

CHAPTER XI

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

145. Definitions. – In this Chapter, -

- (a) “authorized insurer” means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalization) Act, 1972, and any Government insurance fund authorized to do general insurance business under that Act,
- (b) “certificate of insurance” means a certificate issued by an authorized insurer in pursuance of sub-section (3) 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) “liability”, wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140;
- (d) “policy of insurance” includes “certificate of insurance”;
- (e) “property” includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile-stones;
- (f) “reciprocating country” means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter;
- (g) “third party” includes the Government.

Corresponding Law. – Section 145 corresponds to section 93 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 145 seeks to define certain words and expressions appearing in this Chapter.

146. Necessity for insurance against third party risk. – (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 :

⁸⁹ [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 (6 of 1991)].

Explanation. – A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy 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) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected 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 Government purposes connected with any commercial enterprise;
- (b) any local authority;
- (c) any State transport undertaking :

89. *Inserted by Act 54 of 1994, S. 45 (w.e.f. 14-11-1994).*

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 accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

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 & 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.

Corresponding Law. – Section 146 corresponds to section 94 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 146 speaks of the necessity for insurance against third party risk.

NOTES

Section contains a prohibition. – S. 146 contains a prohibition. It debars an owner from using a vehicle till he has obtained a policy in accordance with the requirements of Chap. XI of the 1988 Act. It does not give a right to an owner who has failed to comply with the provisions of law to claim indemnification from the insurance company in respect of the injury or death caused by his negligence to a third party: *Ram Chander v. Naresh Kumar* (1999) 2 Acc. C.C. 586 (P&H)(D.B.).

147. Requirement of policies and limits of liability. – (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 authorized 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

⁹⁰ [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place ;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required –

(i) to cover liability in respect of the death, arising out of and in the course of this employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

90. Substituted for "injury to any person" by Act 54 of 1994, S.46 (w.e.f. 14-11-1994).

- (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

Explanation. – For the removal of doubts, it is hereby declared 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) 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.

(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) where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed 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 in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any 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.

Corresponding Law. – Section 147 corresponds to section 95 of the Motor Vehicle Act, 1939.

Objects and Reasons. – Clause 147 lays down the requirements of the policies and the limit of liability in respect of passengers and persons other than passengers in relation to passenger vehicles and goods carriages.

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Scope – Requirements enjoined by section 147 in relation to use of particular vehicle. – S. 147 enjoins upon the insurer certain requirements in relation to the use of particular vehicle. They are: (1) the policy must specify the persons or class of persons who are insured with respect to their liability to third parties; (2) the policy must specify the extent of liability which must extend to the extents specified in sub-S. (2); and (3) the liability which may be incurred by the specified persons or class of persons in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle insured in a public place: Divisional Manager, New India Assurance Co. Ltd. v. Tumu Gurava Reddy (1998) 2 Acc. C.C. 732 (Andh. Pra.), affirmed in Divisional Manager, New India Assurance Co. Ltd. v. Tumu Gurava Reddy (2000) 2 Acc. C.C. 85: (1999) 5 An.L.T. 337: 2001 Acc.C.J. 543(Andh. Pra) (D.B).

It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle. Thus, where the deceased has boarded the lorry and paid an amount of Rs. 20 as transport charges and it was not proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods, it was held that the travelling with the goods itself does not entitle anyone to protection under S. 147 of the Motor Vehicles Act: National Insurance Co. Ltd. v. Cholleti Bharatmma (2008) 1 S.C.C. 423.

A right on the part of the Insurance Company not pay the amount of insurance would depend upon the facts and circumstances of each case. It is certain situation may be bound to pay the claim made by the third party; if the same is filed before a forum created under the Motor Vehicle Act. Bu defense may be held to be justified before a different forum (say the consumer forum established under the Consumer Protection Act, 1986) where the question raised is required to be considered in a different manner: United India Insurance Co. Ltd. v. Davinder Singh (2007) 8 S.C.C. 698.

