
FIXING LIABILITY IN MOTOR VEHICLE ACCIDENT CASES BETWEEN INSURER, OWNER AND HIRER IN UP ROAD TRANSPORT CORPORATION V. RAJENDRA DEVI

Riya Kapil, Amity Law School, Amity University, Sector - 125, Noida, 201301

ABSTRACT

Under the case of Uttar Pradesh state road Transport Corporation v. rajendra Devi The death was occurred of a 45 year old man, who was on his cycle and was hit by the bus. The bus was hired by UPSRTC, by the agreement of contract between UPSRTC and owner of a bus. Now the question arises is whether Insurer Company or corporation or the hirer is liable for amount of compensation to victim's family. In Motor Accident Claims Tribunal the id council of the insurance company held that It was a private bus and controlled by upsrtc also the working of driver was controlled by the corp. and not by bus owner. Hence the responsibility of giving the compensation wholly belongs to the upsrtc. Id council of the upsrtc sites to refer the case of Rajasthan state road Transportation Corporation kailash nath Kothari v. (1997) according to this case, the corporation is not liable to pay amount of compensation.

Later on, this case is referred to High court and followed that the appellant is vicariously liable to pay the amount of compensation to victim's family. The insurer company has plead before the court in claiming petitioners that in case of any accident occurs the liability arising out shall not exceed beyond Rs 75000. The learned council of insurance company had further submitted that the amount has been paid by the company.

The court has further referred the definition of owner under section 2(19) of motor vehicle act,1939 and held that the insurance company would be liable to pay Rs75000 as compensation to victim's family which has been already paid. Any amount beyond Rs75000 shall be forfeited to the insurance company.

In the case of Uttar Pradesh state road Transportation Corporation v. kulsum and others, the question of consideration was arise by referring the definition of owner under section 2(30) of motor vehicle act 1988 The question arise was when any insured vehicle is plying under the agreement with the corporation and any accident occurs, in such case whether insurance

company will be held liable to pay compensation or whether the corporation is responsible or the owner?

Facts of the case

In the current case, demise happened to old man of 45 years of age who was on a cycle and hit by a transport on 16.08.2001. The Motor Accident Claims Tribunal (hereinafter alluded to as 'MACT') found that it was because of rash and careless driving by the driver of the transport, which was recruited by the litigant Uttar Pradesh State Road Transport Enterprise under an arrangement among it and the transport proprietor. At last finding that the pay would be Rs.18,000/- every year, short 33%, and with a multiplier of 13, Rs.1.65 lakhs + 8 percent intrigue was granted by the MACT, yet it was held, after *Rajasthan State Road Transport Corporation v. Kailash Nath Kothari* (1997) 7 SCC 481 ["Kailash Nath Kothari"], that it is just for the appealing party Corporation to pay this whole sum and not the protection organization. This was held as follows:

"The transport is a private one. It ran heavily influenced by the UPSRTC. The Id. counsel for the Insurance Company has contended that the transport heavily influenced by UPSRTC Declined the obligation of installment of any pay upon UPSRTC in light of the fact that it isn't the proprietor who is in charge of the transport however the Corporation who controls the working of the driver. The Id. counsel for the organization refers to *Rajasthan State Road Transport Corporation versus Kailash Nath Kothari* 1997 ACT 1148. I discover the case law alluded to applies solidly to the current case close by. The UPSRTC O.P. No. 3, and not the O.P. No. 1 and 2, is mindful to pay the honor."

In the High Court, by a judgment dated 27.09.2016, a similar judgment of *Kailash Nath Kothari* (supra) was alluded to and followed, making it understood, hence, that the appealing party alone is vicariously subject to pay the casualty's family the measure of pay that has been requested. It was hence likewise expressed, alluding to the arrangement between the Corporation and the proprietor of the vehicle, as follows:

"Much accentuation has been laid by learned guidance for the litigant on Clause 10 of the understanding between the appealing party and the proprietor to wriggle out of its obligation to make installment of compensation. There is no reference of the said understanding in the

reproved grant. No such ground has been taken in the update of allure that it was recorded before the Tribunal yet has not been thought of. In any perspective on the issue, regardless of whether such a statement exists in the arrangement, it is between the litigant and the proprietor and will not influence the privileges of the petitioners to get compensation spilling out of the arrangements of the Act.

In this way, the principal contention progressed by learned direction for the litigant is without any power and not at risk to be accepted."Having heard scholarly insight showing up for all the gatherings, we are of the view that the judgment depended upon, viz., Kailash Nath Kothari (supra), is itself recognizable for the explanation that the judgment itself records as follows:

"The insurance agency took the request, in its answer to the case petitions, that the transport at the hour of the accident was heavily influenced by the RSRTC, consequently, it was the obligation of the RSRTC to pay compensation and the insurance agency was not at risk. It was additionally argued by the insurance agency that the obligation of the insurance agency, regardless, was restricted and its risk couldn't surpass Rs.75000/- in regard of all the case petitions emerging out of one accident.

