the directions issued under the said Judgment. He also relied upon the decision of a Division

Bench of this Court in case the Amish Ravindra Kondra v. Motor Accident Claims Tribunal, Mumbai and another 2002 ACJ 1755 He invited the attention of the Court to the observations made in the said decision as well as the directions issued in paragraph 11 of the said decision. The learned counsel for the High Court Administration has also assisted the Court by pointing out several provisions of the Maharashtra Rules. We have also heard the learned AGP for State.

Provisions of M.V. ACT

6. Section 165 of the M.V Act provides for constituting the Motor Accidents Tribunals which reads thus:

"165. Claims Tribunals.

1. A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.-For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under Section 140.

2. A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

3. A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

a. Is, or has been, a Judge of a High Court, or

b. Is, or has been, a District Judge, or

c. Is qualified for appointment as a Judge of a High Court.

4. Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them."

7. Essentially, there are three categories of claim petitions which can be filed under the provisions of M.V.Act. The first category is of the petitions under Section 140 which are popularly known as claim petitions filed on the ground of "No Fault Liability".

Section 140 reads thus:

"140. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section.

(2) The amount of compensation which shall be payable under sub-Section (1) in respect of the death of any person shall be a fixed sum of 1[fifty] thousand rupees and the amount of compensation payable under that sub-Section in respect of the permanent disablement of any person shall be a fixed sum of 2[twenty-five] thousand rupees.

(3) In any claim for compensation under sub-Section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-Section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

[(5) Notwithstanding anything contained in sub-Section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this Section or under Section 163-A.]"

8. The second category of petitions is under Section 163-A of the M.V.Act which are known as the petitions invoking "structured formula". Section 163- A reads thus:

"163A. Special provisions as to payment of compensation on structured formula basis.

"163-A. Special provisions as to payment of compensation on structured formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or

the victim, as the case may be.

Explanation. - For the purposes of this sub-Section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-Section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

9. The third category is of regular claim petitions under Section 166 of the M.V.Act. The relevant provisions dealing with the said category of petitions are Sections 166 to 168 which read thus:

"166. Application for compensation.-

(1) An application for compensation arising out of an accident of the nature specified in sub-Section (1) of Section 165 may be made -

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

1[(2) Every application under sub-Section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

(3) [* * *]

3[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-Section (6) of Section 158 as an application for compensation under this Act.]"

[Sub-Section (4) was substituted by Act 54 of 1994, Section 53 (w.e.f. 14-11-1994). Before substitution, sub-Section (4) read :

"(4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks necessary so to do, treat the report as if it were an application for compensation under this Act.]

167. Option regarding claims for compensation in certain cases. Notwithstanding anything contained in the Workmen's Compensation Act, (8 of 1923.) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

168. Award of the Claims Tribunal.

1. On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

2. The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

3. When an award is made under this Section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

Consideration of the Maharashtra Rules

10. Now, we deal with the provisions of the Maharashtra Rules. Rule 253 reads thus:

"253. Information to be furnished to Insurance Company by Claimants.- (a) The Regional Transport Officer shall comply with the requisition from the concerned Divisional Manager, in respect of any motor vehicle involved in an accident.

(b) On receipt of a requisition in Form "Comp AAA" of the First Schedule from a Divisional Manager of an Insurance Company with which a motor vehicle involved in an accident may be insured, the Regional Transport Officer, to whom it may be addressed shall return the same form, duly filled in, in duplicate; within 2 weeks from its receipt.

(c) The Office of the Tribunal shall make available to any applicant on payment of the scheduled charges, a certified copy of the Form "Comp AA" of the First Schedule required by him. as mentioned in Rule 254(8) and such of the information as may be contained in it may be used as genuine and authentic, by any claimant, for the grant of compensation, on any account."

(emphasis added)

Rule 254 reads thus:

"254. Application for compensation arising out of an accident.- (1) An application for compensation arising out of an accident of the nature specified under this Act shall be made to the Claims Tribunal, having jurisdiction over the area in which the accident occurred, which shall be in Form "COMP" of the First Schedule to these Rules with particulars specified in that form.

(2) Every such application shall be sent to the said Claims Tribunal or to the Chairman, in case the Tribunal consists of more than one member, by registered post or may be presented to such Claims Tribunal and shall, unless the Claims Tribunal or its Chairman otherwise directs, be made in duplicate and shall be signed by the applicant.

