CHAPTER: II

THE MOTOR VEHICLES ACT, 1988:
HISTORY, OBJECT, SCOPE AND SALIENT FEATURES
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A. Introduction

With the development of civilization, act of negligence have become actionable wrong. 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 Torts. 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 action\(^1\).

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 negligence. 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

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\(^1\) Kunal Mehta,“An Analyse of Law Relating to Accidents Claim in India”, Accessed on Website, www.legalservicesindia.com on 16.08.2010 at 06.42 p.m.
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 identified2.

In 1988, a new Motor Vehicle Act has been introduced. Chapter 10 of the new Act, provides for interim award. Chapter 11 provides for insurance of motor vehicle against third party risk and Chapter 12 provides for the constitution of Claims Tribunal and adjudication of claim and related matters. This law is still in an era of serious changes. The Supreme Court has held number of times that this is a welfare legislation and the interpretation of provision of this law is required to be made so as to help the victim. In this process, the Supreme Court has passed various judgments in the recent past, which have restricted the statutory defences to the Insurance Company to a greater extent as law relating to burden of proof have been totally changed. Limited defences as to not holding valid driving license, use of vehicle for hire and reward, use of transport vehicle for the purpose not allowed by permit are required to be proved in so stringent manner that insurer are not getting advantage of these defences3.

2 Ibid.
3 Ibid.
B. History

I. Pre – 1988 Position

Before, the Motor Vehicle Act, 1988 came into existence, the Motor Vehicles Act, 1939 was applicable for all types of Motor Accidents. The Motor Vehicles Act, 1939, consolidates and amends the law relating to motor vehicles. This has been amended several times to keep it up to date. The need was, however, felt that this Act should, now inter alia, take into account also changes in the road transport technology, pattern of passenger and freight movements, developments, of the road network in the country and particularly the improved techniques in the motor vehicles management.

Various Committees4, like, National Transport Policy Committee, National Police Commission, Road Safety Committee, Low Powered Two – Wheelers Committee, as also the Law Commission have gone into different aspects of road transport. They have recommended updating, simplification and rationalization of this law. Several Members of Parliament have also urged for comprehensive review of the Motor Vehicles Act, 1939, to make it relevant to the modern – day requirements. A Working Group was, therefore, constituted in January, 1984 to review all the provisions of the Motor Vehicles Act, 1939 and to submit draft proposals for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestions and recommendations earlier made by various bodies and institutions like Central Institute of Road Transport (CIRT), Automotive Research Association of India (ARAI), and other transport organizations including, the manufacturers and the general public, Besides, obtaining comments of State Governments on the recommendations of the Working Group.

4The Motor Vehicle Act, 1988, Statement of Objects and Reasons
Group, these were discussed in a specially convened meeting of Transport Ministers of all States and Union territories. Some of the more important modifications so suggested related for taking care of -

a. The fast increasing number of both commercial vehicles and personal vehicles in the country.

b. The need for encouraging adoption of higher technology in automotive sector;

c. The greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances;

d. Concern for road safety standards, and pollution-control measures, standards for transportation of hazardous and explosive materials;

e. Simplification of procedure and policy liberalization’s for private sector operations in the road transport field; and

f. Need for effective ways of tracking down traffic offenders\(^5\).

### II. The Motor Vehicles Act, 1988

The Supreme Court in **M. K. Kunhimohammed v. P. A. Ahmedkutty\(^6\)**, has made certain suggestions to raise the limit of compensation payable as a result of motor accidents in respect of death and permanent disablement in the event of there being no proof of fault on the part of the person involved in the accident and also in hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon

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\(^5\) Ibid.

the class or type of vehicles involved in the accident. The above suggestions made by the Supreme Court have been incorporated in the Bill of the Motor Vehicles.

The proposed legislation has been prepared in the light of the above background. Some of the more important provisions of the Bill provide for the following matters, namely :-

a. Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.

b. Stricter procedures relating to grant of driving licences and the period of validity thereof.

c. Laying down of standards for the components and parts of motor vehicles.

d. Standards for anti-pollution control devices.

e. Provision for issuing fitness certificates of vehicles also by the authorized testing stations.

f. Enabling provision for updating the system of registration marks.

g. Liberalized schemes for grant of stage carriage permit on non nationalized routes, all-India Tourist permits and also national permits for goods carriages.

h. Administration of the Solatium Scheme by the General Insurance Corporation.

i. Provision for enhanced compensation in cases of “no fault liability” and in hit and run motor accidents.
j. Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles.

k. Maintenance of State registers for driving licences and vehicle registration.

l. Constitution of Road Safety Councils⁷.

The Bill also seeks to provide for more deterrent punishment in the cases of certain offences.

The above suggestions which were incorporated in the Motor Vehicles Bill received the assent of the President on 14th October, 1988 and came on the Statute Book as Motor Vehicles Act, 1988. The Act came into force with effect from 1st July, 1989 replacing the Motor Vehicles Act, 1939⁸.

The erstwhile Motor Vehicles Act, 1939 was repealed by section 217 of the Motor Vehicles Act, 1988. Said section 217 also repealed all laws corresponding to the Motor Vehicles Act, 1939, then being in force in any State immediately before the commencement of the Act of 1988 in the respective states⁹.

III. The Motor Vehicles (Amendment) Act, 1994

The Act was amended by the Motor Vehicles (Amendment) Act, 1994, which came in to effect from 14.11.1994. After the coming into force of the Motor Vehicles Act, 1988, Government received a number of representations and suggestions from the State Government Transport Operators and members of

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⁷ Supra n.4
⁸ Supra n.4
⁹ Supra n.4
public regarding the inconvenience faced by them because of the operation of some of the Provisions of the 1988 Act\(^\text{10}\).