Issue No. 2 was likewise ruled for the case candidates however it was held that in the light of the particulars of the strategy of protection and pertinent arrangements of the Act, the obligation of the insurance agency was restricted, in regard of the accident, to an aggregate sum of Rs.75,000/- as it were." Learned insight showing up for the insurance agency, didn't scrutinize the finding on Issue No. 2 and presented that the predefined sum had since been paid by the insurance agency. . . ."What's more, the Court additionally held, depending upon the meaning of "proprietor" in Section 2(19) of the Motor Vehicles Act (as it at that point stood), as follows:" The meaning of proprietor under Section 2(19) of the Act isn't thorough. It has, thusly, to be interpreted, from a more extensive perspective, in the realities and conditions of a given case. The articulation proprietor must incorporate, in a given case, the individual who has the real belonging and control of the vehicle and under whose headings and orders the driver is obliged to work the transport. To restrict the significance of "proprietor" to the enlisted proprietor just would for a situation where the vehicle is in the real belonging and control of the hirer not be appropriate to secure of obligation in the event of a mishap. The risk of the "proprietor" is vicarious for the misdeed submitted by its worker over the span of his business and it would be an issue of certainty for each situation as to on whom can vicarious risk be attached on account of a mishap. . (accentuation in unique) In this perspective on the issue, it

was thusly held that since the insurance agency's risk was restricted distinctly to Rs.75,000/- which had been paid, the insurance agency would, on the realities of that case, not be subject to pay much else. On this tally, subsequently, the sum payable past Rs.75,000/- was mulcted on to the Corporation all things considered.

In a resulting judgment, viz., *Uttar Pradesh State Road Transport Corporation v. Kulsum and Ors.* (2011) 8 SCC 142["Kulsum"], this Court expressed the subject of law that emerged for thought as follows:

"The subject of law that emerges for thought in the moment and associated advances is planned as under: if a safeguarded vehicle (for this situation a little transport) is handling under an arrangement of agreement with the Corporation, on the course according to allow conceded for the Corporation, in instance of a mishap, regardless of whether the Insurance Organization would be subject to pay or would it be the obligation of the Corporation or the owner?" It at that point alluded to the meaning of "proprietor" under Section 2(30)1 of the Motor Vehicles Act, 1988 and stood out it from the meaning of "proprietor" in Section 2(19)2 of the 1939 Act.

It at that point proceeded to recognize *Kailash Nath Kothari* (supra) as follows:

"In *Kailash Nath Kothari* [*Rajasthan State Road Transport Corporation v. Kailash Nath Kothari* (1997) 7SCC 481], an inquiry had emerged concerning the risk of the insurance agency, where the transport handled according to the agreement with Rajasthan State Road Transport Corporation. In any case, the said case was managing the prior Motor Vehicles Act of 1939. Mulling over the meaning of "proprietor" as it existed then in Section 2(19) of the old Act, it has been held in para 17 as under: (SCC pp.487-88)

"The meaning of 'proprietor' under Section 2(19) of the Act isn't comprehensive. It has, accordingly to be interpreted, from a more extensive perspective, in the realities and conditions of a given case. The articulation 'proprietor' must incorporate, in a given case, the individual who has the real belonging and control of the vehicle and under whose headings and orders the driver is obliged to work the transport. To keep the significance of 'proprietor' to the enlisted proprietor just would for a situation where the vehicle is in the genuine belonging and control of the hirer not be legitimate to secure of obligation in the event of a mishap. The risk of the 'proprietor' is vicarious for the misdeed submitted by its representative over the span of his business and it would be an issue of reality for each situation as to on whom can vicarious

obligation be attached on account of a mishap. For this situation, Shri Sanjay Kumar, the proprietor of the transport couldn't utilize the transport on the specific course for which he had no grant and he in truth was not employing the transport on that course. The administrations of the driver were moved alongside unlimited authority to RSRTC, under whose headings, directions and order the driver was to employ or not to handle the disastrous transport on the critical day. The travelers were being conveyed by RSRTC on getting admission from them. Shri Sanjay Kumar was in this manner not worried about the travelers going in that transport on the specific course on installment of passage to RSRTC. Driver of the transport, despite the fact that a worker of the proprietor, was at the important time playing out his obligations under the request and order of the conductor of RSRTC for activity of the transport. So far as the travelers of the doomed transport are concerned, their privity of agreement was uniquely with the RSRTC to whom they had paid the admission for going in that transport and their wellbeing in this manner turned into the obligation of the RSRTC while going in the transport. They had no privity of agreement with Shri Sanjay Kumar, the proprietor of the transport by any stretch of the imagination. Had it been a case just of move of administrations of the driver and not of move of control of the driver from the proprietor to RSRTC, the issue may have been fairly extraordinary. However, on realities for this situation and taking into account Conditions 4 to 7 of the understanding (supra), the RSRTC must be held to be vicariously at risk for the misdeed submitted by the driver while handling the transport under agreement of the RSRTC. The overall recommendation of law and the assumption emerging consequently that a business, that is, the individual who has the option to recruit and fire the representative, is commonly capable vicariously for the misdeed submitted by the employee worried throughout his work and inside the extent of his position, is a rebuttable presumption. "Connected bids as the inquiry extended in these requests was neither straightforwardly nor generously in issue, in Kailash Nath's case [Rajasthan State Road Transport Corporation v. Kailash Nath Kothari(1997) 7 SCC 481]. In this manner, reference to the equivalent may not be of much assistance to us. Truly, in the said case, this Court was managing respect to before meaning of "proprietor" as found in Section 2(19) of the old Act."

Relevant Sections

Section 2(30) of motor vehicle act 1989 - any person on whose behalf motor vehicle has been registered. If a person is minor, or guardian of a minor in relation subjected to agreement or hire purchase or any person on whose possession a vehicle is.