(3) In case the Tribunal consists of more than one member, the State Government shall designate one of them as the Chairman of the Tribunal.

(4) The Chairman of the Tribunal shall have power to transfer any claim petition from the file of any member to the file of any other member.

(5) There shall be appended to every such application, the following documents, namely :-

- i. injury certificate or in case of death. post-mortem report, or Death Certificate;
- ii. True copy of First information Report or Police Station Diary Entry or Traffic Accident Report duly certified by the Police Officer of the Police Station concerned. in respect of the accident; and

iii. Certified copy of the Form Comp "AA" of the First Schedule mentioned in sub-Rule (8) of this Rule.

iv. If the accident has occurred out of the jurisdiction of the Claims Tribunal and the claimant has opted to file the application for compensation before the Claims Tribunal within whose jurisdiction the claimant resides or carries on business or the claimant has opted to file the application for compensation before the Claims Tribunal within whose jurisdiction the defendant resides. a document showing that the defendant resides within the local limits of jurisdiction of the said Tribunal.

(6) The Officer-in-charge of the Police Station shall, on demand by a person who wishes to make an application for compensation and who is involved in an accident arising out of the use of a motor vehicle or the legal successor of the deceased, shall furnish to him such information and particulars mentioned under Section 160 and within 15 days from the date of such demand.

(7) If any of the documents specified in sub-Rule (5) are not appended to the application the reasons for not appending them shall be stated, and if the Tribunal is satisfied. it may proceed with the application, and require production thereof at a later stage.

(8) The police station concerned, within whose jurisdiction the accident for any motor vehicle occurs shall submit a detailed report regarding an accident to a Claims Tribunal having jurisdiction over the area under Section 166(4) of the Act and obtain an acknowledgement for it. The information shall be submitted by the Police Station in Form Comp AA within one month from the date of accident. Such information shall be submitted only in respect of accidents which are of fatal or serious in nature.

(9) True copies of the annexures referred to in sub-Rule (5) shall also be attached to the copies of the main application to be served on the opposite parties and the Insurance."

(emphasis added)

1. Clause(c) of Rule 253 provides that an Officer of the Tribunal shall make available to any applicant on payment of scheduled charges a certified copy of form Comp. AA of the first schedule required by him for the purpose of filing the claim petition.

11. We have perused the form Comp.AA. It is a form of report about the motor vehicle accidents. The form contains particulars such as the name of the police station, C.R.No. and date, time and place of the accident, number of vehicles and type of vehicles involved in the accident, names and addresses of the owners of the vehicles, the names and addresses of the drivers of the vehicles, the details of the insurance policies of the vehicles. Below the form, a note has been appended stating that the form should accompany copies of (i) FIR, (ii) Panchanama, and (iii) Medical certificate/ Post Mortem Report. Sub Rule 8 of Rule

254 provides that the Police Station within whose jurisdiction the accident of any vehicle has occurred shall submit a detailed report regarding accidents to Claims Tribunal having jurisdiction over an area under sub-Section 4 of Section 166 of the M.V.Act and obtain acknowledgment for it. Information is required to be submitted by the Police Station in form Comp.AA within a period of one month from the date of accident. It is provided that the said information shall be submitted only in respect of the accidents which are fatal or of serious nature. Object of sub-Rule 8 of Rule 254 appears to be that the Motor Accident Claims Tribunal having jurisdiction over the area in which accident has occurred should get detailed information about the accident which can be made available to the claimant so that the claimant is not required to run from pillar to post for getting the requisite information. In fact clause (c) of Rule 253 lays down that the Officer of the Tribunal is under an obligation to make available to the applicant in a claim petition, a certified copy of form Comp.AA. Perusal of the form Comp.AA shows that the information required to be set out therein is essential for filing claim petition. This requirement of sub-Rule (8) of Rule 254 is in terms of sub-Section (6) of Section 158 of the M.V.Act which reads thus:

"(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this Section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

12. As far as the information regarding the accidents is concerned, even Rule 251 is relevant which reads thus:

"251. Inspection of vehicle Involved in an accident.- " (1) Any officer of the Motor Vehicles Department, not below the rank of an Inspector of Motor Vehicles, shall inspect the motor vehicle involved in an accident and for that purpose may enter at any reasonable time any premises where the vehicle may be and may remove the vehicle for inspection.

