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ITEM NO.10 COURT NO.6 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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 : 16-11-2021 The matter 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**
Mr. Amit Kumar Agrawal, Adv.
Ms. Mamta Meghwal, Adv.

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

Sikkim **Mr. Vivek Kohli, Adv.Gen.**
Mr. Sameer Abhyankar, AOR
Ms. Yeshi Rinchhen, Adv.
Mr. Abhinav Mishra, Adv.
Ms. Nishi Sangatani, Adv.

Chhattisgarh **Mr. Sourav Roy, Dy. Adv. Gen.**
Mr. Mahesh Kumar, Adv.
Mr. Vishal Sharma, Adv.
Mr. Prabudh Singh, Adv.
Ms. Devika Khanna, Adv.
Mrs. V.D. Khanna, Adv.
M/s VMZ Chambers

Andhra Pradesh **Mr. Mahfooz Ahsan Nazki, AOR**

	Mr. Polanki Gowtham, Adv. **Mr. Shaik Mohamad Haneef, Adv.** **Mr. T. Vijaya Bhaskar Reddy, Adv.** **Mr. K.V. Girish Chowdary, Adv.**
	Mr. Abhimanyu Tewari, AOR
	Mr. Vmz Chambers, AOR
Goa	**Mr. Ravindra Lokhande, Adv.** **Mr. Vijay S Khamkar, Adv.** **Dr. Abhishek Atrey, AOR** **Ms. Ambika Atrey, Adv.**
	Ms. Deepanwita Priyanka, AOR
Haryana	**Dr. Monika Gusain, AOR**
	Mr. Raj Kamal, AOR
Karnataka	**Mr. V. N. Raghupathy, AOR** **Mr. Md. Apzal Ansari, Adv.**
Kerala	**Mr. G. Prakash, AOR** **Mr. Priyanka Prakash, Adv.** **Ms. Beena Prakash, Adv.** **Mr. Manan Sanghai, Adv.**
	Mr. Mukul Singh, Dy. Adv. Gen. **Mr. Pashupathi Nath Razdan, AOR** **Mr. Yashraj Singh Bundela, Adv.** **Ms. Sneh Bairwa, Adv.**
Maharashtra	**Mr. Rahul Chitnis, Adv.** **Mr. Sachin Patil, AOR** **Mr. Aaditya A. Pande, Adv.** **Mr. Geo Joseph, Adv.**
Manipur	**Mr. Pukhrambam Ramesh Kumar, AOR** **Ms. Anupama Ngangom, Adv.** **Mr. Karun Sharma, Adv.**
Meghalaya	**Mr. Avijit Mani Tripathi, AOR** **Mr. Kynpham V. Kharlyngdoh, Adv.** **Mr. T.K. Nayak, Adv.** **Mr. Upendra Mishra, Adv.**
Mizoram	**Mr. Siddhesh Kotwal, Adv.** **Mr. Ana Upadhyay, Adv.** **Ms. Manya Hasija, Adv.** **Ms. Pragya Barsaiyan, Adv.** **Mr. Akash Singh, Adv.** **Mr. Nirnimesh Dube, AOR**

Nagaland	**Ms. K. Enatoli Sema, AOR** **Ms. Chubalemla Chang, Adv.**
	Mr. Som Raj Choudhury, AOR
	Mr. Vishal Meghwal, Adv.
Rajasthan	**Mr. Vishal Meghwal, Adv.** **Mr. Milind Kumar, AOR**
	Mr. M. Yogesh Kanna, AOR
Telangana	**Mr. S. Udaya Kumar Sagar, AOR** **Mr. Sweena Nair, Adv.** **Mr. P. Mohith Rao, Adv.**
Tripura	**Mr. Shuvodeep Roy, AOR** **Mr. Kabir Shankar Bose, Adv.** **Mr. Ishaan Borthakur, Adv.**
Assam	**Mr. Shuvodeep Roy, AOR** **Mr. Ishaan Borthakur, Adv.**
Uttar Pradesh	**Mr. Pradeep Misra, AOR** **Mr. Suraj Singh, Adv.** **Mr. Yashasvi Virendra, Adv.** **Mr. Bhuwan Chandra, Adv.** **Mr. Manoj Kumar Sharma, Adv.**
Andaman & Nicobar Admn.	**Ms. G. Indira, AOR**
GNCTD	**Mr. Chirag M. Shroff, AOR**
Puducherry	**Mr. Aravindh S., AOR**
GIC	**Ms. Archana Pathak Dave, AOR** **Mr. Avnish Dave, Adv.** **Mr. Parmod Kumar Vishnoi, Adv.** **Ms. Vanya Gupta, Adv.**
West Bengal	**Mr. Soumitra G. Chaudhuri, Adv.** **Mr. Chanchal K Ganguli, AOR**
Tamil Nadu	**Dr. Joseph Aristotle, AOR** **Ms. Preeti Singh, Adv.** **Ms. Ripul Swati Kumari, Adv.** **Mr. Sanjeev Kumar Mahara, Adv.**