Section 2(19) of motor vehicle act 1939 – any person on whose possession a vehicle is minor, guardian of a minor subjected to any agreement of hire and purchase, any person who is under such agreement.

Section 146 of motor vehicle act 1989- Need for protection against outsider danger.

No individual will use, aside from as a traveler, or cause or permit some other individual to utilize, an engine vehicle in a public spot, except if there is in power according to the utilization of the vehicle by that individual or that other individual, all things considered, an approach of protection consenting to the prerequisites of this Chapter.

Clarification - An individual driving an engine vehicle only as a paid worker, while there is in power according to the utilization of the vehicle no such strategy as is required by this sub-area, will not be esteemed to act in contradiction of the sub-segment except if he knows or has motivation to accept that there is no such approach in power.

Sub-segment (1) will not matter to any vehicle possessed by the Central Government or a State Government and utilized for Government purposes detached with any business undertaking.

The suitable Government may, by request, excluded from the activity of sub-area (1) any vehicle claimed by any of the accompanying specialists, specifically:-

The Central Government or a State Government, if the vehicle is utilized for Government purposes associated with any business endeavor; Any nearby power; Any State transport undertaking: Given that no such request will be made corresponding to any such position except if a store has been built up and is kept up by that expert as per the standards made for that benefit under this Act for meeting any risk emerging out of the utilization of any vehicle of that power which that power or any individual in its work may cause to outsiders.

Clarification.- - For the motivations behind this sub-segment, "proper Government" signifies the Central Government or a State Government, all things considered, and Comparable to any partnership or organization possessed by the Central Government or any State Government, implies the Central Government or that State Government;

Comparable to any partnership or organization possessed by the Central Government and at least one State Governments, implies the Central Government;

Corresponding to some other State transport undertaking or any neighborhood authority, implies that Government which has power over that endeavor or authority.

Special leave petition under Article 136 of Indian constitution-

The Supreme Court may, in its preference accord special leave from any judgment, decree, sentence or any determination which is made by any court or tribunal. It does not apply to any judgment or sentence or decree passed by tribunal of armed forces.

Order-XXXIII of civil procedural code- Subject to the accompanying arrangements, any suit might be established by a 50indigent individual.

Clarification I-An individual is a poor individual,-

(a) in the event that he isn't equipped with adequate methods (other than property absolved from connection in execution of an announcement and the topic of the suit) to empower him to pay the expense endorsed by law for the plaint in such suit, or

(b) where no such charge is recommended, in the event that he isn't qualified for property worth 1,000 rupees other than the property excluded from connection in execution of a declaration, and the topic of the suit.

Clarification II - Any property which is procured by an individual after the introduction of his application for consent to sue as a needy individual, and before the choice of the application, will be considered in considering the inquiry whether the candidate is a destitute individual.

Clarification III - Where the offended party sues in a delegate limit, the inquiry whether he is an impoverished individual will be resolved regarding the methods controlled by him in such limit.

Section 165- A State Government may, by notice in the Official Gazette, establish at least one Motor Accidents Claims Tribunals (in the future in this Chapter alluded to as Claims Tribunal) for such zone as might be indicated in the notice to mediate upon claims for remuneration in regard of mishaps including the passing of, or substantial injury to, people emerging out of the utilization of engine vehicles, or harms to any property of an outsider so emerging, or both.

Clarification - For the expulsion of questions, it is thus proclaimed that the articulation "claims for pay in regard of mishaps including the demise of or substantial injury to people emerging out of the utilization of engine vehicles" incorporates claims for remuneration under area 140.

A Claims Tribunal will comprise of such number of individuals as the State Government may think fit to designate and where it comprises of at least two individuals, one of them will be delegated as the Chairman thereof.

An individual will not be equipped for arrangement as an individual from a Claims Tribunal except if he-

Is, or has been, a Judge of a High Court, or

Is, or has been, a District Judge, or

Is equipped for arrangement as a Judge of a High Court.

Where at least two Claims Tribunals are established for any zone, the State Government, may by broad or uncommon request, direct the conveyance of business among them.

Section169- In holding any request under section168, the Claims Tribunal may, subject to any standards that might be made for this sake, follow such outline system as it might suspect fit.

The Claims Tribunal will have all the forces of a Civil Court to make proof on vow and of upholding the participation of witnesses and of convincing the disclosure and creation of archives and material articles and for such different purposes as might be endorsed; and the Claims Tribunal will be esteemed to be a Civil Court for all the motivations behind area 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. (2 of 1974.)

Subject to any standards that might be made for this benefit, the Claims Tribunal may, to settle upon any case for remuneration, pick at least one people having exceptional information on any issue applicable to the request to help it in holding the request.

Section168- On receipt of an application for remuneration made under area 166, the Claims Tribunal will, in the wake of pulling out of the application to the backup plan and subsequent to giving the gatherings (counting the guarantor) a chance of being heard, hold an investigation into the case or, by and large, every one of the cases and, subject to the arrangements of segment 162 may make an honor deciding the measure of pay which appears to it to be simply and

indicating the individual or people to whom pay will be paid and in making the honor the Claims Tribunal will determine the sum which will be paid by the safety net provider or proprietor or driver of the vehicle engaged with the mishap or by all or any of them, all things considered:

Given that where such application makes a case for remuneration under segment 140 in regard of the demise or perpetual disablement of any individual, such case and whatever other case (regardless of whether made in such application or something else) for pay in regard of such passing or lasting disablement will be discarded as per the arrangements of Chapter X.

