

MOTOR ACCIDENTS CLAIMS TRIBUNAL UNDER MOTOR VEHICLES ACT, 1988

Mr. Amit Nag,

Research Scholar of PhD.,

Department of Law, Deshabandhu Chittaranjan School of Legal Studies, Assam University, Silchar.

Postal Address: Mela Road, Bye Lane-3, House No.12, Malugram, Opp. Malugram Girls High School, Silchar, PIN-788002, District-Cachar, Assam.

Abstract

The Law Commission in its 119th Report had recommended that every application for a claim be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, at the option of the claimant. The bill also makes necessary provision to give effect to the said recommendation. Therefore, the proposed legislation has been prepared in the light of the above background. A new forum, i.e. Motor Accidents Claims Tribunal, which substitutes Civil Court, has been created by the Motor Vehicles Act, for cheaper and speedier remedy to the victims of accident of motor vehicles. Prior to the Motor Vehicles Act, a suit for damages had to be filed with civil court, on payment of ad valorem court fee. But, under the provisions of this Act, an application claiming compensation can be made to the Claims Tribunal without payment of ad valorem fee. New provisions in Motor Vehicles Act, do not create any new liability, and the liability is still based on law of tort and enactments like the Fatal Accidents Act.

Key-words: 1)Compensation, 2)Victims, 3)Vehicles, 4)Accidents.

Introduction

In India, the Legislature and the judiciary have taken gradual steps to develop the necessary principles by which compensation could be paid to the victims of crimes. The legislature has done it by enacting the different kinds of laws, namely, the General Laws and Special Laws. The Judiciary through the cases which have been decided by it propounded a set of principles to provide the remedy of compensation where the law is not adequate to provide a remedy to the victim of crime¹. With the development of civilization, act of negligence have become actionable wrong². In the English Law, any person or the legal representative of deceased person who expired on account of negligent act of other can besides instituting criminal proceeding, recover damages under the Law of Torts³. Accountable negligence consist in the neglect of use of ordinary care or skill towards a person to whom the defendant owes duty of observing ordinary care and skill by which neglect the plaintiff have suffered injury to his person or property. Thus, negligence accompanied with losses to the other party give rise to an action⁴.

In order to give effective rights to the person injured or expired in an accident, Fatal Accidents Act, 1885 was enacted in India. This Act provided only a procedure and a right of named legal heirs to claim compensation from the person committing negligence⁵. This enactment has worked in India for a comfortable long period. Because of increase in automation and consequential losses of life and property in accident, it was considered that to give relief to the victims of accident claims, an effective law should be brought in. To facilitate this, provisions have been inserted for compulsory third party insurance and to provide a machinery of adjudication of claim in Motor Vehicle Act by amending Act No.110 of 1956, by which Section 93 to 109 with reference to third party insurance and Section 110(A) to 110(F) with reference to creation of Motor Accident Claims Tribunal and procedure for adjudication of claim has been provided. Initially the liability was restricted to a particular sum but after 1982 the liability of the Insurance Company has been made unlimited and even the defences of the Insurance Companies have been restricted so as to ensure payment of compensation to third parties. In the year 1982, a new concept of providing interim compensation on 'No Fault' basis have been introduced by addition of Section 92(A) to 92(E). By the same amendment, relief has also been given to those persons who expire by hit and run accidents, where the offending vehicles are not identified⁶. New provisions in Motor Vehicles Act, do not create any new liability, and the liability is still based on law of tort and enactments like the Fatal Accidents Act. The position on this point was critically explained in *Oriental Fire & General Insurance Co. v. Kamal Kamini*⁷ "The object of this group of sections 110 to 110F of the (1939) Act is to supply a cheap and expeditious mode of enforcing liability arising out of claim for compensation in respect of accident involving the death, or bodily injury to, persons arising out of the use of motor vehicles, or damage to any property of a third party so

¹The Probation of Offenders Act, 1958; Motor Vehicle Act, 1988; Workmen Compensation Act, 1923, Protection of Human Rights Act, 1993 etc.

²Chakraborty, S. and Roy, S.K. "Traffic accident characteristics of Kolkata", Transport and Communications Bulletin for Asia and the Pacific, Vol.74, pp.75-86, 2005.