UPON hearing the counsel the Court made the following

O R D E R

We have perused the report dated 21.10.2021 submitted by Mr. Jayant K. Sud, learned Additional Solicitor General in compliance of our order dated 03.08.2021 and he has made certain suggestions. He has also sought directions from this Court. We consider it appropriate to issue the following directions:

i) A format for payment advised for remittance of compensation has been devised and followed in the Madras High Court and the Rajasthan High Court and the same is extracted from the judgment of the Madras High Court in *Divisional Manager vs. Rajesh*, 2016 SCC Online Mad. 1913, dated 11.03.2021. We thus direct that the same format will be followed across the country;

ii) A linked issue pointed out by Mr. N. Vijayaraghavan, learned Amicus Curiae is that the amounts deposited in the Tribunals are being credited in savings account with the result that there is accrued interest which keeps lying unattended. The suggestion is that the amount should be credited to a current account. We, however, do not agree with this solution but are of the view that the amounts should continue to be

credited with the savings account to earn interest but we deem it appropriate to issue a general direction that whereever orders are passed for disbursement of compensation to the beneficiaries, any such interest would enure to the benefit of the beneficiaries and would follow the principal amount;

iii) In order to put the liability of the insurance company to an end, on deposit of the amount, the insurance company/depositor will communicate the factum of the deposit forthwith/expeditiously to the concerned Motor Vehicle Accident Claims Tribunal with a copy to the beneficiary;

(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned, it is reiterated that the guidelines laid down by this Court in *Raj Kumar v. Ajay Kumar and Anr.*, (2011) 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to injury/disablement. The District Medical Board is also directed to follow the guidelines issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No. 61, dated 05.01.2018, for issuance of disability Certificate in order to bring Pan India uniformity. The consequence is that the MACT would ascertain that permanent disability certificate issued by the

District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document;

(v) The aspect of disparity in the Tax Deduction at Source (TDS) certificate in Motor Accident Claims, wherein from 10% to 20% dependent on whether the claimants have a Pan Card or not can be redressed by a direction that the Legal Services Authority or any Agency/Mediation Group should assist the claimant for obtaining a Pan Card, where the claimant does not have one, in order to avoid 20% deduction of tax at source. The format of the applications for compensation and motor accidents claims is being modified by inserting the relevant column just after the requirement to set out whether the claimant is income tax assessee or not and whether the claimant has a Pan Card or not and in case has a Pan Card to provide the Pan No. and in case the application is so pending, to provide the application/Reference No. The formats of the applications across the country be suitably amended to facilitate this process.

Learned Additional Solicitor General appears to have addressed a communication in the larger context to the Finance Minister and we would expect the Finance Ministry to bestow urgent consideration on the same;

vi) On the issue of the direction passed on 16.03.2021 for circulation of those directions to the local Police stations, MACT Courts to improve the efficiency, learned Additional Solicitor General submits that on verification, it is found that only 13 States have complied with the same. There are 22 non-complying States and Union Territories in this behalf which are as under :

S. NO.	NATEM OF STATE
1.	State of Chhattisgarh
2.	State of Gujarat
3.	State of Maharashtra
4.	State of Meghalaya
5.	State of Tamil Nadu
6.	State of Telangana
7.	U.T. of Delhi
8.	State of Puducherry
9.	State of Uttar Pradesh
10.	State of Kerala
11.	State of Karnataka
12.	State of Andhra Pradesh
13.	State of Himachal Pradesh
14.	State of Bihar
15.	State of Jharkhand
16.	State of Madhya Pradesh
17.	State of Sikkim
18.	State of Uttarakhand

19.	**U.T. of Daman and Diu and Dadra and Nagar Haveli**
20.	**U.T. of Jammu and Kashmir**
21.	**U.T. of Ladakh**
22.	**U.T. of Lakshadweep**

In view of the recalcitrant attitude of the States, we direct the Registrars General of the High Courts of these States to ensure implementation and submit a compliance report to Mr. Jayant K. Sud, learned Additional Solicitor General, who would thereafter inform us. It would also be appropriate that the Registrars General would call upon the DGPs. of each State to appoint a nodal officer for submitting the status reports as and when called upon to do so.