A Review Committee was, therefore, constituted by the Government in March, 1990 to examine and review the 1988 Act. The recommendations of the Review Committee were forwarded to the State Governments for comments and they generally agree with these recommendations. The Government also considered a large number of representations received, after finalization of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The important suggestions made by the Transport Development Council relate to, or are on account of, -

a. The introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country.

b. Providing adequate compensation to victims of road accidents without going into long drawn procedure.

c. Protecting consumers’ interest in Transport Sector.

d. Concern for road safety standards, transport of hazardous chemicals and pollution control.

e. Delegation of greater powers to State Transport Authorities and rationalizing the role of public authorities in certain matters.

\(^{10}\text{The Motor Vehicle (Amendment) Act, 1994, Statement of Objects and Reasons}\)
f. The simplification of procedures and policy liberalization in the field of Road Transport.

g. Enhancing penalties for traffic offenders\textsuperscript{11}.

IV. Law Commission’s 119th Report

The Law Commission in its 119th Report\textsuperscript{12} 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. The Bill inter alia provides for –

a. Modification and amplification of certain definitions of new type of vehicles.

b. Simplification of procedure for grant of driving licences.

c. Putting restrictions on the alteration of vehicles.

d. Certain exemptions for vehicles running on non-polluting fuels.

e. Ceilings on individuals or company holdings removed to curb “benami” holdings.

\textsuperscript{11} Ibid.
\textsuperscript{12} See 119\textsuperscript{th} Report of Law Commission
f. States authorized to appoint one or more State Transport Appellate Tribunals.

g. Punitive checks on the use of such components that do not conform to the prescribed standards by manufactures, and also stocking / sale by the traders.

h. Increase in the amount of compensation of the victims of hit and run cases.

i. Removal of time limit for filling of application by road accident victims for compensation.

j. Punishment in case of certain offences is made stringent.

k. A new pre-determined formula for payment of compensation to road accident victims on the basis of age / income, which is more liberal and rational.\(^{13}\)

V. The Motor Vehicles (Amendment) Act 2000

The Act was again amended by the Motor Vehicles (Amendment) Act 2000 – Further amendments in the aforesaid Act have become necessary so as to reduce the vehicular pollution and to ensure the safety of the road users. It is, therefore, proposed to prohibit alteration of vehicles in any manner including change of tyres of higher capacity. However, the alteration of vehicles with a view to facilitating the use of eco-friendly fuel including Liquefied Petroleum Gas (LPG) is being permitted. Further, it is proposed to confer

\(^{13}\)Ibid.
powers on the Central Government to allow the alteration of vehicles for certain specified purposes\textsuperscript{14}.

At present, the educational institutions are not required to obtain permits for the operation of buses owned by them. It is proposed to bring the buses run by these institutions within the purview of the aforesaid Act by requiring them to obtain permits. It is also proposed to allow renewal of permits, driving licences and registration certificates granted under the Motor Vehicles Act, 1939 to be renewed under the Motor Vehicles Act, 1988, by inserting new section 217 – A. The proposed amendments are essential in the overall interest of securing road safety and maintaining a clean environment\textsuperscript{15}.

VI. The Motor Vehicles (Amendment) Act, 2001

Third times amendments to this act were brought by the Motor Vehicles (Amendment) Act, 2001. The Motor Vehicles Act, 1988 is a Central legislation through which the road transport is regulated in the country. By the Motor Vehicles (Amendment) Act, 1994, inter alia, amendments were made for make special provisions under sections 66 & 67 so as to provide that vehicles operating on eco–friendly fuels shall be exempted from the requirements of permits and also the owners of such vehicles shall have the discretion to fix fares and freights for carriage of passengers and goods. The intention in bringing the said amendments was to encourage the operation of vehicles with such eco-friendly fuels. However, it has been observed that during the last several years, not only the supply of eco-friendly fuels like CNG has increased tremendously, a large number of vehicles have come on the road which in terms of sections 66 and 67, as amended by the Motor

\textsuperscript{14} The Motor Vehicle (Amendment) Act, 2000, Statement of Objects and Reasons
\textsuperscript{15} Ibid.
Vehicles (Amendment) Act, 1994, are operating without any requirement of permits and are, therefore, not subject to any control of the State Governments. The number of such vehicles is likely to further increase substantially.\textsuperscript{16}

The aforesaid situation is likely to lead to indiscipline on the road and consequent increase in the road accidents. It is, therefore, considered essential to remove exemption provided under sections 66 and 67 of the said Act to CNG operated vehicles so that vehicles which operate on eco-friendly fuels are also covered by the terms and conditions applicable to all other vehicles. The proposed amendments are essential in the overall interest of securing road safety and maintaining a clean environment.\textsuperscript{17}

\textbf{C. Object and Scope}

The Motor Vehicles Act\textsuperscript{18}, 1988 has been applicable to whole India and has been prepared to achieve the following objectives:

I. To take care of the fast increasing number of both commercial vehicles and personal vehicles in the country.

II. The need for encouraging adoption of higher technology in automotive sector.

III. The greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances.

\textsuperscript{16} The Motor Vehicle (Amendment) Act, 2001, Statement of Objects and Reasons
\textsuperscript{17} Ibid.
\textsuperscript{18} The Motor Vehicle Act, 1988, Statement of Objects and Reasons
IV. Concern for road safety standards, and pollution-control measures, standards for transportation of hazardous and explosive materials.

V. Simplification of procedure and policy liberalization’s for private sector operations in the road transport field.

VI. Need for effective ways of tracking down traffic offenders.

VII. Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.

VIII. Stricter procedures relating to grant of driving licences and the period of validity thereof.

IX. Laying down of standards for the components and parts of motor vehicles;

X. Standards for anti-pollution control devices.

XI. Provision for issuing fitness certificates of vehicles also by the authorized testing stations.

XII. Enabling provision for updating the system of registration marks.

XIII. Liberalized schemes for grant of stage carriage permit on non nationalized routes, all-India Tourist permits and also national permits for goods carriages.