³Dr. R.G.Chaturvedi, "Law of Motor Accident Claims and Compensation" (2010) p.56

⁴Kunal Mehta, "An Analyse of Law Relating to Accidents Claim in India", Accessed on Website, www.legalservicesindia.com on 16.08.2016 at 06.42 p.m.

⁵Gupta, S.C. and Kapoor, V.K. "Fundamentals of Mathematical Statistics", Sultan Chand and sons, Educational Publishers, New Delhi, 2001.

⁶Ibid.

⁷*Oriental Fire & General Insurance Co. v. Kamal Kamini*, AIR 1973 (Orissa) 33

arising, or both as referred to in Section 110. Prior to the constitution of the Tribunal, compensation could be claimed by institution of suits for damages only through the medium of the Civil Court on payment of ad valorem court fee. This group of sections furnishes a self-contained Code that the claims can be lodged on the basis of an application without payment of ad valorem court fee. By providing a direct appeal to the High Court, second appeals are also dispensed with. The Tribunal is to follow a summary procedure for adjudication of claims being provided, the sections do not deal with the substantive law regarding determination of liability. They only furnish a new mode of enforcing liability. For determination of liability one has still to look to the substantive law in the law of torts and Fatal Accident Act, 1855 or at any rate to the principles thereof.”

Chapter XII of the Motor Vehicles Act, 1988 deals with the constitution of Claims Tribunal, Application of Claims and award of compensation etc. This chapter also deals with procedure followed by tribunals in awarding claim and awarding of interest and compensatory costs in some cases and appeals against the orders of claims tribunal⁸.

Establishment and Composition of Claims Tribunal

Section 165 of Motor Vehicles Act, 1988 empowers the State Government to constitute Claims Tribunal to adjudicate upon claims for compensation arising out of motor vehicle accidents, resulting in death or bodily injury to persons or damages to any property of third parties. A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunal (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both⁹.

For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 and section 163-A¹⁰. A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof¹¹. A person shall not be qualified for appointment as a member of a Claims Tribunal unless he is or has been a Judge of a High Court, or is or has been a District Judge or is qualified for appointment as a High Court Judge or as a District Judge¹². Where two or more Claims Tribunal are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them¹³.

Setting up of Claims Tribunal

A State Government may, by notification in the official gazette, constitute one or more motor accident claims tribunal for such area as may be specified in the notification. In *Minu B. Mehta v. Balkrishna*¹⁴ it was held by the Supreme Court of India that the power of a State Government to constitute Claims Tribunal is optional, and the State Government may not constitute a Claims Tribunal for certain areas. Where any claims Tribunal has been constituted for any areas, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect any action taken or to be taken by or before the claims tribunal in respect of the claim for compensation shall be granted by the civil court. In *Sushma Mehta v. Central Provinces Transport Services Ltd*¹⁵ it was held by the court that no tribunal can be constituted unless there has been firstly, a notification of the State Government and Secondly, such notification has been published in the official gazette of the state.

Appointment of Member

A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof. Appointment of a person as member of tribunal by name is not necessary and appointment with reference to an office is sufficient. But, it does not mean that no appointment by name can be made. If a person fulfils the qualification test for such appointment, any person can be appointed to be a member of a tribunal by name. The usual practice has been to designate as claims tribunal, the District Judge or Additional District Judge, provided the latter is qualified to become a District Judge. In *Anirudh Prasad Ambasta v. State of*

⁸*Swaranlata v. N.T.I. Pvt. Ltd.*, AIR 1974 (Gauhati), 31 ; see also R.K.Bangia, “Law of Torts including Compensation under the Motor Vehicles Act” (1997) p.469

⁹The Motor Vehicles Act, 1988, Section 165 (1)

¹⁰*Ibid.*, Explanation to Section 165 (1)

¹¹*Ibid.*, Section 165 (2)

¹²*Ibid.*, Section 165 (3)

¹³*Ibid.*, Section 165 (4)

¹⁴*Minu B. Mehta v. Balkrishna*, A.I.R. 1977 S.C. 1248

¹⁵*Sushma Mehta v. Central Provinces Transport Services Ltd*, AIR 1964 (MP) 133 (DB)

Bihar¹⁶ it was held that a District Judge or Additional District Judge, when appointed as member of the tribunal would continue to exercise his original jurisdiction as a member of the State Judicial Service.

