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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.

The rules for compensation under Motor Vehicles Act, 1988 are given further ahead.

Motor Vehicle (Amendment) Act, 2019

The Motor Vehicle Amendment Act, 2019, came into force on 1st September, 2019.

The Amendment Act replaced the Motor Vehicles Act, 1988.

After a long wait for three years, the Motor Vehicle (Amendment) Bill, 2019 was passed on August 5 by the Parliament and on August 9, it received the President's assent. The main aim of introducing this Bill was to improve road safety, regulating road traffic, improving process of issuing licenses and eliminating corruption in RTO offices. Amendments in the 30 year old motor vehicles laws is very much needed with the increasing congestion in all the cities. India needs to keep pace with the upcoming innovation in the transportation and automobile sector along with rapid development and urbanization.

The salient features of the Act are:

Road safety:

To achieve its aim of ensuring road safety, the Act increases penalties and introduces

strict provisions in respects of various offences like drunk driving, over-speeding, driving without a license, over-loading, etc. Penalties for various offences is to be increased by 10% every year.

Section	Offence	Old provision	Penalty	New Minimum Penalties
177	General		Rs.100	Rs.500
New 177A	Rules of road regulation violation		Rs.100	Rs.500
178	Travel without ticket		Rs.200	Rs.500
179	Disobedience of orders of authorities		Rs.500	Rs.2000
180	Unauthorized use of vehicles		Rs.1000	Rs.5000
181	Driving without license		Rs.500	Rs.5000
182	Driving despite disqualification		Rs.500	Rs.10,000
182B	Oversize vehicles	New	Rs.5000	
183	Over speeding		Rs.400	Rs.10000 for LMV and Rs.2000 for MV
185	Drinking and driving		Rs.2000	Rs.10,000
189	Speeding/racing		Rs.500	Rs.5000
192A	Vehicle without permit		Up to Rs.5000	Up to Rs.10,000
193	Aggregators (violations of licensing conditions)	New	Rs.25,000 to	Rs.1,00,000
194	Overloading		Rs.2000 and Rs.1000 per extra tonne	Rs.20,000 and Rs.2000 per extra tonne.
194A	Overloading of passengers			Rs.1000 per extra passenger
194B	Seat belt		Rs.100	Rs.1000
194C	Overloading of two wheelers	Rs.100	Rs.2000	Disqualification of months of license.
194D	Helmets	Rs.100	Rs. 1000	Disqualification for license.
194E	Not providing way for emergency vehicles		New	Rs. 10,000
196	Driving without insurance		Rs.1000	Rs. 2000
199	Offences by juveniles	New	Guardian/owner shall be deemed to be guilty.	Rs. 25,000 with 3 yrs imprisonment. For Juvenile to be tried under JJ act.

Registration of Motor Vehicle to be cancelled.

206 Power of Officer to impound documents Suspension of driving licenses u/s 183,184,185,189,190,194C,194D,194E

210B Offences committed by enforcing authorities Twice the penalty under the relevant section.

Road Safety Board:

Under Section 215B, the Act provides for a National Road Safety Board, to be constituted by a Notification of the Central Government. The Board will advise the Central and State Government on aspects of road safety, traffic management, registration and licensing of motor vehicles, formulating standards related to road safety.

Protection of Good Samaritan:

The Act defines a Good Samaritan as “a person, who in good faith, voluntarily and without expectation of any reward or compensation renders emergency medical or non-medical care or assistance at the scene of an accident to the victim or transports such victim to the hospital”

The Act introduces Section 134A which protects the Samaritans from unnecessary harassment from civil or criminal proceedings. It also empowers the Central Government to make rules for their protection.

Cashless Treatment during Golden Hour:

The Central Government has been given the responsibility to make a scheme that provides for cashless treatment of road accident victims during the golden hour period. Such a scheme may also contain provisions for creation of a fund for the same purpose.

Recalling of vehicles:

Section 110A of the Act allows the Central Government to recall for an motor

vehicle if a defect in that vehicle may cause certain harm to the driver or occupants or to the environment. It also has a provision which states that the manufacturer shall a) reimburse the full cost of the motor vehicle to the buyer; b) replace the defective motor vehicle with another similar vehicle or with better specifications. The Central Government is also empowered to make any rules for regulating the recall of motor vehicles under this section.