XIV. Administration of the Solatium Scheme by the General Insurance Corporation.

XV. Provision for enhanced compensation in cases of “no fault liability” and in hit and run motor accidents.
XVI. Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles.

XVII. Maintenance of State registers for driving licences and vehicle registration.

XVIII. Constitution of Road Safety Councils.

XIX. The introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country.

XX. Providing adequate compensation to victims of road accidents without going into long drawn procedure.

XXI. Protecting consumers’ interest in Transport Sector.

XXII. Concern for road safety standards, transport of hazardous chemicals and pollution control.

XXIII. Delegation of greater powers to State Transport Authorities and rationalizing the role of public authorities in certain matters.

XXIV. The simplification of procedures and policy liberalization in the field of Road Transport.

XXV. Enhancing penalties for traffic offenders.

XXVI. Modification and amplification of certain definitions of new type of vehicles.

XXVII. Simplification of procedure for grant of driving licences.
XXVIII. Putting restrictions on the alteration of vehicles.

XXIX. Certain exemptions for vehicles running on non-polluting fuels.

XXX. Ceilings on individuals or company holdings removed to curb “benami” holdings.

XXXI. States authorized to appoint one or more State Transport Appellate Tribunals.

XXXII. Punitive checks on the use of such components that do not conform to the prescribed standards by manufactures, and also stocking / sale by the traders.

XXXIII. Increase in the amount of compensation of the victims of hit and run cases.

XXXIV. Removal of time limit for filling of application by road accident victims for compensation.

XXXV. Punishment in case of certain offences is made stringent.

XXXVI. A new pre-determined formula for payment of compensation to road accident victims on the basis of age / income, which is more liberal and rational\(^\text{19}\).

\section*{D. Definitions – The Genus and Species of Motor Vehicles}

Section 2 of the Motor Vehicles Act defines certain terms, which have been used in the act, having the meaning as provided in the Motor Vehicles Act, unless the context otherwise requires\(^\text{20}\). Some of the definitions of such terms is as under:-

\begin{footnotesize}
\textit{19}  The Motor Vehicle Act, 1988,  Statement of Objects and Reasons

\textit{20}  Ibid., Section 2
\end{footnotesize}
I. **Area**, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette.

II. **Articulated Vehicle** means a motor vehicle to which a semi-trailer is attached.

III. **Axle Weight** means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface on which the vehicle rests.

IV. **Certificate of Registration** means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV of Motor Vehicles Act, 1988.

V. **Conductor**, in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed.

VI. **Conductor’s Licence** means the licence issued by a competent authority under Chapter III of the Motor Vehicles Act, 1988, authorizing the person specified therein to act as a conductor.

VII. **Contract Carriage** means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum –
(a) On a time basis, whether or not with reference to any route or distance; or

(b) From one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes –

(i) A maxi cab; and

(ii) A motor cab notwithstanding that separate fares are charged for its passengers.

VIII. Dealer includes a person who is engaged –

1. In building bodies for attachment to chassis;

2. Or in the repair of motor vehicles; or

3. In the business of hypothecation, leasing or hire-purchase of motor vehicle.

IX. Driver includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.

X. Driving Licence means the licence issued by a competent authority under Chapter II of the Motor Vehicles Act, 1988, authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

XI. Educational Institution Bus means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities.
XII. **Fare** includes sums payable for a season ticket or in respect of the hire of a contract carriage.

XIII. **Goods** includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle.

XIV. **Goods Carriage** means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

XV. **Gross Vehicle Weight** means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.

XVI. **Heavy Goods Vehicle** means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms.

XVII. **Heavy Passenger Motor Vehicle** means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms.

XVIII. **Invalid Carriage** means a motor vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person.
XIX. **Learner’s Licence** means the licence issued by a competent authority under Chapter II of Motor Vehicles Act, 1988, authorizing the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;

XX. **Licensing Authority** means an authority empowered to issue licence under Chapter II or, as the case may be, chapter III of Motor Vehicles Act, 1988.

XXI. **Light Motor Vehicle** means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms.

XXII. **Manufacturer** means a person who is engaged in the manufacture of motor vehicles.

XXIII. **Maxi Cab** means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward.

XXIV. **Medium Goods Vehicle** means any goods carriage other than a light motor vehicle or a heavy goods vehicle.

XXV. **Medium Passenger Motor Vehicle** means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.

XXVI. **Motor Cab** means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.

XXVII. **Motor Car** means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.
XXVIII. **Motor Cycle** means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

XXIX. **Motor Vehicle or Vehicle** means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters.

XXX. **Tractor-trailer.** - A Division Bench of the Punjab and Haryana High Court in *United India Insurance Company Ltd. v. Pritpal Singh*\(^{21}\) held that even though trailer may be drawn by a motor vehicle if by if self is a motor vehicle and both the Tractor & Trailer taken together would constitute a transport vehicle.

XXXI. **Omnibus** means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

XXXII. **Owner** means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

\(^{21}\) *United India Insurance Company Ltd. v. Pritpal Singh* (1996-2) 113 Punj. L.R. 49
XXXIII. **Permit** means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of motor vehicle as a transport vehicle.


XXXV. **Private Service Vehicle** means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.

XXXVI. **Public Place** means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

XXXVII. **Public Service Vehicle** means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage, and stage carriage.

XXXVIII. **Registered Axle Weight** means in respect of the axle of any vehicle, the axle weight certified and registered by the registering authority as permissible for that axle.


XL. **Route** means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another.
XLI. **Semi-Trailer** means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle.