Appointment of Member by Name not Necessary

Delhi High Court in *New Asiatic Transport (P) Co. Ltd. v. Manohar Lal*¹⁷, held that appointment of a person as Member of Tribunal by name is not necessary and appointment with reference to an office is sufficient. However, it does not follow that no appointment by name can ever be made. If a person fulfils the qualification test for such appointment, any person can be appointed to be a Member of a Tribunal by name. The usual practice has been to designate as Claims Tribunal, the District Judge or Additional District Judge, provided the latter is qualified to become a District Judge. A District Judge or Additional District Judge, when appointed as Member of the Tribunal would continue to exercise his original jurisdiction as a Member of the State Judicial Service¹⁸. However, the person so appointed shall function not virtually as court, but purely as persona designate¹⁹.

The following points should not be ignored while appointment of a person or denominating any particular judicial officer, to be a Member of the Tribunal:

(a) Notification of Appointment is Necessary

A notification is always necessary for constituting a Claims Tribunal, and vesting of powers of a Claims Tribunal, whether by name or with reference to the judicial office. Without notification even a district judge cannot exercise the powers of a Claims Tribunal, merely because he is a District Judge and in a case a claim for compensation has been filed before a District Judge not backed by a notification designating him as Claims Tribunal, the claim so filed shall not be a claim filed under Section 166 of the Motor Vehicles Act, 1988 and in that case such claim shall have to be returned to the claimant for presenting it before a duly nominated Claims Tribunal²⁰.

(b) Transfer of Claim Application from District Judge to Claims Tribunal

Transfer of a claim application filed before a District Judge to the Competent Claims Tribunal, as concerned to in *K.P.Verma v. State of Bihar*²¹, will be misconceived since the power of such transfer is inherently vested in the civil court in which such claim has been erroneously filed, but can be exercised by High Court only either under Section 24 of the Civil Procedure Code or under Article 227 of the Constitution, and the only thing the civil court, bereft of the powers of a Claims Tribunal, can do is to return the claim to the claimant under Order 7, Rule 10 of the Code of Civil Procedure, for it being presented to the proper Tribunal constituted for that area under section 165 of the Motor Vehicles Act, 1988.

(c) General Notification Designating All the District Judges as Claims Tribunal

There can be a general notification designating all the District Judges as Claims Tribunal. Such notification would be notification generally in favour of a class of District Judges and then, whoever, occupies the office of the District Judge shall function also as Claims Tribunal.

(d) Not to Confuse Powers of One Office with Other Office

In *Varalakshmi Sundar v. Meeran* case²², it was held by the Madras High Court that a district Judge when appointed as Claims Tribunal shall not confuse powers in one office with that of the other. While functioning as Claims Tribunal, he cannot make use of all his powers as a District Judge, because the powers of the same judicial officer while acting as court as also a Claims Tribunal cannot be the same. Whereas a civil court has plenary powers, the Claims Tribunal is vested only with specified and limited powers as contemplated by or conferred under the Motor Vehicles Act²³.

¹⁶Anirudh Prasad Ambasta v. State of Bihar, AIR 1990 (Pat.) 49

¹⁷New Asiatic Transport (P) Co. Ltd. v. Manohar Lal, (1966) 68 Punj. LR (Del.) 51

¹⁸Anirudh Prasad Ambasta v. State of Bihar, AIR 1990 ACJ 238 (Pat.) FB

¹⁹New India Assurance Co. Ltd. v. Molia Devi, 1969 ACJ 164 (MP) DB

²⁰Dr. R.G.Chaturvedi, "Law of Motor Accident Claims and Compensation" (2010) p.495

²¹K.P.Verma v. State of Bihar, 1990 ACJ 32 (Pat.) DB.

²²Varalakshmi Sundar v. Meeran, 1981 ACJ 50 (Mad.)

²³Satyabadi Nayak v. Dameli Khilli, 1991 ACJ 211 (Guj.) DB

Qualification for Appointment as Member of Claims Tribunal

A person shall not be qualified for appointment as a member of a Claims Tribunal unless he is or has been a Judge of a High Court, or is or has been a District Judge or is qualified for appointment as a High Court Judge or as a District Judge.