The Claims Tribunal will orchestrate to convey duplicates of the honor to the gatherings concerned quickly and regardless inside a time of fifteen days from the date of the honor.

At the point when an honor is made under this segment, the individual who is needed to pay any sum as far as such honor will, inside thirty days of the date of reporting the honor by the Claims Tribunal, store the whole sum granted in such way as the Claims Tribunal may coordinate.

Section 166- Application for compensation.

An application for remuneration emerging out of a mishap of the nature indicated in sub-segment (1) of area 165 might be made-

By the individual who has continued the injury; or By the proprietor of the property; or Where passing has come about because of the mishap, by all or any of the lawful delegates of the perished; or By any specialist properly approved by the individual harmed or all or any of the lawful agents of the perished, all things considered:

Given that where all the lawful delegates of the perished have not participated in any such application for pay, the application will be made for or to help all the lawful agents of the expired and the lawful agents who have not all that joined, will be pixie leaded as respondents to the application.

Each application under sub-segment (1) will be made to the Claims Tribunal having locale over the zone in which the mishap happened, and will be in such structure and will contain such points of interest as might be recommended:

Given that where any case to remuneration under area 140 is made in such application, the application will contain a different articulation with that impact preceding the mark of the candidate.

No application for such pay will be engaged except if it is made inside a half year of the event of the mishap: Given that the Claims Tribunal may engage the application after the expiry of the said time of a half year yet not later than a year, in the event that it is fulfilled that the candidate was forestalled by adequate reason from making the application in time.

Where a cop has recorded a duplicate of the report with respect to a mishap to a Claims Tribunal under this Act, the Claims Tribunal may, in the event that it thinks essential so to do, treat the report as though it were an application for compensation under this Act.

Section 162- refund in specific instances of remuneration paid under section 161.

The installment of remuneration in regard of the demise of, or egregious hurt to, any individual under area 161 will be dependent upon the condition that if any pay (in the future in this sub-segment alluded to as the other pay) or other sum in lieu of or by method of fulfillment of a case for pay is granted or offered in appreciation of such passing or deplorable hurt under some other arrangement of this Act or some other law or in any case such a large amount of the other pay or other sum previously mentioned as is equivalent to the pay paid under segment 161 will be discounted to the safety net provider.

Before granting pay in regard of a mishap including the demise of, or real injury to, any individual emerging out of the utilization of an engine vehicle or engine vehicles under any arrangement of this Act (other than area 161) or some other law, the council, court or other position granting such pay will confirm concerning whether in regard of such passing or real injury remuneration has just been paid under segment 161 or an application for installment of pay is forthcoming under that part, and such court, court or other authority will,-

In the event that pay has just been paid under area 161, direct the individual at risk to pay the pay granted by it to discount to the safety net provider, so much thereof as is needed to be discounted as per the arrangements of sub-segment (1);

if an application for installment of remuneration is forthcoming under segment 161 forward the points of interest regarding the pay granted by it to the safety net provider.

Clarification - For the motivations behind this sub-area, an application for pay under segment 161 will be esteemed to be forthcoming -

In the event that such application has been dismissed, till the date of the dismissal of the application, and in some other case, till the date of installment of remuneration in compatibility of the application.

Section 140- Risk to pay remuneration in specific cases on the principal of no fault.

Where passing or lasting disablement of any individual has come about because of a mishap emerging out of the utilization of an engine vehicle or engine vehicles, the proprietor of the vehicle will, or, all things considered, the proprietors of the vehicles will, together and severally, be obligated to offer pay in appreciation of such demise or disablement as per the arrangements of this segment.

The measure of remuneration which will be payable under sub-segment (1) in regard of the demise of any individual will be a fixed total of 25 thousand rupees and the measure of pay payable under that sub-area in regard of the lasting disablement of any individual will be a fixed total of twelve thousand rupees.

In any case for pay under sub-area (1), the inquirer will not be needed to argue and build up that the passing or lasting disablement in regard of which the case has been made was because of any improper demonstration, disregard or default of the proprietor or proprietors of the vehicle or vehicles concerned or of some other individual.

A case for pay under sub-segment (1) will not be crushed by reason of any unfair demonstration, disregard or default of the individual in regard of whose passing or perpetual disablement the case has been made nor will the quantum of remuneration recoverable in regard of such demise or lasting disablement be decreased based on the portion of such individual in the duty regarding such passing or perpetual disablement.

Section 167- Alternative with respect to claims for pay in specific cases.

Despite anything contained in the Workmen's Compensation Act, (8 of 1923.) where the demise of, or substantial injury to, any individual offers ascend to a case for pay under this Act and furthermore under the Workmen's Compensation Act, 1923, the individual qualified for

remuneration may without bias to the arrangements of Chapter X guarantee such pay under both of those Acts yet not under both.

Section 195- Burden of least fine in specific situations.

Whoever having been sentenced for an offense under this Act or the principles made thereunder submits a comparable offense on a second or resulting event inside three years of the commission of the past offense, no court will, aside from motivations to be recorded by it recorded as a hard copy, force on him a fine of short of what one-fourth of the most extreme measure of the fine outlandish for such offense.

