

**MACT/411/2019**

DAR - SAPNA MANDAL

Versus

AJAY SHARMA

19.11.2020

Present:- None.

The present petition has arisen out of a Detailed Accident Report filed in FIR No. 297/2019, PS Vivek Vihar as a result of an accident which took place on 18.08.2019 at about 2.40 am. The accident took place between the motorcycle being driven by deceased bearing no. UP 14CJ 3054 and a DTC Bus bearing no. DL 1TC 0560. As a result of the said accident, the deceased suffered injuries and was taken to GTB Hospital where he was declared brought dead.

Reply to the DAR has been filed by respondent no. 1 and 2 wherein it is claimed that the accident was caused solely due to the negligence of the deceased as he was driving his motorcycle on the wrong side of the road that too under the influence of liquor. The Insurance Company i.e. Respondent No. 3 also filed its written statement wherein it claimed that the Respondent Company was not liable to pay compensation as the accident was caused solely due to the negligence of the deceased.

During the course of proceedings, Id. counsel for petitioners / legal heirs of deceased requested that interim compensation

may be awarded under Section 140 M.V. Act to the petitioners. However, the said request of Id. counsel for the petitioner was opposed by Id. counsel for the Insurance Company on the ground that Section 140 M.V. Act has been repealed by Motor Vehicles (Amendment) Act, 2019 which came into force on 01.09.2019 i.e. prior to the filing of the present DAR, which was filed on 20.11.2019.

Therefore, the question before the Tribunal is : Whether the legal representatives of the deceased in a Motor Vehicular Accident which occurred before coming into force Motor Vehicles (Amendment) Act, 2019 i.e. before 01.09.2019 is entitled to interim compensation in a claim petition / DAR filed after 01.09.2019 under Chapter X (Section 140 and Section 144) M.V. Act which was repealed by the aforesaid Amendment Act?

In order to decide the aforesaid question, it is relevant to reproduce Section 140 M.V. Act, as it was, prior to it being repealed by the aforesaid amendment:-

*“140. Liability to pay compensation in certain cases on the principle of no fault.—*

*(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.*

*(2) The amount of compensation which shall be payable under*

*sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.*

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

*(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. 3[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.”*

As noted above, the said Section along with all the other Sections in Chapter X have been omitted by the aforesaid amendment w.e.f. 01.09.2019 and even Chapter XI has been substituted with a New Chapter containing Section 164 M.V. Act which deals with liability to pay compensation without

fault. Under the Amended Act, there is no provision for payment of compensation as was contained in Section 140 M.V. Act, 1988 as it stood prior to the amendment. In the Pre Amended Act, the petitioner could claim compensation on the Principal of “No Fault Liability” either under Section 140 M.V. Act or under Section 163A M.V. Act, however, the compensation under Section 140 M.V. Act could be claimed in addition to compensation on the ground of fault liability under Section 166 M.V. Act. However, after the amendment Section dealing with ‘No fault liability’ i.e. Section 164 reads as under:

*“164. (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 or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.*

*(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt 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 of the vehicle concerned or of any other person.*

*(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”*

Section 6 of the General Clauses Act<sup>1</sup> provides that where any Central Act or Regulation repeals any enactment, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

The question is whether Section 6 of General Clauses Act impedes the enforcement of Section 164 of the Amended Act and provides for the enforcement of Section 140 of the Unamended Act in relation to an accident which occurred prior to the coming into force of the Amendment Act.

Section 6 of the General Clauses Act permits switching over to the repealed Act / provisions only if a different intention does not appear in the new statute / provisions. Such a different intention can be discerned from the new provisions, however no such intention is reflected in the provisions inserted by the Amendment Act, 1999.

The unamended Section 140 MV Act specifically provides

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1 **6 Effect of repeal.** Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

that where death of any person has resulted from an accident arising out of the use of a motor vehicle, the owner of the vehicle **shall be liable** to pay compensation in respect of such death in accordance with the provisions of the section irrespective of the neglect or default of the owner of the vehicle. Thus, section 140 M V Act fixes a liability upon the owner of the vehicle to pay fixed compensation in case of death caused in an accident. The said liability in the present case had arisen on the date of accident i.e. 18.08.2019 which in any manner cannot be defeated by the subsequent Amendment Act, 2019, which came into force on 01.09.2019, unless there is an intention to the contrary reflected in Amendment Act, 2019. Moreover, the Scheme relating to grant of compensation under Chapter X, XI and XII of Motor Vehicles Act being beneficial legislation, a liberal construction is always to be resorted to.

As the liability of the owner of the offending vehicle to pay compensation had arisen at the time of accident on 18.08.2019, therefore, in the opinion of the tribunal the claimants shall be entitled to compensation under the now omitted provision i.e. Section 140 of the unamended Act.

Accordingly, the request of the petitioners for passing an order under the now omitted Section 140 MV Act is allowed for the aforesaid reasons. Involvement of offending vehicle and death of Sh. Tapas Mandal resulting from the accident is not in dispute. Thus, an interim award of Rs.50,000/- is passed in favour of petitioners under Section 140 of M.V. Act.

The Insurance Company / Respondent No. 3 is directed to deposit a sum of Rs.50,000/- along with interest @ 8% from the date of filing of the present petition till deposit of the amount within 30 days from today. Copy of the order be given dasti and be also sent to Id. counsel for petitioner as well as to Id. counsel for Insurance Company through whatsapp / email.

Relist the matter for framing of issues on 02.02.2021.

(SHUCHI LALER)  
PO-MACT/SHD/KKD  
19.11.2020