XLII. **Stage Carriage** means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

XLIII. **State Government** in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution.

XLIV. **State transport undertaking** means any undertaking providing road transport service, where such undertaking is carried on by –

   a. The Central Government or a State Government;

   b. Any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950;

   c. Any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Government;

   d. Zilla Parishad or any other similar local authority.

Explanation. – For the purposes of this clause, “road transport service” means a service of motor vehicles carrying passengers or goods or both by road for hire or reward.
XLV. **Tourist Vehicle** means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf.

XLVI. **Tractor** means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller.

XLVII. **Traffic Signs** includes all signals, warning sign posts, direction posts, markings on the road or other devices for the information, guidance or direction of drivers of motor vehicles.

XLVIII. **Trailer** means any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle.

XLIX. **Transport Vehicle** means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

L. **Unladen Weight** means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body.

LI. **Weight** means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.\(^\text{22}\)

\(^{22}\) *The Motor Vehicles Act, 1988*, Section 2
E. Concept and Meaning of Accident

The term ‘accident’ has not been defined in the Motor Vehicles Act. The term ‘accident’ was first time defined in Fenton v. Thorley & Co. Ltd.\(^{23}\) as unlooked for mishap which is not designed nor expected.

In United India Insurance Co, Ltd. v. Somari Devi\(^{24}\) case it was observed by the Patna High Court that the word ‘accident’ generally denotes an event that take place without one’s foresight or expectation, i.e. an event which proceeds from an unknown cause or is unusual effect of a known cause or contingency. An accident which is unforeseen is accident which term means some unexpected and unforeseen event or overlooked mischief. It is an event happening without concurrence of will of the person by whose agency it was caused\(^{25}\).

It may incidentally be stated that the term ‘accident’ for the purpose of law relating to compensation includes any injury not designed by the injured himself, and it is of consequence that the injury was designed and intended by the person inflicting the same\(^{26}\).

In the matter of Oriental Insurance Co. Ltd. v. Dongkholam\(^{27}\) it was held by the High Court that the difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. If the dominant intention of the act of felony is to kill any particular person then such killing is not accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not

\(^{23}\) Fenton v. Thorley & Co. Ltd., (1903) AC 448 (HL)
\(^{24}\) United India Insurance Co, Ltd. v. Somari Devi, 1999 ACJ 864(Pat.)
\(^{25}\) Ramdev Singh V. Chudasma v. Hansrajbhai V. Kodala 1999 ACJ 1129(Guj.) DB
\(^{26}\) Varkeychan v. Thomman, 1979 ACJ 319 (Ker.), Mathew Joseph v. Johny Sunny, 1995 ACJ 1183 (Ker.)
\(^{27}\) Oriental Insurance Co. Ltd. v. Dongkholam, 2007 ACJ 1973 (Gau.)
intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder within the meaning of Motor Vehicles Act.

I. Accident and Other Allied Expressions like Act of God, Inevitable Accident, Latent Defect, etc.

All causes of inevitable accident may be divided in to two classes:

1. Those which are occasioned by the elementary forces of nature unconnected with the agency of man or other causes; and

2. Those which have their origin either in whose or in part in the agency of man, whether in acts of commission or omission, non-feasance or of malfeasance, or in any other cause independent of the agency of natural forces.  

The term ‘act of God’ is applicable to the former class.

The expression ‘act of God’ signifies operation of natural forces free from human intervention, such as lightning or severe gale, snow storming, hurricanes, cyclones and tidal waves and the like, though every non-expected wind or storm cannot operate as excuse from liability if there is reasonable possibility of anticipating their happening e.g. the possibility of extraordinary floods in any particular region being within competence of authorities to take precautionary steps, i.e., some casualty which human foresight could not discern and from consequences of which no human protection could be provided.

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29 Sankardan Das v. Grid Corporation of Orissa Ltd. 1998 ACJ 1420 (Ori.) DB
30 A.Krishna Patra v. Orissa State Electricity Board, 1998 ACJ 155 (Ori.) DB
In **United India Insurance Co. Ltd. v. Economic Roadways**\(^{31}\) case it was held that since act of God is a ground for defence, it is for the defendant to prove that accident had occurred for reasons beyond his control.

In claims for compensation, governed by beneficial legislations, the defence of act of God or of latent defect is a feeble defence. Tyres fleeing off running vehicle and hitting deceased was not held an act of God by the Rajasthan High Court\(^ {32}\).

In **Sarda Devi v. Birbal Ram**\(^ {33}\) case, where the accident had occurred because of tyre burst but the owner had failed to establish that tyre was road worthy, the finding of tribunal that it was an act of God was reversed by appellate court holding that owner and driver were negligent in operating the bus with unroad-worthy tyres.

**II. Defence of act of God, or of Latent defect feeble under Compensation Laws**

In the matter of **Sharma v. Kartar Singh**\(^ {34}\) where a driver, continuing to drive a jeep when there was storm despite request of occupants to stop, cannot plead that accident was an act of God.

In **R.J.Foujdar Bus Service v. Ganpat Singh**\(^ {35}\) where a driver took the bus on the bridge when water was overflowing. The bus was washed away, resulting in death of several passengers. Accident was not an act of God and negligence of driver was writ large.

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\(^{31}\) United India Insurance Co. Ltd. v. Economic Roadways, 2002 ACJ 2024 (Mad.)

\(^{32}\) Ali Khan v. Vijay Singh, 2007 ACJ 350 (Raj.)

\(^{33}\) Sarda Devi v. Birbal Ram, 2009 ACJ 2780 (Raj.)

