

MOTOR ACCIDENTS - COMPENSATION

NO FAULT LIABILITY

PRESENTED

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DOCTRINE OF NO FAULT LIABILITY BACK DROP

- **JUDICIAL HISTORY**

Claims for compensation - based on law of Torts.

- Fault is 'Sine Qua Non' to claim damages under the law of Torts.
- Sri Justice Fazalali in *Manjusri Raha Vs B.L.Gupta*(AIR 1977 SC 1158) in view of faster growth of vehicular traffic and loss of life and limbs due to frequency of motor accidents, observed :
- “The time is ripe for serious consideration of creating no-fault liability. Having regard to the directive principles of State policy , the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalization of general insurance companies and the expanding trend towards nationalization of bus transport, the law of torts based on no-fault liability needs reform”

**Sri Justice V.R.Krishnayyar in Concord of India
Insurance Co. Vs Nirmala (AIR 1979 SC 1666)
observed:**

“The jurisprudence of compensation for motor accidents must develop in the direction of no-fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.”

STATUTORY HISTORY:

In the light of observations of Supreme Court and the recommendations of Law Commission, Motor Vehicles Act 1939 was amended and Chapter X was introduced and under sec 95 no-fault liability was provided.

M V Act 1988 replaced 1939 Act. Chapter X of Act 1988 deals with it.

- **Sec 140** speaks about liability to pay compensation in case of death or permanent disability.
- **Sec 141** speaks about other right to claim compensation.
- **Sec 142** defines permanent disability.
- **Sec 143** states about the applicability of chapter X to Workmen's Compensation Act.
- **Sec 144** speaks about overriding effect.

NO FAULT LIABILITY – SEC.140

- **Death or Permanent Disability of any person in an Accident arising out of use of Motor Vehicle(s).**

Owner(s) - jointly and severally liable to pay :

In case of – Death: Rs 50,000/

– Permanent Disability: Rs 25,000/-

- **Need not plead**
 - fault on the part of owner or driver and**
 - fault of Deceased or injured is not a defense**
- **Entitled to compensation u/other laws except u/sec 163 A.**

- Compensation u/sec. to be deducted from other compensation awarded.
- **Accident – not defined under MVA Act.**
- **Distinction between Murder and Accidental Murder is drawn in Smt. Rita Devi Vs New India Assurance co.(2000) 5 SCC 113 by the Supreme Court. It is held:**
- **“ If the dominant intention of the act of felony is to kill –it is a murder simplicitor. If the murder was not originally intended and same was caused in furtherance of any other felonious act then such murder is an accidental murder”.**

- Accident arising out of use of motor vehicle :
- The word 'use' has a wider connotation to cover the period when the vehicle is not moving and stationary, became immobile due to breakdown or mechanical defect or accident.
- The accident should be connected with the use of the motor vehicle. The connection need not be direct and immediate. The expression used enlarges the field of protection made available to the victims and is in consonance with the beneficial object underlying the enactment.

Vide Sivaji Dayanu patil Vs Smt. Vatschala Uttam More 1991 ACJ 777 (SC). It is followed in Smt. Rita Devi (supra).

- **DEFENCES available for Claims U/S 140 to the Insurance Companies :**
- **The burden is on the Insurance Co. to prove:**
 - a) **Owner committed willful breach of conditions of policy,**
 - b) **Insurance Companies can take all defenses available u/s 149.**

**National Insurance Co.vs Tumu Guruva Reddy
-2001 ACJ 542 (A.P);**

Yellawwa Vs Nat. Ins. Co. AIR 2007 S.C.2582.

- **Willful breach of conditions of policy:**
- Mere violation of conditions of policy by insured is not sufficient to get over the liability by the insurer.
- The insurer must prove that the insured is guilty of negligence and failed to exercise reasonable care in fulfilling the conditions of policy . The burden is on the insurer to establish willful breach.

- **Fundamental breach :**
- **The breach of conditions of policy must be so fundamental as are found to have contributed to the cause of the accident.**
- **The rule of 'main purpose' and concept of 'fundamental breach' have to be kept in mind in interpreting the policy conditions and the defenses available to the insurer.**

- These niceties are extensively considered by a three Judge bench of Supreme Court in **National Insurance Co.Ltd. Vs Swaran Singh 2004 ACJ 1=(2004) 3 SCC 297.**
- The breach must be willful. If insured has taken all precautions to fulfill condition - there is no willful breach. Vide **Sohan Lal Passi Vs P. Sessa Reddy AIR 1996 SC 2627.** Followed in **Swaran Singh (supra).**

- **PERMANENT DISABILITY : Sec.142.**
- A)Permanent Privation of :
 - 1) sight of either eye or
 - 2)hearing of either ear
 - 3) of any member or joint or
- Destruction or permanent impairing of the powers of any member or joint, or
- Permanent disfiguration of the head or face.

- **Doctrine of Strict Liability:**
- The "**STRICT LIABILITY**" doctrine propounded in Rynalds Vs Fletcher is:

"The true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or perhaps, that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists, here, it is unnecessary to inquire what excuse would be sufficient".