Section has to be given wider, effective and practical meaning. – S. 147 is quite comprehensive in scope and meaning. I has to be given wider, effective and practical meaning so that the object of the Legislature which was faced with divergent views of various Courts of the country giving different interpretation to the provisions of S. 95 of the 1939 Act causing immense harm to many categories of persons by disentitling them from claiming compensation either from the insurer or the insured or both, in the facts and circumstances of the case, is given effect to. New provision, therefore, covers such kind of cases as well. The Legislature clearly intended that every policy of insurance is statutorily required to cover the risk of liability in respect of classes of persons relating to all types of vehicles without exception and with no defense to the insurance company disclaiming the liability with respect to particular class of persons or particular kind of vehicles: New India Assurance Co. v. Shakuntla Devi A.I.R. 1997 J.&K. 40: (1997) 2 T.A.C. 45(D.B).

Person specified in policy need not necessarily be a registered owner. – S. 147 deals with requirements of policies and limits of liability. In Cl. (b) of sub-S. (1) of S. 147, it is provided that in order to comply with the requirements of this Chapter, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-S. (2). This provision does not qualify that the person or classes of persons specified in the policy must be a registered owner: National Insurance Company Ltd. v. Ithoo Devi (1998) 1 Acc. C.C. 641: 1999 Acc.C.J. 615 (Him. Pra)(D.B.).

Time from which insurance policy to be operative – In absence of specific mention of time, policy becomes effective from previous midnight. – Should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following. However, in case there is mention of a specific time for its purchase then a special contract to the contrary comes into being and the policy would be effective from the mentioned time: New India Assurance Co. v. Bhagwati Devi (1999-2) 122 Punj.L.R. 294: (1998) 6 S.C.C. 534; Oriental Insurance Co. Ltd. v. Naravath Najiram (1999) 5 An.L.T. 673: (2000) 1 Acc. C.C. 460.

Where policy of insurance in respect of scooter was Act policy, in case of death of pillion rider, a gratuitous passenger, in accident, the Insurance Company would not be liable to pay compensation: General Manager, United Insurance Co. Ltd. v. M.Laxmi A.I.R. 2009 S.C. 626.

148. Validity of policies of insurance issued in reciprocating countries. – Where, in pursuance of an arrangement between India and any reciprocating country, the motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance in force in that country, then, notwithstanding anything contained in section 147 but subject to any rules which may be made under section 164, such policy of insurance shall be effective throughout the route or area in respect of which, the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.

Corresponding Law. – Section 148 corresponds to section 95 – A, of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 148 provides for the validity of policies of insurance issued in a reciprocating country in respect of motor vehicle of the reciprocating country operating on any route common to the two countries.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. – (1) if, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is requirement to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) ⁹¹ [or under the provisions of section 163 – A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :-

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

91. Inserted by Act 54 of 1994, S. 47 (w.e.f. 14-11-1994).

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India :

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section, the expression “material fact” and “material particular” means, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression “liability covered by the terms of the policy” means liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation. – For the purposes of this section, “Claims Tribunal” means a Claims Tribunal constituted under section 165 and “award” means an award made by that Tribunal under section 168.

Corresponding Law. - Section 149 corresponds to section 96 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 149 lays down that it is the duty of the insurers to satisfy judgments against persons insured in respect of third party risk.

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In case of no fault liability. – Once it is an Act policy, non-payment of any separate premium by the insured for no fault liability is of no consequence. It is for the insurer to collect the premium. In any view of the matter, the liability is of the insured to pay the compensation under no fault liability being absolute and when the insured suffered a decree in regard thereto, the insurer shall indemnify the owner in accordance with the provisions of S. 149 of the Act regardless of the fact whether it is fault liability or no fault liability: Divisional Manager, New India Assurance Company, Ltd. v. Tumu Gurava Reddy (1999) 6 Acc. A.L.D. 256: (2000) 2 Acc. C.C. 85: (Andh. Pra.) (D.B.)

Where vehicle was being driven by minor at time of accident whereby a third person died, the Insurance company gets absolved of its liability: United India Insurance Co. Ltd. v. Rakesh Kumar Arora A.I.R. 2009 S.C. 24.

150. Rights of third parties against insurers on insolvency of the insured. – (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter, a person is insured against liabilities which he may incur to third parties, then -

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to the company or of a receiver or manager of the company’s business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge, if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor’s rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

Corresponding Law. – Section 150 corresponds to section 97 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 150 provides that in the event of the insured becoming insolvent any liability incurred by the insured person and his rights against the insurer will be transferred to and vest in the third party to whom the liability was so incurred.