\(^{34}\) Sharma v. Kartar Singh, 2008 ACJ 892 (MP) DB

\(^{35}\) R.J.Foujdar Bus Service v. Ganpat Singh, 2007 ACJ 1591 (MP) DB
In Madhya Pradesh State Road Transport Corporation v. Bhoj Singh\textsuperscript{36}, the bus collided against a tree which caused tyre burst in the rear wheel, causing injury to a passenger. The defence was that the tyre was in good condition and that the burst was a \\textit{vi major}. The evidence was that the bus was overloaded. It was held that the tyre burst was due to overloading and that the driver was negligent in having the bus overloaded.

In State of Rajasthan v. Ram Prasad\textsuperscript{37}, claim for compensation was made under the Workmen’s Compensation Act, 1923, in respect of death of a lady worker who died of an accident which took place on account of lightning. The defence was that lightning was act of God. Repelling such defence, the court observed:

“… the concept of the liability under the Act is wide enough to cover a case of this nature in as much as death has taken place arising as result of accident in the course of employment. It is no doubt true that accident must have a causal connection with the employment and arise out of it. If the workmen is injured as a result of natural force such as lightning though in itself has no connection with employment, she can recover compensation by showing such employment exposed her to such injury. In this case, the finding is that the said….was working on the site an would not have been exposed to such hazard of lightning striking her had she not been working so\textsuperscript{38}’.

III. An Accident Arising Out of the Use of a Motor Vehicle

The expression ‘an accident arising out of the use of a motor vehicle’ is the foundation of a claim for compensation and is, therefore, of vital significance

\textsuperscript{36} Madhya Pradesh State Road Transport Corporation v. Bhoj Singh, 1992 ACJ 1151 (MP)
\textsuperscript{37} State of Rajasthan v. Ram Prasad, 2001 ACJ 647(SC).
\textsuperscript{38} Ibid
which, of course, needs an independent chapter for the construction and meaning thereof.

In construing the scope of the expression ‘accident arising out of the use of a motor vehicle’, it can be said that the word ‘use’ is used in the Act in a wide sense so as to cover all employments of a motor vehicle, so that whichever the vehicle is put into action or service, there is ‘user’ of the vehicle within the meaning of the Act, whether the vehicle was being driven or repaired or simply parked or kept stationary or left unattended and in that sense, the vehicle is used, whenever the vehicle is driven out for any purpose, whatsoever. This, without anything more, is sufficient to attract the provisions of the Act. Thus, whenever any accident occurs causing death of or bodily injury to persons because of the vehicle or in the course of its user, the jurisdiction of the Claims Tribunal arises\(^9\).

In \textit{Union of India v. Satish Kumar Patel}\(^{40}\) and \textit{Gujarat State Road Transport Corporation v. Union of India}\(^{41}\) matters where accidents do often occur because of collision between a train and a motor vehicle, usually on unmanned level crossing, and such accidents may take one of the following modes, namely:

a. Where there is negligence only on part of the driver of the train.

b. Where the railway, or the driver of a train and the driver of a motor vehicle are both jointly responsible for the accident in question.

c. Where the driver of a motor vehicle is alone responsible for the accident in question.

\(^{39}\text{Padmanabhan Nair v. Narayaniutty, 1988 ACJ 58 (Ker.) DB.}\)
\(^{40}\text{Union of India v. Satish Kumar Patel, AIR 2001 MP 41}\)
\(^{41}\text{Gujarat State Road Transport Corporation v. Union of India, AIR 1988 Guj 13}\)
In cases falling within (a.) above, the accident cannot be said to have arisen out of the use of motor vehicle and a claim for compensation cannot lie before a Motor Accidents Claims Tribunal, but in cases covered by (b) and (c) above, the accident shall be held to have arisen out of the use of a Motor Vehicle, and a claim for compensation shall lie before the Motor Accidents Claims Tribunal42.

Section 165 provides the form of constitution of Claim Tribunal in adjudging claims of compensation in respect of accidents involving the death of bodily injury to persons "arising out of the use of Motor Vehicle". Being welfare legislation the scope of this term have been widened which includes accident by a stationery vehicle, injuries suffered by passengers in bomb blast, injuries due to fire in petrol tanker. Murder in a motor vehicle has also been covered as a motor accident.

In Bipal Bashi Das v. Oriental Insurance Co. Ltd.43 where the extremists had hired a vehicle causing death of one and injury to other passengers, death was held to have arisen out of use of motor vehicle.

In New India Assurance Co. Ltd. v. Sheeja44 where the driver taken his taxi to workshop and the gas cylinders exploded in the course of repair, the accident was held to have arisen out of use of motor vehicle.

42 Maniklal Dubey v. Mohd. Ismail, 1999 (3) Civil LJ 329
43 Bipal Bashi Das v. Oriental Insurance Co. Ltd., 2009 (1) ACC 288 (Gau.) DB.
44 New India Assurance Co. Ltd. v. Sheeja, 2007 ACJ 338 (Ker.) DB
F. Salient Features of Motor Vehicles Act, 1988 Relating to Awarding of Compensation in Motor Accident Cases

The relevant provisions relating to awarding of compensation in Motor Vehicle Accidents has been provided in Chapter X, Chapter XI and Chapter XII of the Motor Vehicles Act, 1988. These chapters deal with following subjects:

1. Chapter X deals with No Fault Liability in certain cases.

2. Chapter XI of the Act deals with Insurance of Motor Vehicles against Third Party Risk, and

3. Chapter XII of the Act deals with establishment of Claims Tribunals, application for and award of compensation in cases of accidents arising out of use of Motor Vehicles, recovery of amount of compensation from insurer as arrears of land revenue and other procedural and incidental matters.

In this chapter, first two chapters i.e. Chapter X & XI of Motor Vehicles Act, 1988 have been studied and judicially analyzed. Third chapter i.e. Chapter XII of Motor Vehicles Act, 1988 is studied separately in the next Chapter with title “Claims Tribunals under Motor Vehicles Act”.