Nothing in sub-segment (1) will be interpreted as limiting the intensity of the court from granting such detainment as it considers vital in the conditions of the case not surpassing the most extreme determined in this Act in regard of that offense.

Section 170- Impleading guarantor in specific cases.

Where over the span of any request, the Claims Tribunal is fulfilled that-

There is conspiracy between the individual creation the case and the individual against whom the case is made, or the individual against whom the case is made has neglected to challenge the case, it might, for motivations to be recorded as a hard copy, direct that the backup plan who might be obligated in regard of such case, will be pixie leaded as involved with the procedure and the safety net provider so devil leaded will immediately have, without bias to the arrangements contained in sub-segment (2) of section 149, the option to challenge the case on all or any of the grounds that are accessible to the individual against whom the case has been made.

Section 171- Grant of interest where any case is permitted.

Where any Claims Tribunal permits a case for remuneration made under this Act, such Tribunal may guide that notwithstanding the measure of pay straightforward intrigue will likewise be paid at such rate and from such date not sooner than the date of making the case as it might determine for this sake.

Claims Tribunal under Motor Vehicle Act, 1988

Motor accident claims tribunal (MACT) is established to restore civil courts in matters related to motor vehicle accidents. The main aim and objective of these tribunals are to get speedier and cheaper remedy to the victims of motor vehicle accidents. In a civil court when a suit is filed under motor vehicle act it is made on a payment of ad valorem fee. But under the provisions of this Act, an application made to tribunal without payment of ad valorem fee. There are no new provisions of Liability under motor vehicle act; it is still grounded on law of torts and enactments

Establishment and composition of claims tribunal

Section 165 of motor vehicle act 1988 authorizes the state government to constitute tribunals to examine upon claims for compensation arising out of motor vehicle accidents which results to injury or death to any person or destroying property of third parties.

A state government by notification in the official notice board initiates motor accident claims tribunal for such areas which are specified under the notification for the purpose of determining in claims of compensation due to accidents involving deaths, bodily injuries to persons coming out of motor vehicles or any property destroyed of third party.

A claim tribunal may constitute a number of members as appointed by state government. It consists of two members, one of which is appointed as the chairmen. State government may by special or general order make distribution of business among two or more claim tribunals, constituted in the same area. The qualification for member appointed for claim tribunals shall be, he is or has been a judge of high court or has been a judge in district court.

Setting up of claim tribunals

A state government by notifying in the official notice board shall initiate one or more tribunals in a area specified by official gazette.

In case of **Minu B Mehta v. Balkrishna**¹ the hon'ble Supreme Court held that it is decision of state to make tribunals for definite areas and power of making tribunals are optional for state.

¹ Minu B Mehta v. Balkrishna A.I.R 1977 SC 1248

When in any area the claims tribunal has been already found by state, in that case no civil court has any jurisdiction and right to entertain any issues related to compensation in case of accidents in motor vehicle and no right of injunctions on any award passed by claim tribunals.

I. Who can file a claim?

The application for compensation has to be filed by the owner of a property which is damaged. It is also suggested that in the case of death occurred to any person, the legal representative can claim for compensation completely.

1. Anybody who is harmed in accidents on the roads, can themselves file for compensation or indemnify or through their advocates.
2. People who did not attain the age of 18 years cannot file for compensation by their own; they have to go through their advocates.
3. Death occurred to legal heirs of person can alternatively claim compensation through their advocates.

II. Who can reports in MACT IN case of accident?

Any person who aggrieved in a case of personnel injury or through advocate can report to MACT in case of accident. In case of minor who is below the age of 18 years can report to MACT through advocates. In case of death of a legal air claim under M A C T is made or done through advocates. In case of the property destruction the owner of the vehicle.

III. Documents which are required to file a claim along with application are:

1. Copy of FIR lodged in case of said accident
2. Postmortem copy
3. In a case of death any copy of identity of claimant and of diseased.
4. Death reports or panchnama copy, in case of death
5. While treatment, all the documents of original bills of expenses occurred.
6. If necessary, all the documents of educational qualifications of deceased.
7. In a case of injury, the documents in case of any disability occurs.
8. The corroboration of income of deceased or injured.
9. Official papers about the age of persons.

10. Any cover note issued by insurance policy, in case of third party insurance
11. Any documents or evidence which shows the relationship between claimants and deceased.
12. RTO certificate of deceased.
13. Photograph- passport Sized
14. Court fee stamp

Jurisdiction to Entertain claim by Indigent Persons

Tribunals has outwit as civil courts for the purpose of jurisdiction. It carries in the same manner by taking evidence on oath and taking attendance of witnesses and to discover and compel documents presented in the court and for any determination prescribed under section 169(2) of the motor vehicle Act. No reference has been made in Order 33 of civil procedure code which deals with suits on behalf of indigent persons.

In the case of state of Haryana v. Darshana Devi²

The hon'ble Supreme Court constitutionally challenged that no poor person is forced to pay court fee and exempted from the provisions of Order XXXIII of civil procedure code. So state of Haryana has mindless of mandate of equal justice to the indigent persons.