151. Duty to give information as to insurance. – (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 147 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect hereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provision of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to an vested in him by section 150, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub- section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty so imposed to be inspected and copies thereof to be taken.

Corresponding Law. – Section 151 corresponds to section 98 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 151 prescribes that it is the duty of the insured to give information relating to the insurance on demand by or on behalf of the person making the claim for compensation.

152. Settlement between insurers and insured persons. – (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purpose of this Chapter has become insolvent, or where, if such insured person is a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding-up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Corresponding Law. - Section 152 corresponds to section 99 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 152 lays down that any settlement made by the insurer in respect of any claim which may be made by the third party will not be valid unless the third party is a party to the claim.

153. Saving in respect of section 150, 151 and 152. – (1) For the purposes of section 150, 151 and 152 a reference to “liabilities to third parties” in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of section 150, 151 and 152 shall not apply where a company is wound-up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

Corresponding Law. – Section 153 corresponds to section 100 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 153 lays down that the liability of the insurer will be only in respect of that particular policy alone and not in respect of any other policy of insurance.

154. Insolvency of insured persons not to affect liability of insured or claims by third parties. – Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 150 shall, notwithstanding anything contained in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 147; but nothing in this section shall affect any rights against the insurer conferred under the provisions of section 150, 151 and 152 on the person to whom the liability was incurred.

Corresponding Law. – Section 154 corresponds to section 101 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 154 provides that the insolvency of the insured will not affect

the liability of the insured or affect the claims of third parties or the rights against the insurer.

155. Effect of death on certain causes of action. – Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925) of the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Corresponding Law. – Section 155 corresponds to section 102 of the Motor Vehicle Act, 1939.

Objects and Reasons. – Clause 155 makes it clear that in the event of the death of the insured after the happening of an accident in which his motor vehicle was involved, the right of third parties will not be barred against the insured or his estate.

156. Effect of certificate of insurance. – When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then -

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

Corresponding Law. – Section 156 corresponds to section 103 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 156 provides that where the insurer has issued a certificate of insurance, and the policy of insurance has not been issued, then the policy to be issued be deemed to be in terms conforming in all respects to the particulars mentioned in the certificate of insurance.

157. 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.

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[*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.

92. *Inserted by Act 54 of 1994, S. 48 (w.e.f. 14-11-1994)*

Corresponding Law. – Section 157 corresponds to section 103-A of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 157 lays down that when the certificate of registration is transferred from one person to another, then the policy of insurance in respect of that vehicle is also deemed to have been transferred to that other person from the date on which the ownership of the motor vehicle stands transferred.

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Compensation could not be denied because policy had not been transferred. – Both under the old as well as the new Acts, the Legislature was anxious to protect the third party's (victim's) interest; what was implicit in the old Act has been made explicit in the new Act, presumable because different High Courts had been taking conflicting views. Thus, a victim or his legal representative cannot be denied compensation by the insurer merely because the policy had not been transferred in the name of the transferee of the vehicle. However, the third party here will not include transferee whose transferor has not followed procedure for transfer of policy: *G. Govindan v. New India Assurance Co. Ltd.* A.I.R. 1999 S.C. 1398: (1999) 97 Comp. Cas. 443. Where no intimation was given by transferee to insurance company. – Where no intimation as required under S. 157 of the 1988 Act had been given by the transferee to the insurance company, held, in such a situation, it could not be presumed that the liability to indemnify the owner stood transferred from transferor to the transferee. Thus, the Tribunal did not err in holding that the compensation shall be payable by the owner of the vehicle, i.e., transferee and not by the insurance company: *Ram Chander v. Naesh Kumar* (1999) 2 Acc. C.C. 586 (P. & H.)(D.B).

158. Production of certain certificates, licence and permit in certain cases. – (1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorized in this behalf by the State Government, produce -

(a) the certificate of insurance;

(b) the certificate of registration;

(c) the driving license; and

(d) in the case of a transport vehicle also the certificate of fitness referred to in section 56 and the permit, relating to the use of the vehicle.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificate, driving licence and permit referred to in sub-section (1) to a police officer, he shall produce the said certificates, licence and permit at the police station at which he makes the report required by section 134.