National Transportation Policy:

A major highlight of the new Act is the power conferred upon the Central Government under Section 66A to form a National Transportation Policy to transform the transportation system, identify areas of development, improve connectivity and formulate many other strategies.

Provisions related to driving license:

In order to ensure that only those who possess the necessary skill and training obtain a driving license, the Act makes a provision that a Learners license is given in an electronic form. The Act also provides for a computerized 'driving test' and opening up of new driving training schools. It has also introduced a new condition to undergo 'driving refresher training course' for reviving the license after revocation or suspension of the license.

Motor Vehicle Accident Fund:

Section 164B confers power on the Central Government to constitute a Motor Vehicle Accident Fund to provide for compulsory insurance cover to all road users in India. This fund will be used for treatment for road accident victims in the golden hour period, compensation of people injured in hit-and-run accident and compensation to representatives of a victim killed in a hit-and-run accident.

Third Party Insurance:

The Act removes the cap on liability for third-party insurance. It includes a ten fold

increase in the insurance compensation: from Rs. 5000 to Rs. 5 Lakh. The compensation for representatives of the victims killed in a hit-and-run accident will be increased from Rs. 25,000 to Rs. 2 Lakh. The compensation for a victim grievously injured in a hit-and-run case will be increased from Rs. 12,500 to Rs. 50,000.

Definitions under MVA, 2019

S.2.(I) “adapted vehicle” means a motor vehicle either specially designed and constructed, or to which alterations have been made under sub-section (2) of section 52, for the use of a person suffering from any physical defect or disability, and used solely by or for such person;

S. 2(12A) “golden hour” means the time period lasting one hour following a traumatic injury during which there is highest likelihood of preventing death by providing prompt medical care;’

S. 2 (4A) “community service” means an unpaid work which a person is required to perform as a punishment for an offence committed under this Act.

S.145: (a) “authorised insurer” means an insurer for the time being carrying on general insurance business in India and granted a certificate of registration by the Insurance Regulatory and Development Authority of India established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 and any Government insurance fund authorised to do general insurance business under the General Insurance Business (Nationalisation) Act, 1972;

(b) “certificate of insurance” means a certificate issued by an authorized insurer in pursuance of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

(c) “grievous hurt” shall have the same meaning as assigned to it in section 320 of the Indian Penal Code;

(d) “hit and run motor accident” means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(i) “third party” includes the Government, the driver and any other co-worker on a transport vehicle.

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 owe 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 victims as 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 ...[as prescribed under MVA,2019] 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 ... as prescribed under MVA,2019]].

(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 [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.

Compensation for third-party motor claims under Ammendment Act, 2019:

The government has amended the compensation amount payable for third-party fatal accidents and injury claims. According to the amendment made in Motor Vehicle Act, 1988, the amount of compensation payable in case of death will be Rs five lakh. The amount payable as compensation has been decided keeping in

view costs of living said the notification.

If the accident results in permanent disability, compensation will be payable based on this formula:

Compensation amount = Rs 5 lakh X percentage disability as per schedule I of the Employee's Compensation Act, 1923.

The minimum compensation in case of permanent disability of any kind shall not be less than Rs 50,000. However, for accidents resulting in minor injuries, the compensation amount is fixed at Rs 25,000.

Therefore, any third-party claims filed on and from May 22, 2018 will be paid as per the amount mentioned above.

to keep up with the cost of living in the future, the compensation amount will increase by five percent annually for all types of compensations with effect from January 1, 2019.

This means that from January 1, 2019, the amount of compensation payable in the event of death will increase by 5 percent to Rs 5,25,000. Similarly, compensation in case of minor accidents will increase from Rs 25,000 to Rs 26,250. As per the earlier law, the minimum amount payable as compensation in case of death was Rs 50,000 and for permanent disability was Rs 25,000. However, these cases used to go to court and the compensation amounts were decided by the courts to settle these claims.

Necessity for insurance against third party risks[MVA,2019]:

Section 146. (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.

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.

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 [as prescribed under MVA,2019];

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of [as prescribed under MVA,2019].

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 SC1624.

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.

Requirement of policies and limits of liability:

Section 147. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which— (a) is issued by a person who is an authorised insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)— (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place; (ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Explanation.—For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

((2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and

Development Authority. (3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

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 maybe.

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 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 or 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.”