Tribunal cannot Entertain Application for claims in case of Hit and Run Accident

A plain perusing of Rule 20 of the Solatium Scheme, 1989, clarifies that an application looking for pay under the Scheme if there should arise an occurrence of quick hit and run accidents mishaps is to be recorded in Form 1 preceding the Claims Enquiry Officer of the Sub-Division in which the mishap or accident had occurred. Consequently, under the plan, a specific discussion has been accommodated; guaranteeing compensation if there should be an occurrence of hit. Also, run engine mishaps. This being the position, inquirers asserting remuneration in instances of death or grievous hurt emerging under the hit and run accidents or mishaps can't file application before the Claims Tribunal, and the Cases Tribunal having no jurisdiction in this regards, the request for the Claims Court dismissing the objection taken by the insurer as respects the practicality of the application can't be permitted to stand or to be allowed.

² In case of state of Haryana v. Darshana Devi 1979 ACJ 205 (SC)

Alternative Regarding Claims for Compensation in Certain

Cases

Section 168 of the Act gives that the Claims Tribunal will convey the duplicates of the honor to the gatherings inside fifteen days of the honor and that the individual against whom the honor is made will store the sum granted inside thirty long stretches of declaration of the honor.

On receipt of an application for pay made under segment 166, the Cases Tribunal will, subsequent to pulling out of the application to the safety net provider and Subsequent to giving the gatherings (counting the safety net provider) a chance of being heard, Hold an investigation into the case or, all things considered, every one of the cases and, Subject to the arrangements of section 162 may make an honor deciding the measure of pay which appears to it to be simply and determining the individual or then again people to whom pay will be paid and in making the honor the Cases Tribunal will determine the sum which will be paid by the backup plan or Proprietor or driver of the vehicle engaged with the mishap or by all or any of them, by and large Given that where such application makes a case for pay under section 140 in regard of the passing or lasting disablement of any individual, such guarantee and whatever other case (regardless of whether made in such application or something else) for remuneration in regard of such demise or perpetual disablement will be discarded as per the arrangements of Chapter X The Claims court will organize to convey duplicates of the honor to the gatherings Concerned speedily and regardless inside a time of fifteen days from the Date of the award

Section 167 of the Act sets out that when guarantee emerges under this Act and Under the remuneration just under both of these Acts and not under both the Act. Despite anything contained in the Workmen's Compensation Act, 1923 where the demise of, or substantial injury to, any individual offers ascend to a case for remuneration under this Act and furthermore under the Workmen's Compensation Act, 1923, the individual qualified for remuneration may without bias to the arrangements of Chapter X guarantee such remuneration under both of those Acts yet not under both.

In *New India Assurance Co. Ltd. v. Mehebulanbibi*³ the choice for the situation might be taken as an exemption to the arrangement been deputed by his boss to convey a harmed transformer in a work vehicle, had fallen into a dump. The expired, squeezed under the harmed transformer

³ 2003 2 TAC 639 (guj) DB

in the dump surrendered to his wounds in the medical clinic. Passing of the perished had emerged out of and in the course of work since the perished was representative of the power board and passed on while working. Since the mishap had happened due to carelessness of the driver of the farm hauler, which had a place with an alternate individual, it was held by the Division Bench that the petitioners, in the particular situation of the case, were qualified for guarantee remuneration under the Motor Vehicles Act just as under the Workmen' compensation act.

Award of claim tribunal

At the point when an honor is made under this part, the individual who is needed to pay any sum regarding such honor will, inside thirty days of the date of declaring the honor by the Claims Tribunal, store the whole sum granted in such way as the Claims Tribunal may coordinate. In *Ranu Bala Paul v. Bani Chakraborty*⁴ it was held that an honor under Engine Vehicles Act, 1988 can't be compared either with a common or a lawbreaker case, and the court while granting pay isn't required to go into amenities or details however should receive a wide and a liberal methodology.

In New India Assurance Co. Ltd. v. G. Lakshmi⁵

it was held that the court is required to grant a pay which gives off an impression of being simply, it follows that in meriting cases, the council may not be limited by the figure expressed in the case appeal to and can grant a sum significantly more than what has been guaranteed.

Procedures and power of Claims Tribunal

Section 169 of the Act sets out the technique to be trailed by the Claims Court in setting claims remuneration and the forces of the Claims council. In holding any request under area 168, the Claims Tribunal may, subject to any standards that might be made for this benefit, follow such outline methods as it thinks fit.

The Claims Tribunal will have all the forces of a Civil Court with the end goal of making proof on vow and of implementing the participation of witnesses and of convincing the revelation and creation of records and material items and for such different purposes as might be endorsed;

⁴ 1999 ACJ 634 (gauhati)

⁵ 1999 ACJ 1068 (AP)

and the Claims Tribunal will be regarded to be a Civil Court for all the reasons for segment 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Subject to any guidelines that might be made for this benefit, the Claims Tribunal may, to arbitrate upon any case for remuneration, pick one or more people having exceptional information on any issue pertinent to the request to help it in holding the request. The methodology to be followed at the Claims Tribunal is as under:

I. Application for Compensation

Initial step at claims council is application for pay compensation by either the Victim of motor vehicle accidents vehicle mishap or his lawful beneficiaries or lawful agent. Application for Compensation has been concentrated in detail before in this section under para C with heading - Application for Compensation.

