

all pages 2 copy

Government of India
Ministry of Road Transport & Highways
(MVL Section)

F.No. RT-11021/17/2007-MVL New Delhi Dated 12 July, 2010

To,

- (i) The Principal Secretaries/Transport Commissioners of all the States/UTs
- (ii) Inspector Generals of Police of All the States/Union Territories.

Sub: -Strict compliance of Section 158(6) of Motor Vehicles Act, 1988-
Direction of the Hon'ble Supreme Court of India regarding.

Sir,

I am directed to refer to this Ministry's letter of even number dated 27th July, 2008 and 14th May, 2008 (copies enclosed) vide which a copy of the Judgement of Hon'ble Supreme Court of India in W.P.(Civil) No. 282 of 2007; General Insurance Council and others Vs. State of Andhra Pradesh and Others was forwarded to you with the request that appropriate instructions/directions may be issued to all the enforcement agencies under your administrative control to follow the requirement of Section 158(6) of the Motor Vehicles Act, 1988 and ensure strict compliance of direction of the Hon'ble Supreme Court.

2. The Hon'ble Supreme Court, in its recent judgement dated 19th April, 2010 (copy enclosed) in W.P No. 14 of 2008 has reiterated that despite aforesaid directions having been issued in two matters, grievance is still being made by the Petitioner, that the Police, investigating agency and the prosecuting agency are not taking appropriate and adequate steps for compliance of aforesaid directions issued by the Court. A copy of this judgement has already been sent to all States/UTs by Assistant Registrar, Supreme Court of India vide letter D.No. 326/07/X dated 21.4.2010

3. It is therefore, requested that appropriate instructions/directions may be issued to all enforcement agencies under your administrative control to follow the requirements of Section 158(6) of the Motor Vehicles Act, 1988 and ensure strict compliance of direction of the Hon'ble Supreme Court.

Yours faithfully,



(Anand Prakash)
Director (Road Transport)
Tel: 011 23719097

Encl: As above

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Yours faithfully,

(Anand Prakash)

Director (Road Transport)

Tel: 011 23719097

Encl: As above

SUPREME COURT'S DIRECTION *en*

Government of India
Ministry of Shipping, Road Transport & Highways
Department of Road Transport & Highways

Transport Bhavan,
No. 1, Parliament Street,
New Delhi-110001

No. RT-11021/17/2007-MVL

Dated: 14th May, 2008

To

- (i) The Transport Commissioners of all States/Union Territories.
- (ii) The Inspector Generals of Police of all States/Union Territories.

Sub: Strict Compliance of Section 158(6) of Motor Vehicles Act, 1988- Direction of Hon'ble Supreme Court of India- regarding.

Sir/Madam,

I am directed to refer to this Ministry's letter of even No. dated 27th July, 2007 (copy enclosed) on the above-cited subject vide which a copy of the judgement of Hon'ble Supreme Court of India in W.P. (Civil) No. 282 of 2007; General Insurance Council & others Vs. State of Andhra Pradesh & others was forwarded to you with a request that appropriate instructions/directions may be issued to all the enforcement agencies under your administrative control to follow the requirements of Section 158(6) of the Motor Vehicles Act, 1988 and ensure strict compliance of direction of the Hon'ble Supreme Court.

2. While disposing the above cited petition, the Hon'ble Supreme Court has directed that the Department of Transport and Highways shall make periodical verification to ensure that action is being taken and in case of any deviation the same is to be brought to the notice of the concerned State Government/Union Territories immediately so that necessary action can be taken against the concerned officials.

3. As yet, we have received copy of instructions issued to concerned transport/police authorities by State Governments of Himachal Pradesh & Jharkhand only. You are, therefore, requested to ensure that the directions of the Supreme Court are being complied with. A copy of instructions/directions issued may be sent to this Department. A confirmation regarding compliance of requirements of Section 158(6) of the Motor Vehicles Act, 1988 may also be sent.