I. Liability to Pay Compensation in Certain Cases on the Principle of No Fault.

Sections 140 to 144 of the Act, provides for payment of compensation on the principle of no fault liability i.e. without any fault on the part of any party.

Section 140 of the Motor Vehicles Act, 1988 provides for liability to pay compensation in certain cases on the principle of no fault. 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 vehicles 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.

(a) The amount of compensation which shall be payable under section 140 (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].

(b) In any claim for compensation under section 140 (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.

(c) A claim for compensation under section 140 (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.

(d) Notwithstanding anything contained in Section 140(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:

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47 Inserted, Ibid. (w.e.f. 14-11-1994).
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 163 – A”.

Section 140 of the Act provides that in case of death or permanent disablement of any person resulting from an accident which arise out of use of a Motor Vehicle/s, the owner of offending vehicle/s shall be liable jointly or severally to pay compensation in respect of such death or permanent disablement. Under this section amount of compensation is a fixed amount of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement. For claiming such compensation, claimant is not required to plead that such accident is occurred due to negligence or fault of the owner/driver of the vehicle and death or permanent disablement is result of that accident. Moreover, such claim shall not be defeated by reason of any wrongful act, neglect or default on the part of the person whose death or disablement has been occurred. Nor the quantum of compensation shall be reduced due to contributory negligence on the part of person who sustained disablement or death.

Compensation awarded under this section does not barred the victim to claim compensation under any other law being in force, though the amount of such compensation to be given under any other law shall be reduced by the amount of compensation payable under no fault liability under this section or in accordance with the structured formula laid down under schedule -2 to this Act read with Section 163A of the Act.
In Satvantkumar Harjit Singh Vig v. Aarti Jayant Lalwani\textsuperscript{48} case it was held by the Double Bench of the Mumbai High Court that the phrase ‘has resulted from’ occurring in section 140 of the Motor Vehicles Act, 1988 does not require the death to have occurred in the accident itself. The section is attracted even where death is result or the consequence of the accident arising out of a motor vehicle. What is necessary to see is whether the death is the consequence of an accident arising out of use of motor vehicle.

In New India Assurance Co. Ltd v. Mehebubanbibi\textsuperscript{49} case the deceased was deputed by his employer to carry a damaged transformer in a tractor. The tractor fell in to a ditch. The deceased was pressed under the damaged transformer, sustained injuries and died in hospital. Death of the deceased had arisen out of and in course of his employment. Though the case was not one of no fault liability, but as the accident had occurred due to negligence of the driver of the tractor, yet the fact of the case attract for a claim of double compensation under two different laws, irrespective of whether the claim is based on fault liability or on no fault liability.

What is material is that a claim under the Motor Vehicles Act is no bar to claiming compensation, if permissible, also under a different law. The Double Bench of Gujarat High Court held that the heirs of deceased in such case could claim compensation both under the Motor Vehicles Act for negligence of the driver of the tractor and also under Worken’s Compensation Act, 1923 for death occurring out of and in the course of employment.

\textsuperscript{48} Satvantkumar Harjit Singh Vig v. Aarti Jayant Lalwani, 2005 (1) ACJ 255 (Mum) DB
\textsuperscript{49} New India Assurance Co. Ltd v. Mehebubanbibi, 2003 (2) TAC 639 (Guj.) DB
In **Ram Singh v. Anil**\(^{50}\) it was held by the High Court that when occurrence of accident is proved to have arisen out of use of Motor Vehicle, it is not necessary to plead or prove negligence of driver of vehicle under Section 163A.

In **National Insurance Co. Ltd. v. Honnappa**\(^{51}\) in a claim under no fault liability, claimant need not plead or establish that permanent disablement was due to wrongful act or negligence or default of owner of the other vehicle with which the vehicle of claimant has colluded.

In **Pepsu Road Transport Corp. v. Kulwant Kaur**\(^{52}\)’s case it was held by the supreme court that section 140, as it came in to effect from 01.07.1989, is not retrospective. Hence the provision amended with effect from 14.11.1994 is also not retrospective. Therefore, in accident which occurred on 30.11.1982, and decided on 16.07.1984, the claimant was entitled only Rs. 15,000/- as per provisions of section 92A of the Motor Vehicles Act, 1939.

The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163 – A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force\(^{53}\).

A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent

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\(^{50}\) **Ram Singh v. Anil**, 2009 ACJ 73 (MP) DB  
\(^{51}\) **National Insurance Co. Ltd. v. Honnappa**, 2008 (3) ACC 726 (Karn) DB  
\(^{52}\) **Pepsu Road Transport Corp. v. Kulwant Kaur**, 2009 ACJ 1329  
\(^{53}\) **The Motor Vehicles Act, 1988**, Section 141 (1)
disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place\textsuperscript{54}.

Notwithstanding anything contained in section 141(1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation and also if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation\textsuperscript{55}.

For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or destruction or permanent impairing of the powers of any members or joint; or permanent disfiguration of the head or face\textsuperscript{56}.

The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person

\textsuperscript{54} \textit{Ibid.}, Section 141 (2)
\textsuperscript{55} \textit{Ibid.}, Section 141 (3)
\textsuperscript{56} \textit{Ibid.}, Section 142
under the Workmen’s Compensation Act, 1923 (8 of 1923) resulting from an accident of the nature referred to in sub-section (1) of section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act\(^57\).

The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force\(^58\).

II. **Necessity of Insurance Against Third Party Risk.**


Section 145 of the Act defines certain terms like authorized insurer, certificate of insurance, liability, policy, property etc., which terms are relevant to motor insurance against third party. Some of the definitions are as under:

(a) **Authorised Insurer**

The term Authorised Insurer means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972, and any Government insurance fund authorised to do general insurance business under that Act.