The expression 'is or has been' a Judge of the High Court, or a District Judge implies that a retired Judge of the High Court or a retired District Judge can be appointed as the member, or the presiding officer, as the case may be, of a Claims Tribunal. The expression "qualified for appointment" as High Court judge or as a District Judge is preferable to relevant provisions of the Constitution of India.

In computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office as a Member of a Tribunal or any post, under the Union or a state, requiring special knowledge of law. Similarly, in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office of a member of a tribunal or any post under the Union or a State, requiring special knowledge of law after he became an advocate.

Other Staff of Claims Tribunal

There is no separate provision for appointment of persons as staff of the claims tribunal. In case a sitting judicial officer, falling within the definition of a District Judge, is appointed as member of claims tribunal, the staff of such appointee shall also function as staff of such Claims Tribunal. In the case of constitution of the tribunal by appointing a person other than the person holding the post of a District Judge, it would be open for the State Government to furnish such tribunal with a staff of persons appointed or to be appointed by the State Government²⁴.

Claims Tribunal: Powers of Civil Courts

Claims tribunal set up under this Act are deemed Civil Courts. In *Mohd. Riyazur Rehman Siddiqui v. Deputy Director of Health Services*²⁵, it was held that technically grammatically speaking, tribunal may not be a civil court, but it has all the trappings of court since it passes an award which has all the ingredients of a judgement as known under civil jurisprudence.

In the matter of *Harinagar Sugar Mills v. Shyamsunder Jhunjuinwal*²⁶ the distinction between courts and tribunal was pointed out by the Supreme Court of India as follows: "The word court is not defined in the Companies Act, 1956. It is not defined in the Civil Procedure Code. The definition in the Indian Evidence Act is not exhaustive, and is for the purpose of that Act. In the New English Dictionary²⁷ the meaning is given is: 'an assembly of judges or other persons legally appointed and acting as a tribunal to hear and determine any cause, civil, ecclesiastical, military or naval'. The Claims Tribunal shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.

Claims Tribunal: A Substitute of Civil Courts for the Purpose of Compensation Claims

To say that Claims Tribunal is a Court is entirely different from saying that a Claims tribunal is a Civil Court. It is a civil court for all intents and purposes of adjudication of claims for compensation in motor accident cases. From the scheme of the Motor vehicles Act and the Rules framed there under, it is clear that a Claims tribunal is constituted for a specific area, which is specified in the notification for adjudication of such claim. The institution of the proceedings is by an application for compensation. The tribunal disposes such application by giving the parties an opportunity of being heard and holding an inquiry in to the claim and it has to make an award determining the amount of compensation is to be paid and the amount which is to be paid by the insurer. The tribunal has been given all the powers of a civil judge for the purpose of taking evidence on oath and enforcing the attendance of witness and of compelling the discovery and production of documents. Rules framed under the Act also confer all the powers of a civil court on the Claims tribunal in so far as the same are not inconsistent with the provisions of the Act. Right to appeal to the High Court is also provided. Resort to Article 227 of Constitution of India in preference to Revision under Section 151 of Civil Procedure Code, 1908

In *New India Assurance Co. Ltd v. Ganga Devi*²⁸, it was held that as a matter of law and practice both, where the statute has made provision for an appeal against a judgement or order and right of appeal is absolute, additional, restricted or otherwise, a revision against such judgement or order does not lie.

²⁴Dr. R.G.Chaturvedi, "Law of Motor Accident Claims and Compensation" (2010) p.497, 498

²⁵*Mohd. Riyazur Rehman Siddiqui v. Deputy Director of Health Services*, 2009 (3) ACC 300 (Bom)FB

²⁶*Harinagar Sugar Mills v. Shyamsunder Jhunjuinwal*

²⁷New English Dictionary, Vol. II, p. 1090, 1091

²⁸*New India Assurance Co. Ltd v. Ganga Devi*, 2006 ACJ 2857 (Jhar.) DB

The reasoning conceding to the power of the High Court to entertain such a revision seems to gravitate upon one or the other of the propositions not appealing to the reason. The claims tribunal is said to have trapping of civil court, but merely because some authority has been clothed with the trappings of a court, it cannot logically follow that it is liable to be treated as civil court for all intents and purposes. If the tribunal is or can be considered to be a civil court, there is no use of employing the additive which inheres the expression 'trappings of court'. The use of this expression is itself indicative that the possession of some trappings of a court cannot identify an authority with a de facto civil court²⁹.

