

LL.B 1ST SEMESTER

PAPER--IV

LAW OF TORTS, CONSUMER PROTECTION AND MOTOR VEHICLES ACT

Unit-V ---Motor Vehicles Act

Introduction

In this Unit general overview of the Motor Vehicles Act,1988 will be given.

First of all I would like to acquaint you with the basic aim of the Motor Vehicles Act,1988. The Motor Vehicles Act,1988 is a comprehensive enactment in respect to various matters relating to traffic safety on the roads and minimization of road accidents. The Act came into force from 1 July 1989. It replaced Motor Vehicles Act,1939, which earlier replaced the first such enactment Motor Vehicles Act,1914.

The Act provides in detail the legislative provisions regarding licensing of drivers/ conductors, registration of motor vehicles, control of motor vehicles through permits, special provisions relating to State transport undertakings, traffic regulations, insurance, liability, offences and penalties etc.

There are various rights created for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of motor vehicles.

By the Motor Vehicles (Amendment) Act, 1994, inter alia, amendments were made for make special provisions under sections 66 & 67 so as to provide that vehicles operating on eco-friendly fuels shall be exempted from the requirements of permits and also the owners of such vehicles shall have the discretion to fix fares and freights for carriage of passengers and goods. The intention in bringing

the said amendments was to encourage the operation of vehicles with such eco-friendly fuels.

Over the years, judiciary has not only been called upon time to time to interpret these statutory provisions and apply them to different facts and situations, but also to lay down various legal principles for assessing compensation. The Motor Vehicles Act, 1988, does not provide any guidelines for the identification of the items of loss to be compensated, nor does it lay down any criteria for the compilation of the quantum of compensation for each item of loss.

This is an Act to make a comprehensive review of all aspects of Motor Accident Compensation law. An Act to consolidate and amend the law relating to motor vehicles.

Liability rules deal with the unintended accidents and related issues. A suit under liability rules is generally a private suit (over injuries) as opposed to a criminal prosecution. If the legal requirements are fulfilled, the injurer is required to compensate the victim.

Dear students, now we will study the rules for compensation under Motor Vehicles Act, 1988.

COMPENSATION UNDER MOTOR VEHICLES ACT, 1988

Rules for payment of compensation can be discussed under two sub-headings;

- a. Fault based liability and
- b. no fault liability

Fault based liability and no fault liability

The cases of motor accidents constitute a major bulk of tort cases in India. To prevail in a suit generally, a victim must also demonstrate that the injurer has breached a duty he owes to the victim. When an injurer breaches a legal duty he is

said to be “at fault’ or negligent. Breach of a duty is caused by doing something which a reasonable man should do under the circumstances.

The rule of negligence with the defence of contributory negligence holds injurer liable if and only if he was negligent and the victim was not. In India, this rule requires proportional sharing of liability when both parties were negligent. That is, the compensation the victim receives gets reduced in proportion to his or her negligence.

The rule of strict liability always holds the injurer liable irrespective of the care taken by the two parties.

Before 1988 for motor vehicle accidents liability of injurer was predominantly fault based liability. However, the 1988 amendment to the Act brought in an element of strict liability. The following provision (section. 140) was introduced in the amendment:

“where death or permanent disablement of any person has resulted from an accident arising out of the use of the 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.”

In simple terms, this amendment implied that the injurer or the insurance company of the injurer has to pay a certain amount as compensation to the victim irrespective of whose fault it is.

The Act was further amended in 1994. As a result of this amendment, liability of injurer became even stricter. According to section 163-A:

“Notwithstanding anything containing in this Act or any other law for the time being in force, the owner of the motor vehicle or the authored insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation as indicated in the second schedule, to legal heirs or the victim s the case may be.”

The claimant shall not be required to plead or establish that the death or permanent disablement was due to any wrong full act or neglect or default of the owner of the vehicle or the vehicles concerned or any other person.

While filing the damage awards (i.e the liability payments to be made by the injurer to the victim), courts should take into account the entire loss suffered by victim. A court may entitle the victim to over or under compensation. Such court errors can cause various effects depending upon the liability rule in force.