II. Correction of Pleadings: Amendment for Enhancement of Claim Sum

In *Madan Lal v. Chimman Singh's*⁶ Case, it was held by the High Court that correction in pleadings can't be declined on ground of uncertainty about truth of averments in pleadings. Truth or in any case of averments in pleadings must be determined on premise of proof. In a case by widow for her and her minor child, the widow passed on during pendency of procedures and the child having become significant south a few correction in guarantee request. It wasn't right on some portion of Tribunal to have refused alteration holding that there is no arrangement for change and questioning bonafides or contention made in application for change. In request, the amendment is permitted on costs. In **United India Insurance Co. v. Shaik Saibaqtualla**⁷ it was held by the High Court that there is no arrangement in law for alteration after choice of guarantee. Ensuing occasions can be no reason for looking for alteration in unique guarantee after its choice.

An amendment in claim petition for improvement of measure of pay compensation can be looked for before the Tribunal yet not under the appellate court.

III. Notification, Summons, Processes and Service

⁶ 1991 (1) ACC 265 (MP)

⁷ 1992 ACJ 858 (AP) DB

On receipt of guarantee application Claims court is compelled by a sense of honor to guarantee administration of request on proprietor and driver of the vehicle. Where a notification has been sent in normal course as additionally through Registered Post, AD, yet could not be served on one of the two proprietors and there was nothing to show that said proprietor was keeping away from administration or that petitioner had put forth attempts to give right location of said proprietor, it was held that condition for subbed administration through paper was not fulfilled. Case must be remanded after putting aside ex parte orders

In **Allanoor v. Dilip Singh**⁸ case it was held by the High Court that the case can't be excused by ascribing default in filling measure expense on part of petitioner for subbed administration on proprietor. It was additionally held that summons on proprietor and driver of vehicle can be served on counsel speaking to driver and proprietor in criminal court for reason for bail.

IV. Composed Statement

The arrangement of Rule 1 of Order 1 Civil Procedure Code sets out that composed explanation ought to be recorded inside 90 days from date of administration is index and court can concede authorization to document composed proclamation even past time of 90 days if a case in such manner is made out. This arrangement doesn't explicitly remove the intensity of court to record composed articulation even after time of 90 days.

In **Oriental Insurance Co. Ltd. v. Sanjay Kumar**⁹ case, the Hon'ble High Court put aside the request for striking off protection in light of a legitimate concern for equity.

In **New India Assurance Co. Ltd. v. Bimla's** case it was held by the High Court that simple confirmation of driver in his composed explanation of some of conflicts brought up in the case appeal can't add up to conspiracy of driver with the petitioner. With the end goal of conspiracy, there ought to have been an issue and for confining of issue, there ought to have been explicit arguing. Nonappearance of pleadings in composed explanation that the states of protection strategy were disregarded coming about in not projecting any issue on the point, blocks guarantor to meet such complaint

Execution of award of claims tribunal

⁸ 1998 ACJ 136 (RAJ)

⁹ 2007 ACJ 222 (P&H)

Executing court isn't enabled to reexamine any part of grant anew however, is needed to execute it as passed by preliminary court. Execution of grant if taken out following twelve years isn't allowable. The honor if not executed inside twelve years gets defective and unenforceable. The executing court while upholding the honor can't go past the fundamental grant. Where the culpable vehicle was the restrictive property of the U.P. State Road transport Corporation, the Corporation would be at risk for installment of remuneration qua the mishap. Any resulting allotment of the advantages of the enterprise between the territory of U.P. furthermore, State of Uttaranchal can be no ground to hinder execution of the honor to antagonistically influences the privileges of the petitioner. Use of the partnership for Impleading Uttaranchal State Road Transport Corporation was held appropriately dismissed by the executing court. Ward of court to uphold its honor isn't restricted just a single technique, in particular issuance of endorsement to the authority for recuperation of the sum due under the honor as overdue debts of land income. The council groups characteristic ward to authorize its own honor as per the arrangements of the Code of Civil Procedure as relevant to execution of requests and pronouncements passed by a common court. At the point when court has such characteristic locale, the inquirer can't be approached to follow another method and the court is to execute the honor under Order 21, Rule 11 of Civil Procedure Code.

Impleadation of insurer in certain cases

Section 170 of the Act accommodates impleadation of guarantor in specific cases. Where over the span of any request, the Claims Tribunal is fulfilled that there is agreement between the individual creation the case and the individual against whom the guarantee is made or the people against whom the case is made has neglected to challenge the case, it might, for motivations to be recorded as a hard copy, direct that the safety net provider who might be at risk in regard of such case, will be impleaded as a gathering to the procedure and the safety net provider so impleaded will immediately have, without bias to the arrangements contained in sub-area (2) of segment 149, the privilege to challenge the case on all or any of the grounds that are accessible to the individual against whom the case has been made.

In **Manful v. Mehmood**¹⁰ it was held that severe guidelines of proof are definitely not relevant to procedures before the Tribunal and it is to be at first sight built up that mishap occurred with an motor vehicle and injury caused or come about into death of the person in question.

¹⁰ 2005 (1) ACC 765

section 170 of the Act has likewise mulled over an extra circumstance wherein the safety net provider must be essentially impleaded and for that an event emerges just when the Claims Tribunal gets fulfilled that the petitioner and the proprietor of the vehicle are in plot or where the proprietor or driver has not challenged the case and as respects the previous, it is surprising for the council to smell any such agreement and it is just the safety net provider who needs to make such application and fulfill the court by illustrating proof that there has been an agreement between the petitioner and the safeguarded proprietor of the vehicle. On the court being fulfilled, it will permit the safety net provider to assume control over the whole protection, raise all such requests as be accessible to the proprietor safeguarded, and such requests will, at that point be notwithstanding the legal protections accessible to or effectively taken by the safety net provider under area 149 (2).