Conclusion & Suggestions

Section 166 of the Act provides for the form of application for compensation, the person who may claim compensation, the time within which the application should be filed, etc. It also provides that if the Claims Tribunal, thinks so, may treat the accident report filed by the Police Officer as per Section 158 as an application under this Act. An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has sustained the injury or by the owner of the property or where death has resulted from the accident, by all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be³⁰. Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application³¹. Every application under subsection (1) of section 166 shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides, or carries on business or within the local limits of whose jurisdiction the defendant resides and shall be in such form and contain such particulars as may be prescribed³².

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant³³. The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act³⁴. The state government may under rules prescribes the form of application for compensation and sub section 2 of section 166 confers jurisdiction to entertain and adjudicate on such application upon following three different tribunal:

- a) The Tribunal within the local limits of whose jurisdiction the accident has occurred, or
- b) The Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business, or
- c) Within the local limits of whose jurisdiction the defendant resides.

And confusion lingers as to which tribunal shall have jurisdiction to entertain and adjudicate upon application or applications in cases where the claimants of a person deceased in an accident, or the defendants, where there are more than one, are residing or carrying on their business at two or more different places, and the confusion is embittered particularly in absence of any statutory provision for transfer of an application from one claims tribunal to another. Assuming that such transfer at instance of one or more parties can be allowed by the High Court under Article 227 of the Constitution, if not under section 24 of the code of Civil Procedure, confusion can hardly be said to have been resolved if in case of several claimants or several defendants, each may be residing or carrying business in different states. Assuming in the last resort, that the Supreme Court may be approached for allowing such transfer of a claim from one tribunal to the other under Section 25 of the Code of Civil Procedure, it is difficult yet to conceive on what grounds such transfer can be allowed, when each of the several claimants has legal right to have his claim decided by the tribunal within the local limits of whose jurisdiction he resides or carries on business.

In *National Insurance Co. Ltd. v. Indu Sharma*³⁵ it was held by the High Court that the proceedings on a claim for compensation under section 163A and section 166 of the Act can go together, both being independent provisions and awarding of compensation under section 163 A, unlike that under section 140, does not detract or defeat the provisions of section 166.

In *Ramdev Singh v. Chudasma v. Hansrajbhai V Kodala*³⁶, it was held by the High Court that section 163A has specially provided for loss to the estate of the deceased to a given extent without any proof where compensation on head of loss of estate cannot be awarded without proof under section 166. Claim application can be filed under Section 163A for claim to be

²⁹Ibid.

³⁰The Motor Vehicles Act, 1988, Section 166(1)

³¹Ibid., Proviso to Section 166 (1)

³²Ibid., Section 166 (2)

³³Ibid., Proviso to Section 166 (2)

³⁴Ibid., Section 166(4)

³⁵*National Insurance Co. Ltd. v. Indu Sharma*, 2000 ACJ 808 (P&H)

³⁶*Ramdev Singh V. Chudasma v. Hansrajbhai V. Kodala* 1999 ACJ 1129 (Guj.) DB

determined on structural formula basis provided in Schedule-II. Schedule-II has been adjudged as suffering from severe mistakes and the Supreme Court has held that total reliance cannot be placed on this schedule. Further the Schedule do not provide any computation chart for the persons having more than Rs.40,000/- annual income. Claim petition can also be filed under Section 166 of Motor Vehicle Act pleading negligence where the claim shall be assessed by the Judge not on the basis of structural formula but on the basis of evidence led.

The injured or the legal representatives of deceased can file claim application in a prescribed format making driver, owner and insurer as party. Driver is not a necessary party in some states. For e.g. in the Rajasthan Motor Accident Claims Tribunal Rules only owner and insurer are required to be party. No limitation has been prescribed for filing of the claim application. Initially when the law has come into force the limitation was 6 months which was later increased to one year and ultimately in the garb of welfare legislation the provision of limitation has been deleted. A claim launched by dependents of deceased but not by his legal representatives would be defective unless the legal representatives of the deceased have been joined either as claimants or even as respondents³⁷.

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³⁷Cheriyakutty Mammi v. UmmerKutty, 1996 ACJ 402 (Ker.) DB

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