(2) The Officer empowered under sub-Rule (1) shall, submit his report to the Transport Commissioner, the District Magistrate and Superintendent of Police, Commissioner of Police concerned and the Director General of Police, Maharashtra State in Form R.A.R. of the-First Schedule.)"

(emphasis added)

13. We have perused the form R.A.R. It contains very detailed information about the accident. It provides for a sketch of accident, the details of the accident such of the details of the vehicles involved and the victims, the condition of the road at the spot of accident etc. The information in form R.A.R is so exhaustive that the State Government should consider of forwarding R.A.R form to the concerned

Tribunals. It is an accepted fact there is hardly any implementation of Sub-Rule 8 of Rule 254. We may note here that the said Rule has been enacted before the 1994 amendment to Section 166 of the M.V.Act which now provides that it is not necessary to file the claim petition within the jurisdiction of the Tribunal where the accident has occurred. In fact choice of forum has been provided to the applicants. Therefore, Sub-Rule 8 of Rule 254 needs modification. Moreover, Sub-Rule 8 of Rule 254 does not provide that the form Comp.AA is required to be issued in case of all the accidents involving the bodily injury.

14. In our view, the State Legislature should step in by providing that the information in Form Comp.AA shall be furnished by the Police Stations in the case of not only fatal or serious accidents but of all the accidents where injuries are caused to the concerned person/persons. In view of the amendment to Section 166, only way by which information can be made available in the form of Comp.AA to all the Tribunals where claim petitions could be filed, is to ensure that the same is uploaded together with all its accompaniments such as copy of FIR on a dedicated website or the website of the Transport Department within a specified time. For making this provision, it is not necessary to wait till an amendment is made to the Maharashtra Rules and therefore, we propose to issue necessary directions in that behalf. The State Government should consider of uploading form R.A.R along with Comp.AA form. The Rules can be amended to provide that production of a print out of a downloaded form Comp.AA with the claim petition will be treated as a sufficient compliance. In fact, we may note here that clause (iv) of Sub-Rule 5 of Rule 254 was incorporated on 16th August 1996 after the amendment of the M.V.Act was made. At that stage, an amendment of the Maharashtra Rules could have been made for giving effect to amended sub Section (2) of Section 166.

Requirement of the Personal presence of the Claimants at the time of filing claim Petitions and Representation of the Claimants by Advocates

15. Rule 256 provides that while filing the petitions covered by Rules 254 (under Section 166 of the M.V.Act), 255 (under Section 140 of the M.V.Act) and 255-A (under Section 163-A of the M.V.Act), the applicant must produce his recent passport size photograph which is required to be either affixed to the claim petition or affixed on a separate sheet of paper annexed to the claim petition. Rule 258 confers power on the Tribunal to examine the applicant on oath as provided therein. Rule 264 provides that the Claims Tribunal may, in its discretion, allow any party to appear through a legal practitioner. Sub Rule 2 of Rule 254 provides that every application under Section 254 shall be sent to the Claims Tribunal by registered post or may be presented to such Claims Tribunal. On perusal of the Rules in Chapter IX of the Maharashtra Rules, we find that there is no requirement of the applicant or applicants personally remaining present in the office of the Tribunal at the time of presenting claim petitions under any of the three Sections. The requirement of affixing photograph as provided in Rule 256 is mandatory, but the requirement of the Advocate signing

or attesting photograph will become mandatory only in those cases where at the time of filing the claim petitions, the Tribunal grants permission to an Advocate to represent the applicant or applicants in accordance with Rule 264.

16. If applicant wants to engage an Advocate, at the time of filing the claim petition itself, the claim petition shall be accompanied by an application in writing to that effect signed by the applicant . At the time of presentation of the claim petition, the Registrar of the Tribunal or the Administrative incharge of the office of the Tribunal shall place the application before the learned Member of the Tribunal who is required to pass appropriate order thereon immediately. If the Tribunal refuses permission to engage an Advocate, notwithstanding the said order, filing of the claim petition should be accepted and the office of the Tribunal shall intimate the applicant regarding the refusal of the Tribunal to grant permission to engage the Advocate. We may note here in many cases, the Tribunal may need assistance of a Member of the Bar for effectively disposing of the cases. Therefore, in a normal course, when a permission under Section 264 is sought, the Tribunal should grant permission to engage an Advocate and the refusal should be only in exceptional cases.