Yours faithfully,

Encl: As above.

en
(Anand Prakash)
Director (Road Transport)
Tele: 23719097

Assured to file.
18/5/08

o/c

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CASE NO.:
Writ Petition (civil) 282 of 2007

PETITIONER:
General Insurance Council & Ors

RESPONDENT:
State of Andhra Pradesh & Ors

DATE OF JUDGMENT: 09/07/2007

BENCH:
Dr. ARIJIT PASAYAT & P.P. NAOLEKAR

JUDGMENT:
JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Prayer in this writ petition is for direction to the various States Governments and the Union Territories to ensure that the mandate of Section 158 (6) of the Motor Vehicles Act, 1988 (in short the 'Act') is complied with without exception. It is stated that Section 158 (6) of the Act casts a statutory obligation on the concerned police officers forward to Claims Tribunal having jurisdiction about the death or bodily injury any person so recorded in the police station. Further mandate is contained in the provision about the sending copy thereof to the concerned insurer and the owner of the offending vehicle. The owner of the vehicle is obligated to forward the report to the Claims Tribunal and the insurer. The Union of India has expressed its concern about the apparent non-compliance with the requirements of the provision by letter dated 6.6.2006 of the Government of India, Ministry of Shipping Road Transport and Highways, Department of Road Transport and Highways issued circular to transport Secretaries and Commissioners of all States and Union Territories IG (Traffic) police and all the States and Union Territories highlighting non-compliance with the statutory requirements. No action has been taken to comply with the requirements of Section 158 (6).
2. There is no dispute that there is statutory requirement to comply with the requirement and actual implementation is very disheartening.
3. Section 158 (6) of the Act reads as under:
"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 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."

(13)

4. Rule 150 of the Central Motor Vehicles Rules, 1989 (in short the 'Rules') deals with the matter.
5. Form 54 of the Rules provides the format in which the information is to be given. The Rule and the Form read as follows:
150. Furnishing of copies of reports to Claims Tribunal.
(1) The police report referred to in sub-section (6) of section 158 shall be in Form 54.
(2) A registering authority or a police officer who is required to furnish the required information to the person eligible to claim compensation under section 160, shall furnish the information in Form 54, within seven days from the date of receipt of the request and on payment of a fee of rupees ten."
6. There is substance in the plea of Mr. G.N. Vahanvati, learned Solicitor General for the petitioner that if action in terms of Section 158 (6) is taken, it will rule out filing of false claim petitions and the job of the Claims Tribunals will become easier. It is stated by learned counsel that a large number of cases alleging sufficient injuries are being filed long after the accidents and this is adding to the pendency of the claims petitions. If action in terms of Section 158 (6) is taken, it will reduce considerably the filing of false claims. It has been highlighted in the writ petition as follows:
"26. Some salient facts which have emerged from a detailed study on a macro level which are relevant for the purposes of the instant writ Petition may be noticed:
26.1 As on date there are about 1.5 million cases pending in different Tribunals/High Courts/Supreme Court;
26.2 About 4 lakh new cases involving injury/death under the Motor Vehicles Act, 1988 are reported every year;
26.3 Claims under the Motor Vehicles Act, 1988 are reported after about 7 months from the date of accident;
26.4 Delay in reporting the claim promotes exaggeration and frauds;
26.5 Delay in reporting the claim makes investigation and fact verification extremely difficult;
26.6 Adjudication of cases take about 3 to 5 years.
26.7 Petitioners Insurance Companies suffer on account of higher claim cost on account of delay in the adjudication of the claim petitions.
26.8 Strict implementation of Section 158(6) shall ensure speedier reporting to Insurance companies which in turn will ensure expeditious and efficient settlement of claims."
7. The language used in sub-section (6) of Section 158 mandates the police officer to forward a copy of the report to the Claims Tribunal having jurisdiction and to the concerned insurance company "as soon as any information regarding any

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- accident involving death or bodily injury is recorded or a report under Section 158 is completed by the police officer."
8. Use of the expression 'as soon as' implies that there has to be promptitude in action. To do a thing 'as soon as possible' means to do it within a reasonable time, with an understanding to do it within the shortest possible time. [Per Dysant, J. in King's Old County Ltd. v. Liquid Carbonic Can. Corporation Ltd. (1942) 2 WWR 603]. 'As and when' and 'as soon as' are almost synonymous. Whenever these expressions are used in respect of time and place, they denote contemporaneous notion. 'As soon as' and 'forthwith' both are to be normally understood as allowing reasonable time, but latter is more peremptory than the former. But urgency is the hallmark of both expressions. Expression 'as soon as' may be stretched to mean 'as soon as' practicable. It has to be forwarded with promptitude.
 9. Since there is a mandatory requirement to act in the manner provided in Section 158(6) there is no justifiable reason as to why the requirement is not being followed.
 10. It is, therefore, directed that all the State Governments and the Union Territories shall instruct, if not already done, all concerned police officers about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 159 and in Form 54. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Transport and Highway shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the concerned State Government/Union Territories so that necessary action can be taken against the concerned officials.
 11. The writ petition is accordingly disposed of.