Motor Vehicles Act,1988, however, recognizes limited 'no fault liability' but only in the cases of death and permanent disablement. While deciding on compensation, courts have applied rule of negligence with defence of contributory negligence. For instance, if the liability is limited to Rs. 50,000 in the case of death and Rs.25,000 in the case of permanent disablement. Such compensation can be claimed without establishing any negligence on the part of owner or the driver of the vehicle. The compensation claimed exceeding the amount can prevail only if negligence is proved.

Liability Without Fault In Certain Cases

Liability without fault in certain cases is dealt under Chapter X of the Act.

Section 140 provides Liability to pay compensation in certain cases on the principle of no fault. – It runs as

(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 vehicles 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 subsection (1) in respect of the death of any person shall be a fixed sum of 85[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 86[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.”

In *Teethi vs. Motor Accidents Claims Tribunal*, AIR 1996 Ker 237, it was observed that under section 140 of the Act, the liability of the owner or owners of the vehicle or vehicles is joint and several. In accidents involving two Motor vehicles, liability to pay compensation is upon both the owners. If only one owner is identified, he is liable to pay compensation.

These provisions apply in cases where the claimant suffers death or permanent disablement, as defined in the Act. The object behind no-fault principle is to give minimum relief expeditiously to the victim of the road accident or his legal representative. To that extent, these provisions constitute a measure of social justice.

The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right to

claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force. Thus the claims for death or permanent disablement can also be pursued under other provisions of the Act on the basis of negligence.

It was held in *Ashok vs. Ashok Singh*, 1996 (1) ACJ 392, To claim interim award under no fault liability certificate from a medical practitioner regarding permanent disablement is sufficient.

Similarly in *New India Insurance Co. Ltd. Vs. Mithakhan*, 1996 (1) ACJ 155, it was held that where compensation is claimed in respect of death or permanent disablement under section 140 of the Act, the claim for compensation is required to be disposed of in the first place in view of section 140(2) of the Act.

Section 141: Provisions as to other right to claim compensation for death or permanent disablement – The section runs as:

“(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to 88[any other right, except the right to claim under the scheme referred to in section 163 – A (such other right hereafter)] in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance

with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and -

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.”

For instance if the first mentioned compensation is Rs. 25,000, and second mentioned is Rs.30,000, then the person liable is to pay an extra amount of Rs.5000 in total.

Section 141 makes provision to claim compensation for death or permanent disablement besides the claim for compensation for no fault liability.

For the purposes of this Chapter, under section 142 permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving :-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any members or joint; or

(c) permanent disfiguration of the head or face.

LIABILITY OF INSURER

Motor Vehicles Act makes the insurance of Motor Vehicles compulsory. The owner of every motor vehicle is bound to insure his vehicle against third party

risk. The insurance Company covers the risk of loss to the third party by the use of the motor vehicle.

Thus if there is insurance against the third party risk, the person suffering due to the accident (third party) caused by the use of motor vehicle may recover compensation either from the owner or the driver of the vehicle, or from the insurance company, or from them jointly.

The policy of Insurance issued by an authorized insurer is;

1. To insure the person or class of person's specified in the policy.
2. Insurer is liable to the extent specified in section 147(2)
3. Liable for death, or bodily injury to any person, or damage to property of third party, or bodily injury to any passenger of a Public Service Vehicle.

1. Insurer's Liability For Third Party Risks—Liability For Injury To Certain Persons Or Class Of Persons (Other Than Gratuitous Passenger And Pillion Rider):

It is well settled that where the contract of insurance covers the risk of third party but not that of the owner or pillion rider of a two wheeler, the liability of the insurance company, in case of this nature, is not extended to a pillion rider of the vehicle.

In *Oriental Insurance Co. Ltd. Vs. Sudhakaran*; AIR 2008 SC 2729; the deceased was travelling as a pillion rider on a scooter, when she fell down and succumbed to the injuries sustained by her. In terms of section 147 of the Motor Vehicles Act, 1988, it is imperative for the owner of the vehicle to take a policy of the insurance in regard to reimbursement of the claim to third party while it is from other risks.. The question involved here was, whether the pillion rider on a scooter would be a third party within the meaning of section 147.