17. If a petition is received through registered post or is filed by the Advocate in absence of the applicant or applicants and if the Claims Tribunal entertains any doubt about the genuineness of the applicant or applicants, it can always exercise the power of enforcing the personal presence of the applicant or applicants as the case may be. In view of the power conferred on the Tribunal by Sub-Rule 1 of Rule 276, in a given case, the Tribunal can take recourse to the examination of the applicant or applicants under Rule 258 after issuing a notice for enforcing their presence.

Furnishing the detailed Information about the Accidents with all Particulars

18. Rules 254, 255 and 255-A lay down what documents should be appended to the claim petitions under Sections 140, 163-A and 166 of the M.V.Act. As regards form Comp. AA, as noted earlier, we propose to issue necessary directions. Sub-Rule 6 of Rule 254 provides that every Officer Incharge of a Police Station is under a mandate to furnish information to a person who wishes to make an application for grant of compensation. The mandate is to provide information to such persons as mentioned in Section 160 within a period of 15 days of the demand. Section 160 of the M.V.Act reads thus:

160. Duty to furnish particulars of vehicle involved in accident.

A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said authority or the said police officer relating to the identification marks and

other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any damaged in such form and within such time as the Central Government may prescribe.

19. We propose to issue necessary directions to the State to ensure that the Officers in-charge of each police station strictly comply with Sub-Rules 6 and 8 of Rule 254. In a given case, on an application made by the applicant or applicants, the Claims Tribunal can issue a direction to the Officer In-charge of any Police Station to furnish information directly to the Tribunal in accordance with Sub-Rule 6 of Rule 254. The Tribunal, in a given case can issue a direction to furnish a copy of form Comp.AA. In view of clause (b) of Rule 276 of the Maharashtra Rules, the Tribunal can exercise the said power under Order 16 by issuing summons to produce the documents. The said power can be exercised at any stage of the claim petitions. In fact, such a direction can be also issued by the Tribunal on its own to ensure that the claim petitions under Section 140 or 163-A are disposed of within the time specified under Sub-Rule 3 of both the Rules 255 and 255-A.

Effect of the non production of the documents

20. Sub Rule 7 of Rule 254 makes it very clear that the Claim petition under Section 166 of the M.V.Act is not rendered per se illegal or invalid if the documents set out under sub-Rule (5) of Rule 254 are not appended to the claim petitions or not produced with the claim petitions. The same is the case with the claim petitions under Sections 140 and 163-A. The relevant sub Rules grant power to the Tribunal to proceed with the applications, if the reasons for not appending the necessary documents are stated in the Claim Applications. Thus, the Tribunal cannot refuse to accept the filing of the claim petitions on the ground that the necessary documents are not filed.

21. In a given case, if the Tribunal is satisfied on the basis of the available documents that a case is made out for grant of compensation, it can always proceed to decide the Claim Petition in accordance with law notwithstanding the fact set out in Rule 254, 255 and 255-A are not appended to the Claim Petition.

Service of Notices

22. Now, coming to the service of notices on claim petitions, Rule 263 provides for payment process fees. In the State of Maharashtra, now the payment of process fees in this Court as well as Civil Courts has been abolished by virtue of the Bombay High Court Process Fees Repeal Rules, 2014. We, therefore, strongly recommend to the State Government to repeal Rule 263 which requires payment of process fees. If Rule 263 is not repealed, it may expose itself to the vice of being discriminatory and in breach of Article 14 of the Constitution of India. We propose to direct the State Government to initiate appropriate action in this behalf. Moreover, the disposal of the claim petitions is delayed in many cases as process fee is not paid within the stipulated time.

23. We have perused the decision of a Division Bench in the case of Amish Kondra. In paragraph 11 of the Judgment the Division Bench has issued following directions:

11. In the circumstances of the case, in our opinion, the following directions will serve the ends of justice:

(i) Tribunal shall scrupulously follow Rules 255(3) and 260(3) of the Maharashtra Motor Vehicles Rules, 1989;

(ii) Ordinarily the notice period provided in Rule 260(3) of the said Rules shall not exceed 15 days from the date of issue of such notice contemplated therein;

(iii) Only in exceptional cases can the Tribunal extend the said period of 15 days, but while extending it beyond the period of 15 days the Tribunal will have to record reasons in writing as to why the period is so extended;

(iv) In no case, however, the notice period shall extend beyond the period of four weeks from the date of issue of such notice.