* * * * *

Government of India
Ministry of Shipping, Road Transport & Highways
Department of Road Transport & Highways

Transport Bhavan,
1, Parliament Street,
New Delhi-110 001.

No.RT-11021/17/2007-MVL(Pt.)

New Delhi, the 27th July, 2007.

To

- (i) The Transport Commissioners of all States/Union Territories.
- (ii) The Inspector Generals of Police of all States/Union Territories.

Sub: Strict compliance of Section 158(6) of Motor Vehicles Act, 1988 –
Direction of the Hon'ble Supreme Court of India – regarding.

Sir/Madam,

I am directed to enclose a copy of the judgement of Hon'ble Supreme Court of India in W.P.(Civil) No.282 of 2007, General Insurance Council & Others Vs. State of Andhra Pradesh & Others.

2. While disposing of the above cited petition, the Hon'ble Supreme Court has given following direction:-

" All the State Governments and the Union Territories shall instruct, if not already done, all concerned police officers about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 159 and in Form 54. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case, there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Transport and Highway shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the concerned State Government/Union Territories so that necessary action can be taken against the concerned officials."

3. It is noteworthy to mention that Section 158(6) of the Motor Vehicles Act, 1988 provides as under:-

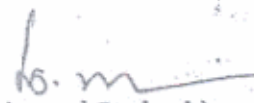
" As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the

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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."

4. It is, therefore, requested that appropriate instructions/directions may be issued to all enforcement agencies under your administrative control to follow the requirements of Section 158(6) of the Motor Vehicles Act, 1988 and ensure strict compliance of direction of the Hon'ble Supreme Court.

Yours faithfully,


(Anand Prakash)
Director (Road Transport)
Ph: 23719097.

Encl.: As above.

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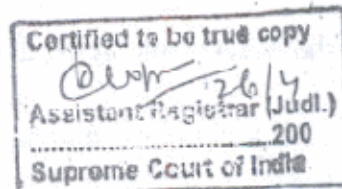
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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 14 OF 2008



General Insurance Council & Ors.

.....Petitioners

Versus

State of Andhra Pradesh & Ors.

.....Respondents

JUDGMENT

Deepak Verma, J.

1. Even though the question projected in this petition filed under Article 32 of the Constitution of India stands answered by a judgment of two learned judges of this Court reported in (2002) 10 SCC 283 titled Sunderbhai Ambalal Desai Versus State of Gujarat pertaining to interpretation and mode of implementation of Sections 451 and 457 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as 'the Code'), but on account of certain grey areas having been left untouched, which still cast clouds on the question, this petition has been filed for further directions, orders and clarifications.

2. Petitioner No.1, General Insurance Council has been constituted under Section 64 C (b) of the Insurance Act, 1938 consisting of all the members and

associate members of the association as envisaged in Section 64A of the said Act, who carry on general insurance business in India and are being represented by Petitioner No. 1 and have been arrayed as Petitioner Nos. 2 to 5 in the said petition.

3. According to them, there has been a gross violation of fundamental rights as conferred on them under Articles 14 and 19 of the Constitution of India. Thus, they are constrained to approach this Court directly by filing a petition under Article 32 of the Constitution of India. They further contended that despite the directions passed by this Court in *Sunderbhai Ambalal Desai (supra)*, as also in *W.P. (C) No. 282 of 2007* titled *General Insurance Council and Others Vs. State of Andhra Pradesh and Others*, decided on 09.07.2007, there has not been full and complete compliance of the same. Therefore, they have once again approached this Court for issuing further directions so that national waste with regard to the seized vehicles involved in commission of various offences may not become junk and their road worthiness be maintained.