The Registrars General would also interact with the Judicial Academy for conducting training and awareness sessions periodically not only for the Presiding Officers of the MACTs. but also Police Officers, nodal persons of insurer,Presiding Officers of Lok Adalat/ Online Mediation Group etc. to enhance the awareness in implementation of the directions;

(vii) On 03.08.2021, we were assured that all 26 insurance companies were on board to develop a common mobile App. Learned counsel had entered appearance for GIC and it appears that on enquiry by the learned

Additional Solicitor General, a response was received from the Secretary General of the GIC on 20.09.2021 now stating that the GIC was willing to develop a mobile App. if certain specific directions were given by this Court.

We do not appreciate this approach of the GIC and the insurance companies. The directions dated 16.03.2021 and 03.08.2021 are comprehensive enough. The insurance company cannot wriggle out of the earlier directions. Either they are able to develop it or we would call upon Government to develop an App. which would have to be imposed on the insurance companies. We thus direct the needful to be done within a period of 2 months from today and do not accede to the request of the learned counsel for giving some enlarged time for the said purpose, more so, on account of not having put forth the correct position before this Court;

(viii) In respect of direction (VI) passed earlier for the learned Additional Solicitor General to look into the feasibility of withdrawing exemptions given to the vehicles of the State Corporation(s) for insurance, or in the alternative to create a mechanism to ensure that a sufficient fund pool was available with these corporations for meeting their liabilities towards the claimants, learned Additional

Solicitor General submits that on examination, it has been found that it was not feasible to withdraw the exemptions. If that be the position, then the alternative must come into force to create a mechanism to ensure that a sufficient fund pool is available with these Corporations;

In respect of the aforesaid Mr. N. Vijayaraghavan, Amicus Curiae has drawn our attention to Section 146 of the Motor Vehicles Act, 1988, which reads as under :

> **"146.** Necessity for insurance against third party risks.**-(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:**
>
> **Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).**
>
> ***Explanation*- For the purposes of this sub-section, a person driving a motor vehicle merely as a paid employee, while there is in relation to the use of the vehicle no such policy in force as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.**
>
> **(2) The provisions of sub-section(1) shall not apply to any vehicle owned by**

the Central Government or a State Government and used for purposes not connected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section(1), any vehicle owned by any of the following authorities, namely:-

(a) the Central Government or a State Government, if the vehicle is used for purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State Transport Undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in such manner as may be prescribed by appropriate Government.

***Explanation*- For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case may be, and-**

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State Transport Undertaking or any local authority, means that Government which has control over that undertaking or authority."

A reading of the aforesaid provision makes it clear that any exemption from operation of sub-

Section (1) under sub-Section (3) of vehicles owned by any of the authorities specified therein is coupled with the proviso that no such order would be made in relation to any such authority unless a fund has been established and maintained by that authority in such a manner as may be prescribed by the appropriate Government.

The aforesaid being the position, we grant 3 months' time to the appropriate Government to create the funds to cover the requirement of disbursement of compensation and initially the fund should consist of at least as much is the liability which has arisen on account of determination for the last 3 financial years. In case, this is not so done, in view of the provision as it stands, we direct that the exemption benefit shall not be made available and the authorities will not be able to claim such exemption.

This direction becomes necessary as sub-Section (1) of Section 146 begins with the clause that no person shall be entitled to use the vehicle in the absence of the same and thus non-compliance would amount to putting the vehicle on stand, and

(ix) In respect of direction (VII) for settlement of motor accident claims through online Mediation, it has been proposed by learned Additional Solicitor General that consideration of this direction may be

deferred for the time being as the Central Mediation Act is in public domain which includes the process of online mediation and objections/suggestions are invited for the same. In fact, the illustration available from the State of Maharashtra itself shows that Motor Vehicles Act cases constitute 35% of the break up of pending cases in a representative civil cases in that State and that National Judicial Data Grid reveals that 25% of the motor accident claims are pending for 3 years or above before MACT. There is also further appeal to the High Court. The ADR methodology has been found to be extremely effective in these cases. Some suggested directions have been set out but since deferment is sought in this behalf we will consider the same on the next date.

We categorically hold that all directions passed today must be duly and properly implemented and post implementation, the learned Additional Solicitor General be informed.

List for further directions on 27.01.2022.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)