In *National Insurance Co. Ltd. v. Anjana Shyami*¹¹ it was held that except if court has allowed the back up plan to challenge the case on all or some other grounds that are accessible to people against whom the case had been made, application under section 170 isn't viable.

Award of compensatory costs in certain cases

Grant of Interest Where Any Claim is Allowed Area 171 of the Act engages the Claims Tribunal to arrange that straightforward enthusiasm at such rates as it might suspect fit will likewise be paid alongside the honor of remuneration.

Where any Claims Tribunal permits a case for remuneration made under this Act, such Tribunal may guide that notwithstanding the measure of remuneration straightforward intrigue will likewise be paid at such rate and from such date not sooner than the date of making the case as it might determine for this sake Award of Compensatory Costs in Certain Cases section 172 of the Act looks to enable the Claims Tribunal to grant uncommon compensatory costs where in specific cases it is discovered that there has been distortion of case or vexatious to cases or protection.

Any Claims Tribunal settling upon any case for pay under this Act, may regardless where it is fulfilled for motivations to be recorded by it in composing that the approach of protection is void on the ground that it was acquired by portrayal of certainty which was bogus in any material specific or any gathering or back up plan has advanced a bogus or vexatious case or

¹¹ 2001 (2) AJR 523

protection such Tribunal may make a request for the installment, by the gathering who is liable of distortion or on the other hand by whom such case or safeguard has been advanced of uncommon expenses by way of pay to the guarantor or, all things considered, to the gathering against whom such case or guard has been advanced No Claims Tribunal Shall pass an order for special costs under sub section (1) of section 172 for any amount exceeding one thousand rupees. No person or insurer against whom an order has been made under this section shall, by reason thereof be exempted from any criminal liability in respect of such mis-representation, claim or defense as is referred to in sub-section (1) of section 172 Any amount awarded by way of compensation under this section in respect of any mis-representation, claim or defense, shall be taken into account in any subsequent suit for damages for compensation in respect of such misrepresentation, claim or defense.

Power of state government to make rules

Intensity of State Government to Make Rules are-

Section 176 of the Act gives upon the State Government to make rules for conveying into impact arrangements of statements 165 to 173. A State Government may make rules to convey into impact the arrangements of segments 165 to 174, and specifically, such guidelines may accommodate all or any of the accompanying issues, to be specific :-

- (a) the type of use for claims for pay and the specifics it may contain, and the charges, assuming any, to be offered in appreciation of such applications;
- (b) the technique to be trailed by a Claims Tribunal in holding a request under this Chapter;
- (c) the forces vested in a Civil Court which might be practiced by a Claims Court;
- (d) the structure and the way where and the charges (assuming any) on installment of which an allure might be favored against an honor of a Claims Tribunal; furthermore,
- (e) some other issue which is to be, or might be, endorsed

Insurer and No fault liability

In Bani Ram Das v. Public Insurance Co. Ltd¹²

¹² 2008 ACJ 538

It was held that the rule never positioned any risk on the backup plan to pay under no shortcoming. Obligation regardless of whether vehicle is secured under a substantial protection strategy since the rule plainly positioned that obligation on the proprietor to pay.

Conclusion

The current law of compensation for the Injuries endured in road accident including an motor vehicle is different from as the law as it started in the customary law courts of Great Britain.

Under the first law the bas of case for compensation was at fault. The courts granted compensation just when the driver was to blame. Consequently It was compulsory for the petitioner to compensate and set up that the vehicle required, at the hour of accident, was being driven rashly and Carelessly. The burden is on the petitioner and claim failed if the respondent had proved that there was abrupt disappointment of brake or the vehicle endured from some idle imperfection. The claimant was barely in a situation to rebut the litigant's proof on these matters. So as to move the burden law courts developed the principle of **res ipsa laquitur**, which means the thing or occasion justifies itself. By the use of this precept the courts assumed rash. Furthermore, careless driving where the realities were sufficiently articulates to prompt that end and conclusion.

In 1988 Act the provision of insurance is contained in Chapter XI. S. 146 falling in the Chapter prohibit use of a motor vehicle in a public place, except as a passenger, unless there is in force in relation to the use of the vehicle, a policy of insurance complying with the requirements of the chapter. Sub-Sections (2) and (3) provide for exemption from the requirement of insurance in Respect of vehicles owned by the Central Government, the State Government, Local authority and State Transport undertaking and the conditions subject to which exemption may be granted. Requirements of the policies and limits of insurer's liability are mentioned In S. 147. From the above it is seen that the list of persons liable to satisfy the claim swells to three- (1) the actual wrong doer (Chauffeur) , (2) the owner of the vehicle, and (3) the insurer.

Under this case the liability to pay compensation was came totally under insurance company as of the third party insurance. It was held that the compulsory insurance was made for the benefit sand for usefulness of the third party. Section 146 of this act also states that if any person using the vehicle independently does not require having a separate insurance policy and

the object behind this is to prevail social justice In view to this matter the appeal is allowed and amount awarded by MACT is only payable by insurance company

References

1. www.manupatra.com
2. www.legalserviceindia.com
3. www.ebc.com
4. www.lawjournal.com
5. www.sconline.com
6. www.ssrn.com
7. www.scobserver.com