(3) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer-in-charge of the police station at which he reported the accident :

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.

(4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 146 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(5) In this section, the expression “produce his certificate of insurance” means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 146.

⁹³[(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer].

Corresponding Law. - Section 158 corresponds to section 106 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 158 makes it compulsory on the part of the driver of the vehicle involved in accident, to produce the certificate of registration and insurance, the certificate of fitness and permit and driving licence without delay. It also provides that the police officer who makes a report of accident shall send a copy of the report to the Accident Claims Tribunal.

159. Production of certificate of insurance on application for authority to use vehicle. – A State Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either -

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 146 does not apply.

Corresponding Law. – Section 159 corresponds to section 107 of the Motor Vehicle Act, 1939.

Objects and Reasons. – Clause 159 empowers the State Government to make rules to require production of certificate of insurance of a motor vehicle at the time of payment of taxes and in the case of transport vehicle to have a valid certificate of insurance before the vehicle is put on public road after obtaining a permit.

93. Sub.-S. (6) substituted by Act 54 of 1994, S.49 (w.e.f. 14-11-1994). Prior to its substitution, sub-S. (6) read as under :-

“(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or a report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same also to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer.”

160. Duty to furnish particulars of vehicle involved in accident.— A registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any, damaged in such form and within such time as the Central Government may prescribe.

Corresponding Law. - Section 160 corresponds to section 109 of the Motor Vehicles Act, 1939.

Objects and Reasons.- Clause 160 lays down that it is the duty of the police officer registering accident case and the registering authority to furnish to the person who alleges that he is entitled to claim compensation all such particulars in such form and within such time as the Central Government may prescribe.

161. Special provisions as to compensation in case of hit and run motor accident. – (1) For the purposes of this section, section 162 and section 163 -

(a) “grievous hurt” shall have the same meaning as in the Indian Penal Code, 1860 (45 of 1860);

(b) “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;

(c) “scheme” means the scheme framed under section 163.

(2) Notwithstanding anything contained in the General Insurance Business (Nationalization) 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.

(3) 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 ⁹⁴ [twenty-five thousand rupees];

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of ⁹⁵ [twelve thousand and five hundred rupees].

(4) The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.

Corresponding Law. – Section 161 corresponds to section 109 – A of the Motor Vehicle Act, 1939.

Objects and Reasons. – Clause 161 provides for framing of a scheme by the Central Government for the payment of compensation in “hit and run” cases. It also lays down the amount of compensation in respect of the death and also in respect of grievous hurt.

94. Substituted for “eight thousand and five hundred rupees” by Act 54 of 1994, S.50 (w.e.f. 14-11-1994).

95. Substituted, *ibid*, for “two thousand rupees” (w.e.f. 14-11-1994).

162. Refund in certain cases of compensation paid under section 161. – (1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the Tribunal Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall, -

(a) if compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1);

(b) if an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation. – For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending –

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

Corresponding Law. - Section 162 corresponds to section 109-B of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 162 seeks to provide that when compensation is awarded in a case where compensation under clause 161 has already been paid then so much of the compensation paid as per clause 161 shall be refunded to the insurer.

163. Scheme for payment of compensation in case of hit and run motor accidents. – (1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that –

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act.

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

Corresponding Law. – Section 163 corresponds to section 109-C of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 163 empowers the Central Government to make scheme for payment of compensation in “hit and run” accident cases detailing the procedure for making claim, the authorities to whom the claim should be made, etc.

⁹⁶ [163 – A. Special provisions as to payment of compensation on structured formula basis.

– (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.]

Corresponding Law. – This is a new provision in the 1988 Act.

NOTES

Section is not retrospective. – S. 163-A of the Motor Vehicles Act, 1988 as inserted by Amending Act 54 of 1994, creates a new right in favour of the claimants and this right is similar to the right under S. 140 of the Motor Vehicles Act, 1988. Simultaneously, it creates a new liability on the owners of the vehicles and, therefore, it is to be governed by the rule that unless the Legislature makes it respectively operative, its operation shall be prospective only: *United India Insurance Co. Ltd. V. Mehtab Bai* A.I.R. 1999 Raj. 293: (1999) 3 Raj. L.W. 1392: (2000) 1 T.A.C. 255. However, even where award was passed before coming into effect of S. 163-A, the guidance from Sch. II while applying the multiplier looking to factor of longevity of age: *Shantaben Gordhandas Bhatt v. Gujarat State Road Transport Corporation* (2001-2) 21 Guj.L.H. 180 (D.B.).