4. According to the Petitioners, the report of 2005 of NCRB, 84,675 vehicles were reported lost, out of which 24,918 vehicles were recovered by the police and out of these, only 4,676 vehicles were finally co-ordinated. As a result, several hundred crores worth of assets were lost. Further, by the time the recovered vehicles are released, the same are reduced to junk at the respective police stations. In other words, Petitioners have prayed that national waste that is being caused

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could be substantially reduced, curbed and eliminated to a great extent. Keeping in view the aforesaid facts in mind, they have filed this Writ Petition.

5. In Sunderbhai Ambalal Desai (supra), the Supreme Court was primarily dealing with provisions of Sections 451 and 457 of the Code. While quoting the aforesaid two provisions of the Act in the judgment, it was observed in para 7 as under:-

"7. In our view, the powers under Section 451 Cr PC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. court or the police would not be required to keep the article in safe custody;
3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

6. To safeguard the interests of the prosecution, it was directed that following measures should be adopted giving instances contained in para 12 reproduced hereinbelow:

"12 For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

- (1) preparing detailed proper panchnama of such

articles;

- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security."

7. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts, the court observed as under:-

- "17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.
- 18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

8. Since it appeared to the Petitioners that despite the said directions, the

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requirements of the Petitioners were not being fulfilled, they were constrained to file W.P. (C) No. 282 of 2007 titled General Insurance Council and Others Vs. State of Andhra Pradesh and Others, decided on 09.07.2007 by a coordinate Bench of two learned Judges of this Court.

9. In this second round of litigation before this Court, a direction was sought with regard to compliance of Section 158 (6) of the Motor Vehicles Act, 1988 in short 'the M.V. Act' and Rule 159 of the Central Motor Vehicles Rules, 1989 in short, 'the Rules'.

10. This Court in the said matter after considering the issue came to the following conclusion:-

“Since there is a mandatory requirement to act in the manner provided in Section 158 (6) there is no justifiable reason as to why the requirement is not being followed.

It is, therefore, directed that all the State Governments and the Union Territories shall instruct, if not already done, all concerned police officers about the need to comply with the requirement of Section 158 (6) keeping in view the requirement indicated in Rule 159 and in Form 54. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Transport and Highway shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the concerned State Government/Union Territories so that necessary action can be taken against the concerned officials.”

The writ petition is accordingly disposed of.”

11. Despite the aforesaid directions having been issued by this Court in the aforesaid two matters, grievance is still being made by the Petitioners, that the police, investigating agency and the prosecuting agency are not taking appropriate and adequate steps for compliance of aforesaid directions issued by this Court. Therefore, a need has arisen for giving further directions so as to clear the clouds and iron out the creases.

12. Notice of the said petition was issued to all the States and Union Territories. Almost all the States have contended that they have already issued necessary guidelines and directions for full and complete compliance of the provisions contained in Sections 451 and 457 of the Code as elaborated in *Sunderbhai Ambalal Desai (supra)* as also under Section 158 (6) of the M.V. Act and 159 of the Rules as directed in *General Insurance Council case (supra)*. Thus, in one voice, they have contended that there would not be any difficulty in compliance of the directions that may be issued in furtherance of achieving the object as directed by this Court. Thus, in our view, there appears to be consensus in this matter.

13. Petitioners have submitted that information with regard to all insured vehicles in the country is available with the Insurance Information Bureau created by IRDA. This information could be utilised to assist the police to identify the

W.P.

insurer of the vehicle. Upon recovery of the vehicle in police station, insurer/complainant can call an All India Toll Free No. to be provided by Insurance Information Bureau to give the information of the recovered vehicle. Thereafter, the insured vehicle database would be searched to identify the respective insurer. Upon such identification, this information can be communicated to the respective insurer and concerned police stations for necessary coordination.

14. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai (supra)* considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given.

- (A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.
- (B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.
- (C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally

adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.

(W00)

16. In case any non-compliance is reported either by the Petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands. With the aforesaid directions, this writ petition stands finally disposed of.

sd/-
.....J.
[P.SATHASIVAM]

sd/-
.....J.
[DEEPAK VERMA]

New Delhi.
April 19, 2010

Enclt letter no. C.1/16523/TC/10 dated 14-08-10

to be mailed to all Deputy Transport Commissioners, all Regional Transport Officers, all Joint Regional Transport Officers and all Motor Vehicle Inspectors of all check posts for information and necessary action.

[Signature]
For Transport Commissioner.

16/8/10
[Signature]