24. The said directions continue to bind the Tribunals in the State. We may note here that Sub-Rule 2 of Rule 260 provides that service of notice shall be by way of personal service through Bailiff or R.P.A.D or by both. If the address of the owner or driver of the offending vehicle or the insurer of the vehicle is of a place which beyond the territorial jurisdiction of the Motor Accident Claims Tribunal, ordinarily, the notice shall be issued simultaneously through Bailiff and by R.P.A.D or speed post to facilitate early service. The State will have to consider of amending the Maharashtra Rules for incorporating the provision regarding service of notice through courier services.

Reluctance of the doctors to issue disability certificates

25. Another issue raised is as regards the reluctance of the reputed Doctors or even the hospitals to issue disability certificates though they willingly provide treatment to the victims. One of the reasons is that the disability certificates are not accepted by the insurers and therefore, the concerned Doctors are compelled to attend the Tribunal for giving evidence. In all the Districts in the State (except Mumbai), the District Judges who are holding posts of Chairman or Members of the Tribunal are also entrusted with the other civil and criminal work. On occasions, there are adjournments sought by the lawyers. Very often the Members of the medical profession are required to wait for several hours for recording their evidence. On many occasions, they are required to go back without their evidence being recorded. Perhaps, the witnesses are treated on par with the litigants and are made to wait in a queue. Rule 267 provides that the evidence of medical witnesses shall be taken down as nearly as may be, word to word. There is no prohibition on recording the evidence of the medical practitioners or for that matter other witnesses including claimants/applicants through video conferencing or if video conferencing is not available, through applications providing for video chat services such as skype. The Tribunals are

well advised to take recourse to such methods for recording the evidence of the Doctors or other experts. If the evidence of the medical practitioners is recorded in such a manner, their time will not be wasted and there may not be any reluctance on their part to issue disability certificates. The Registry may consider of issuing a Circular on the administrative side in this behalf.

Directions of the Apex Court in the case of Jai Prakash

26. Our attention is invited to the decision of the Apex Court in the case of Jai Prakash. In paragraphs 9 and 10, the Apex Court observed thus:

9. The legislature tried to reduce the period of pendency of claim cases and quicken the process of determination of compensation by making two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month of receipt of first information of the accident, without the claimants having to file a claim petition. Sub-Section (6) of Section 158 of the Act provides:

"158. (6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this Section is completed by a police officer, the officer in charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the insurer concerned, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer." Sub-Section (4) of Section 166 of the Act reads thus:

"166. (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-Section (6) of Section 158 as an application for compensation under this Act."

"12. But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement these mandatory provisions of the Act. If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident and/or their families to get compensation, in a span of few months. There is, therefore, an urgent need for the police authorities concerned and the Tribunals to follow the mandate of these provisions."

In paragraph 16 and 20 following directions were issued:-

"16. The Director General of Police of each State is directed to instruct all police stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident information report ("AIR", for short) in Form No. 54 of the Central Motor Vehicles Rules, 1989 shall be submitted by the police (Station House

Officer) to the jurisdictional Motor Accidents Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal:

- (i) The age of the victims at the time of accident;
- (ii) The income of the victim;
- (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and post-mortem report (in case of death) or the injury/wound certificate (in case of injuries). The names/addresses of injured or dependent family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, a copy of the AIR with annexures thereto shall be furnished to the insurance company concerned to enable the insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim (in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing."

"Directions to the Claims Tribunals

"20. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary registers, forms and other support is extended to the Tribunal to give effect to Section 166(4) of the Act."

27. If the Registrar General of this Court has not issued instructions in terms of the said directions, he shall do so immediately in addition to the directions which are required to be issued in terms of this decision.

28. A grievance was made across the bar that even the hospitals run by the State Government and public authorities like Municipal Corporations are reluctant to issue disability certificate setting out specified percentage of disability though victims are treated in the said hospital. The State Government will have to be look into this aspect and issue appropriate directions.

29. It is urged that the Tribunals are not disposing of the claim petitions under Sections 163-A and 140 of the M.V.Act within the outer limit provided under the Rules 255 and 255A. It must be noted that the Courts in the state are not operating in ideal conditions. They lack proper infrastructure. There is always a

problem of overflowing dockets. Every Member of the Tribunal is fully aware of the urgency involved in such cases. They are always sensitive about the plight of the claimants. Hence, we are not issuing any directions on this aspect.