- **The principles laid down in Rylands Vs Fletcher were considered by a Constitutional Bench of Supreme Court in M.C. Mehta Vs Union of India.1987(1) SCC395.**
- **This aspect was also considered in Charan Scihu vsUnion of India1990(1) SCC613.**
- **Supreme Court in Smt. Kaushnuma Begum Vs New India Assurance Co. Manu/SC/0002/2001 has held rule of Rynalds can be followed.**

- **The Constitutional Bench in M.C Mehta(supra) has held as follows :**

"In view of fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rynalds Vs Fletcher. From the point of view of the pedestrian, the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit and run cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. When a pedestrian without negligence on his part is injured or killed by a motorist whether throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault."

negligently or not, he or his legal representatives as the case may be should be entitled to recover damages, if the principle of social justice should have any meaning at all.

In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a **LIABILITY WITHOUT FAULT.**

- May be in view of the above observations of Supreme Court the Parliament brought an amendment to MVAct and Introduced a Structured Formula under 2nd Schedule and introduced SEC 163-A and 163-B.
- The liability to pay as per 2nd Sch. is a NO FAULT liability as fault of owner or driver is irrelevant for a claim under SEC 163-A.

LIABILITY UNDER – SEC 163 - A.

Notwithstanding anything u/Act or any law,
Owner or Insurer shall pay –

**in case of Death or Permanent Disability –
to the legal heirs or victim**

Compensation as per 2nd Schedule.

- **Permanent Disability - as defined u/ W.C.Act.**
- **Not necessary to plead or establish – wrongful act/neglect/default of Owner(s) or of any person.**
- **Option to claim u/s 140 or 163-A - but not both.(163-B).**

- Claim U/s 163-A excludes claim U/S 166 but not in addition. **Deepal Girishbhai Soni Vs U.I. Co.(2004)5 SCC 385(three J bench)**
- Persons whose annual income is up to Rs 40,000/-can only take recourse u/this sec.(ibid).
- It requires re consideration as daily minimum wages exceeds Rs 40000/-per year.
- Multiplier U/2nd Sh. is only for calculating compensation for Permanent Disability but not in case of death. – **Rani Gupta Vs U.I.Ins.Co. 2009 (3)Suprem535.**

- **No arithmetical mistakes in 2nd Sh. (disagreeing with earlier views of S.C)**
Reshmakumari Vs Madanmohan (2009)1 SCC 422.
- **The view of S.C. that claim u/163-A does not come U/no fault liability N.Ins.Co. Vs Sunita(2012)2 SCC 56 is not accepted by subsequent bench of S.C in the case between U.Ind.Ins.Co. vs Sunil Kumar (2014) 1 SCC 680 and relied on three judge bench of S.C. in Deepal Girishbhai (cited supra) and referred the matter to a Larger Bench.**

- **Driver – Entitled U/sec. 163-A ?**

No ,when no other vehicle is involved as he is not a 3ed person. In New India Assurance. Co Vs Meerabhai 2007 ACJ 818.

- **Owner does not come u/163-A even if he is driving – Lrs not entitled. In Ninganna Vs U.Ind.Ins Co 2009 ACJ 2020.**

- Defences available to the insurer in a claim u/s 163-A:
- Defences available under Sec 149(2) of MVAct are applicable to a claim U/S 163-A .
Vide Oriental Insurance Co. Vs Meena Varial (2007) 5 SCC 428.
- If that is so the Doctrine of “**pay and recover**” is applicable to a claim u/s 163-A.

SECOND – SCHEDULE.

- It is a structured formula-applicable to both fatal accidents and permanent disability cases.
- Under it , Victims are classified or grouped as per age and multipliers are prescribed.
- In death cases victims are classified on the basis of annual income. Maximum is stated as Rs 40000/-
- Pre calculated or pre determined amount are prescribed. The Multiplier ranges from 5 to 20.
- Where as Multiplier in 2nd vertical Column ranges from 5 to 18.

- **In case of fatal accident claims from the amount of prescribed compensation 1/3rd of it shall be reduced as personal expenses.**
- **Amount of compensation in fatal accidents shall not be less than Rs 50000/-**
- **It prescribes general damages in addition to prescribed compensation .i.e. funeral expenses, loss of consortium in case the claimant is the spouse , loss of estate and medical expenses incurred prior to the death by the victim.**

- It also prescribes the method of calculating compensation in case of disability by using the multiplier in col.2 of table and loss of income.
- It prescribes notional income in certain cases.
- Non-earning persons – Rs. 15000/- per year.
- Spouse - 1/3rd of income of the earning/surviving spouse.
- In case of other injuries only “general damage” as applicable.

- The Supreme Court in Kisan Gopal Vs Lala (2014) 1 SCC 244 considered the notional income of non earning persons prescribed under 2nd schedule .
- It is observed that the amount of Rs 15000/- was fixed in 1994 and Rupee value has come down drastically and it is just and reasonable to take notional income as Rs 30000/-

- In view of the directions and observations made by Supreme Court , a Bill of 2012 was introduced to amend the 2nd schedule and other provisions .
- It was pass by Rajya Sabha and it is pending in Lok Sabha.
- A reference is made in Puttamma vs K L Narayana Reddy.(2013)15 SCC 45.
- Let us hope for better future to the motor accident victims.

THANKS.

ALL THE BEST.



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