(b) **Certificate of Insurance**

The expression Certificate of Insurance means a certificate issued by an authorised insurer in pursuance of sub-section (3) of section 147 and

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\(^{57}\) *Ibid*, Section 143

\(^{58}\) *Ibid*, Section 144
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**

The word Liability is here 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**

Policy of Insurance includes “certificate of insurance”.

(e) **Property**

The word property includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile-stones;

In United India Insurance Co. Ltd. v. Kadviben Udabhai Rathwa\(^5\) it was held by the Full Bench of the Gujarat High Court that insurer is not entitled to raise any defence under section 149 (2) in an application under section 140.

(f) **Goods**

Goods as defined in section 2 (13) of the Act includes livestock and anything carried by a vehicle except living persons.

\(^5\) United India Insurance Co. Ltd. v. Kadviben Udabhai Rathwa, 2006 ACJ 2019
In National Insurance Co. Ltd. v. Khushboo\textsuperscript{60} it was held by Patna High Court that goods does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle.

In National Insurance Co. Ltd. v. Phool Singh\textsuperscript{61} it was held by the Punjab and Haryana High Court that personal effects are not goods. Merely because the person is going to join his duties was carrying a box, suit case and bed holder and had paid Rs. 100 as fare, cannot be said to be owner of goods.

In National Insurance Co. Ltd. v. Khushboo\textsuperscript{62}it was held that a dead body comes under the definition of goods.

(g) \textbf{Reciprocating Country}

This word 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.

(h) \textbf{Third Party}

The word third party includes the Government.

Section 146 of the Act provides for the necessity for insurance against third party risk. According to sub-section 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

\textsuperscript{60} National Insurance Co. Ltd. v. Khushboo, 2009 (3) ACC 460 (Pat.)
\textsuperscript{61} National Insurance Co. Ltd. v. Phool Singh, 2008 ACJ 58
\textsuperscript{62} Supra n.60
that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

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\textsuperscript{63}.

Explanation added to this sub-section states that 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.

The word public place has been defined under section 2(34) of the act to mean a road, street way or other place, whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage.

The word public place was interpreted in the case of \textit{Chairman, The Trustee of Port of Madras v. Suganesan & Co.}\textsuperscript{64} as place accessible to members of public and available for their use, enjoyment, avocation and other purposes though right of access thereto may be permissive, limited, restricted or regulated by tickets, passes, payment or oral or written permission and any place restricted generally or to a particular purpose or purposes, such as harbor, port trust, or railway station.

\textbf{In National Insurance Co. Ltd. v. William Jenifar Ajitha}\textsuperscript{65} it was held by Madras high Court that even those places of private ownership where

\textsuperscript{63} Inserted by Act 54 of 1994, S. 45 (w.e.f. 14-11-1994).
\textsuperscript{64} \textit{Chairman, The Trustee of Port of Madras v. Suganesan & Co.}, 1996 ACJ 1224 (Mad.)
\textsuperscript{65} \textit{National Insurance Co. Ltd. v. William Jenifar Ajitha} 2009 ACJ 1042
members of public have access whether free or controlled, falls under public place.

It was held in Chinna Gangappa v. B. Sanjeeva Reddy\textsuperscript{66} that an accident which occurred in garage in the process of reversing a tractor, would be held as accident in a public place, since access to garage is not prohibited to members of public.

The provision of compulsory insurance 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\textsuperscript{67}.

Sub Section -3 of Section 146 authorised the appropriate Government to exempt the operation of sub-section (1) for any vehicle owned by the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise or any local authority or any State transport undertaking.

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 to Section 146 (3) states that for the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and

\textsuperscript{66} Chinna Gangappa v. B. Sanjeeva Reddy, 1998 (1) TAC 268 AP
\textsuperscript{67} The Motor Vehicles Act, 1988, Section 146 (2)
a. In relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government.

b. In relation to any corporation or company owned by the Central Government & one or more State Governments, means the Central Government.

c. In relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

III. Requirement of Insurance Policy and Limits of Liability Under Such Policy.

Section 147 of the Act deals with the provisions regarding requirement of policies and limits of liability.

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 authorised insurer and (b) insures the person or classes of persons specified in the policy to the extent specified in Sub Section (2):

a. Against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised 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.

b. 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

(c) If it is a goods carriage, being carried in the vehicle, or

(ii) To cover any contractual liability.

An explanation appended to sub section (1) has declared for the removal of doubts 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.

Sub Section (2) of the Section provides that 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.

In National Insurance Co. Ltd. v. Puja Roller Flour Mills (P) Ltd. It was held by the apex court that liability under policy issued under ACT of 1939 had stipulated the liability of Insurer to the extent of Rs. 1.5 Lakhs only

In Jameskutty Jacob v. United India Insurance Co. Ltd it was held by the Supreme Court that if the policy itself has provided for Rs. 50,000/- than the insurer cannot be made liable in excess thereof.

In Jayshree Narendra Kataria v. Somnath Damodhar Kale it was held by the Mumbai High Court that where the policy showed limited liability in respect of any one claim or series of claims arising out of one event upto Rs. 1.5 Lakhs and premium of Rs. 240 was accepted, the liability of insurer was held unlimited.

Sub Section (3) of Section 147 provides that 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

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68 National Insurance Co. Ltd. v. Puja Roller Flour Mills (P) Ltd. 2007 (1) ACC 219
69 Jameskutty Jacob v. United India Insurance Co. Ltd. AIR 2006 SC 3690
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.

Where a cover note issued by the insurer under the provisions of this Chapter or the rules made there under 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 prescribe71.

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 persons72.