30. In view of discussion made above, we pass the following order:-

(i) The state government shall issue a direction to all the concerned officers of the Motor Vehicles Department to scrupulously implement sub-Rule (2) of Rule 251 of the Maharashtra Rules by submitting reports in form R.A.R. The State Government shall take appropriate decision on the issue of uploading the said forms on a website;

(ii) The Director General of Police shall issue instructions to all the Police Stations in the State to scrupulously follow and implement the provisions of sub-Rules (6) and (8) of Rule 254 of the Maharashtra Rule read with Section 160 of the M.V.Act. The State Government shall issue a direction for uploading form Comp.AA on either a dedicated website or on its existing website by making a provision for Police Station wise and date wise search. The State Government shall consider of amending the sub-Rule (8) of Rule 254 for making a provision for submitting information as regards all the accidents involving bodily injury;

(iii) We hold that the Tribunals are not entitled to insist on personal presence of the applicants at the time of filing of the claim petitions;

(iv) Subject to what is observed above, the Tribunals shall not refuse to accept the filing of the claim petitions on the ground that the documents as provided in Rules 254 to 255-A of the Maharashtra Rules are not filed along with the claim petitions. However, compliance with Rule 256 is mandatory. But attestation by the Advocate for the applicants on photographs will be mandatory provided the claim petition is either filed or sent by post by an Advocate;

(iv) We hold that in a given case, on an application made by the applicant or applicants, or suo motu, the Tribunal can issue a direction to the Officer In-charge of any Police Station to furnish information directly to the Tribunal in accordance with Sub-Rule 6 of Rule 254. The Tribunal, in a give case can always issue a direction to furnish a copy of form Comp.AA. The Tribunal can also issue a direction to the concerned Officer to produce form R.A.R. In view of clause (b) of Rule 276 of the Maharashtra Rules, the Tribunal can exercise the power under Order 16 of the Code of Civil Procedure, 1908 by issuing a summons to produce the aforesaid documents. The said power can be exercised at any stage of the claim petitions. In fact, such a direction can be given by the Tribunal on its own to ensure that the claim petitions under Section 140 or 163-A are disposed of within the time specified under Sub Rule 3 of both the Rules 255 and 255-A.

(v) We strongly recommend to the State Government to repeal Rule 263 of Maharashtra Rules which requires payment of process fees on claim petitions. If Rule 263 is not repealed, it may expose itself to the vice of being discriminatory and violative of Article 14 of the Constitution of India. Therefore, the State

Government shall take necessary action in accordance with law;

(vi) The directions issued in the decision of this Court in the case of Anish Kondra continue to bind all the Tribunals. In addition, If the address of the owner or driver of the offending vehicle or the insurer of the vehicle is of a place which is beyond the territorial jurisdiction of the Tribunal, ordinarily, the notice shall be issued simultaneously through Bailiff and by R.P.A.D or Speed Post to facilitate early service.

(vii) It will be appropriate if the State Government amends the Maharashtra Rules to facilitate service of notice through Courier service as provided in sub-Rule(3) of Rule 9 Order 5. of the Code of Civil Procedure,1908;

(viii) There is no prohibition on recording the evidence of the medical practitioner or for that matter other witnesses including claimants through video conferencing or if video conferencing is not available, through applications providing for video chat services. The Tribunals are well advised to take recourse to such method for recording the evidence of the Medical Practitioners or other experts. If the evidence of the Medical Practitioners is recorded in such a manner, their time will not be wasted. The Registry may consider of issuing a Circular on the administrative side in this behalf.

(ix) If the Registrar General of this Court has not issued instructions to all the Tribunals in the State in terms of the directions issued by the Apex Court in the case of Jai Prakash and the directions issued by this Court in the case of Amish Kondra, he shall do so in addition to the directions which are required to be issued in terms of this decision.

(x) All the aforesaid directions shall be complied with within a period of three months from today.

(xi) For reporting compliance, this Petition shall be listed on 24th March 2017 under the caption "Directions". The Registrar (J-1) shall seek necessary directions from the Hon"ble the Chief Justice for placing this Petition before the same Bench for considering the compliance:

(xii) Rule is disposed of on above terms with no orders as to costs.