Holding that the pillion rider in a scooter was not to be treated as a third party when the accident had taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle, the apex court held that the legal obligation arising under section 147, could not be extended to injury or death of the owner of the vehicle or the pillion rider.

The observations made in connection with carrying passengers in a goods vehicle, it was held would equally apply with equal force to gratuitous passengers (who pays no fare) in any other vehicle.[United India Insurance Co. Ltd vs. Tilak Singh, AIR 2006 SC 1576]

According to Section 2(30) **“owner”** means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

In M/s. Godavari Finance Co. vs. Degala Satyanarayanamma, AIR 2008 SC 2493, referring to the opening words “unless the context otherwise requires”, in section 2(30) of 1988 Act, the Apex Court ruled: “In case of motor vehicle which is subject to a Hire-Purchase Agreement, the financier cannot ordinarily be treated to be the owner. The person in possession of the vehicle, and not the financier being the owner, would be liable to pay damages for the motor accident.”

Liability is transferred with the transfer of certificate of insurance, as mentioned under section 157 of Motor Vehicles Act,1988. It reads as:

“Transfer of certificate of insurance. –

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfer to another person the ownership of the another vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

[Explanation. – For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.”

2. Extent Of Liability Of The Insurer Under The Act

Section 147(2) of the 1988 Act reads as:

“Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred.

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.”

Insurer’s liability for persons on the roof of a bus:

Section 123 says “(1) No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

(2) No person shall travel on the running board or on the top or on the bonnet of a motor vehicle.”

In *New India Assurance Co. Ltd. Vs. Samandari Roadways Co.*, 1985 ACJ 239, it was held that no person should be carried on the running board or otherwise than within the body of vehicle. In such cases Insurance Co. not liable to pay any compensation.

Hit and run case:

Section 161 deals with the cases where the identity of the vehicle or vehicles involved in the accident cannot be ascertained in spite of reasonable efforts in that behalf. It reads as

Section 161(2): (2) Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

161(3) reads as: Subject to the provisions of this Act and the scheme, there shall be paid as compensation –

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of [twenty-five thousand rupees];

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of [twelve thousand and five hundred rupees].

Insurer's liability beyond the limits of the Act:

There is no limitation on Insurer to undertake liability beyond the limits of the Act, was held in Sheihhpura Trpt. Co. vs. NIT Ins. CO., AIR 1971 SC 1624.

3. Insurer's Liability For Use Of Vehicle In A Public Place

Vehicle can be said to be in use even when it cannot run e.g. taking out battery, when car is parked.

In a private place owner or driver of vehicle may be liable but insurer not liable. Private place is a place where visitors can go only after permission.

Clause (34) of Section 2 defines “public place”. It means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

CLAIMS TRIBUNALS

Sections 165-175 of Motor Vehicles Act, 1988, deals with;

- a. Setting up of a Claims Tribunals
- b. Procedure to be followed
- c. Award of compensation

A--Claims Tribunals

Section 165(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 Claim 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.

Constitution:

Section 165(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.

Section 165 (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.

Qualification:

Section 165 (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 High Court Judge[or as a District Judge.]

Matters of adjudication by MACT

Section 165 says that Motor Accidents Claims Tribunals are constituted 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.

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 and section 163-A.

B--Procedure to be followed

Application for Compensation

Section 166 reads as

(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.

On the Receipt of Application

Section 166(2) says that; 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.

Section 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. (i.e report filed by the police will be treated as application).

Simply the MACT, 1. Holds an enquiry.

2. summons the parties and

3. fixes the liability as per the procedure and passes an award.

Award of Claims Tribunal

The finding of MACT, fixing the liability and order for compensation is called award. It is final order. The award should;

- a. determine the amount of compensation, which appears to it to be just.
- b. Specify the persons to whom compensation shall be paid, and
- c. Specify the amount which shall be paid by the insurer, or the owner, or the driver of the vehicle involved in the accident, or by all or any of them, as the case may be.

MACT can in special circumstances review its own award on the application made by a party.

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 (section 168).

The Claim 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 (section 168).

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.

An appeal against the award lies to a High Court. Before going for appeal the appellant has to deposit Rs.25000/- or 50% of the amount of award, whichever is less in the MACT. Then appeal is allowed.

Section 173 reads as: "(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees of fifty per cent, of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."