Object. – The purpose of the Legislature in introducing S. 163-A is to enhance further the purpose of introducing S. 140 of the Act. On analogy, one may say how such a huge claim can be awarded without a full-fledged trial? However, it appears that from catena of decisions and by experience, the Legislature has realized that in cases of pecuniary loss what is required to be established before the Tribunal is the income of the victim and age of the victim and the fact of

⁹⁶ Inserted by Act 54 of 1994, S. 51 (w.e.f. 14-11-1994).

motor vehicular accident which is either fatal or has caused injury, with the name of owner and insurer of motor vehicle in an application under S. 166 of the Act, a full-fledged trial is held to collect such a data and on collecting such data, compensation is decided after applying multiplier, on determining liability and extent thereof. Question of liability and extent thereof are not justiciable in application under S. 163-A of the Act. As soon as the data is provided, Tribunal can decide compensation on the basis of structured formula and that too instantly and expeditiously. Purpose of the Legislature is to see that victims or injured get instant relief so far as the pecuniary loss is concerned because that loss suffered by them requires instant and immediate relief may be from the next day of the accident. Any delay in grant of such compensation will make their life miserable and may read therein mockery of justice and mockery of Claims Tribunal. It is a common experience that the claim applications are not heard expeditiously and it takes atleast 4 to 5 years to decide the same although sincere attempts are made. It is found that in certain cases, it took about 7 years for the Tribunal to decide. It is with such an experience in the back-drop, the Legislature appears to have been tempted to introduce S. 163-A. The Supreme Court in the case of U.P. State Road Transport Corporation v. Trilok Chandra (1996) 4 S.C.C. 362 has said that Sch. II is a guide as there are innumerable mistakes in income calculation and the figures arrived at. Therefore, the multipliers are a guide. It is very difficult to read from S. 163-A that it is subject to S. 166. Just to achieve the goal referred hereinabove, the Legislature has introduced predetermined structured formula to award compensation and the multipliers are arrived at and provided for with a view to have consistency and they are based on catena of cases: Ramdevsing V. Chudasma v. Hansrajbhai V. Kodala (1999-1) 19 Guj. L.H. 278: (1999-1) 40 Guj.L.H. 631: (1999) 2 Acc.C.C. 730 (D.B.).

⁹⁷

[163-B. Option to file claim in certain cases. – Where a person is entitled to claim compensation under section 140 and section 163-A, he shall file the claim under either of the said sections and not under both.]

Corresponding Law. – This is a new provision in the 1988 Act.

164. Power of Central Government to make rules. – (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter, other than the matters specified in section 159.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for –

(a) the forms to be used for the purposes of this Chapter;

(b) the making of applications for and the issue of certificates of insurance;

(c) the issue of duplicates to replace certificates of insurance lost, destroyed or mutilated;

(d) the custody, production, cancellation and surrender of certificates of insurance;

(e) the records to be maintained by insurers of policies of insurance issued under this Chapter;

(f) the identification by certificates or otherwise of persons or vehicle exempted from the provisions of this Chapter;

(g) the furnishing of information respecting policies of insurance by insurers;

(h) adopting the provisions of this Chapter to vehicles brought into India by persons making only a temporary stay therein or to vehicles registered in a reciprocating country and operating on any route or within any area in India by applying those provisions with prescribed modifications;

97. Inserted by Act 54 of 1994, S. 51 (w.e.f. 14-11-1994).

(i) the form in which and the time limit within which the particulars referred to in section 160 may be furnished; and

(j) any other matter which is to be, or may be, prescribed.

Corresponding Law. – Section 164 corresponds to section 111 of the Motor Vehicles Act, 1939.

Objects and Reasons. – Clause 164 confers upon the Central Government the power to frame rules to implement the provisions of clause 60.