In United India Insurance Co. Ltd. v. Hussain Sab73, the owner of the goods vehicle as well as the insurance company denied liability on the ground that the deceased persons were not travelling in the goods vehicle as passengers but were only pedestrians. The claimants in support of their claim produced documents relating to criminal case, namely FIR etc., which disclosed that the deceased were travelling as passengers in the goods vehicle. It was held that the FIR would be admissible in evidence since strict rules of evidence are not applicable to trials and enquiry relating to motor accident claims.

71 The Motor Vehicles Act, 1988, Section 147 (4)
72 Ibid, Section 147 (5)
73 United India Insurance Co. Ltd. v. Hussain Sab, AIR 2006 (NOC) 437 (Kar.)
In the case of M.V. Jayadevappa v. Oriental Fire and General Insurance Co. Ltd., it was held by the apex court that a vehicle described in the Schedule annexed with policy as ‘Cheverolet Lorry with open body’ with its licensed carrying capacity as 2 tons is a good vehicle when it is nowhere written in policy that it was authorised to carry passengers.

IV. Validity of Policies of Insurance Issued in Reciprocating Countries

Section 148 of the ACT relates to validity of polices of insurance issued in reciprocating countries. Which states that 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.

V. Liability of Insurer and Defence Available to Insurer.

Section 149 of the Act provides for liability of insurer and defences available to insurer in a case of Motor Accident filed before a Motor Accident Claims Tribunal and provides for duties of insurers to satisfy judgments and awards against persons insured in respect of third party risks. 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 effectuated, judgement or award in

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74 M.V. Jayadevappa v. Oriental Fire and General Insurance Co. Ltd., 2005 ACJ (3) 1801 (SC)
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) 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 of 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 there under, as if he were the judgement 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 judgements.

No sum shall be payable by an insurer under sub-section (1) in respect of any judgement or award unless, before the commencement of the proceedings in which the judgement 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 judgement 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:

a. That there has been a breach of a specified condition of the policy, being one of the following conditions:-

   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

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75 The Motor Vehicles Act, 1988, Section 149 (1)
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

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 licenced, or by any person who has been disqualified for holding or obtaining a driving licence 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.  

Where any such judgement as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgement is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 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 judgement were given by a Court in India:

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76 Ibid., Section 149 (2)
Provided that no sum shall be payable by the insurer in respect of any such judgement unless, before the commencement of the proceedings in which the judgement 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)\textsuperscript{77}.

Section 13 of Civil Procedure Code reads as under:

a. When foreign judgment not conclusive? A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except?

b. Where it has not been pronounced by a Court of competent jurisdiction;

c. Where it has not been given on the merits of the case;

d. Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;

e. Where the proceedings in which the judgment was obtained are opposed to natural justice;

f. Where it has been obtained by fraud;

\textsuperscript{77} \textit{Ibid,} Section 149 (3)
g. Where it sustains a claim founded on a breach of any law in force in India

Sub Section (4) of the section states that 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 subsection (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.

Sub-Section 5 states that 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.

Sub Section 6 defines the expression “material fact” and “material particular” means, respectively, a fact or particular of such a nature as to influence the judgement 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

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78 Civil Procedure Code, 1908, Section 13
79 The Motor Vehicles Act, 1988, Proviso to Section 149 (4)
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.80

Sub Section 7 provides that 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 judgement or award as is referred to in sub-section (1) or in such judgement 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.

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 168.81

VI. Third Party Insurance: Defence Available to the Insurer.

The Insurance Company cannot avoid the liability except on the grounds and not any other ground, which have been provided in Section 149(2). In recent time, Supreme Court while dealing with the provisions of Motor Vehicle Act has held that even if the defence has been pleaded and proved by the Insurance Company, they are not absolve from liability to make payment to the third party but can receive such amount from the owner insured. The courts one after one have held that the burden of proving availability of defence is on Insurance Company and Insurance Company has not only to lead evidence as to breach of condition of policy or violation of provisions of Section 149(2) but has to prove also that such act happens with the connivance or knowledge of the owner. If knowledge or connivance has not

80 Ibid, Section 149 (6)
81 Ibid, Explanation to Section 149 (7)
been proved, the Insurance Company shall remain liable even if defence is available.

VII. Right of Recovery from Owner to Insurance Company

With the development of law, liability of the insurance Company has been made strict to the third party even if there is no negligence or defences to the Insurance Company are available. A right has been given to the Insurance Company by way of legal precedents incorporating various provisions to recover the said amount paid to third party from owner. This recovery can be made by mere filing of an execution application and not by a separate civil suit.

VIII. Rights of Third Party Against Insurers on Insolvency of Insured.

Section 150 of the Act provides for the rights of third parties against insurers on insolvency of the insured. Sub section (1) of the Section provides that 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 in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or 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.

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 is any provision of law, be transferred to and vest in the person to whom the debt is owing\(^\text{82}\).

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 there under 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\(^\text{83}\).

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,

\(^{82}\text{Ibid} \text{ Section 150 (2)}\)
\(^{83}\text{Ibid, Section 150 (3)}\)
nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance\textsuperscript{84}.

IX. Duty to Give Information as to Insurance.

Section 151 of the Act provides about the duty to give information as to insurance. 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\textsuperscript{85}.

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

\textsuperscript{84} Ibid. Section 150 (4)
\textsuperscript{85} The Motor Vehicles Act, 1988, Section 151 (1)
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 there under 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.

If, from the information given to any person in pursuance of sub section (2) or otherwise, he has reasonable ground for supporting 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.

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.

X. **Effect of Settlement Between Insure and Insured.**

Section 152 of the Act concerned with the effect of any settlement between insurers and insured persons. 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.

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86 *Ibid,* Section 151 (2)
87 *Ibid,* Section 151 (3)
88 *Ibid,* Section 151 (4)
89 *The Motor Vehicles Act, 1988,* Section 152 (1)
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.\(^90\)

**XI. Driving License**

Earlier not holding a valid driving license was a good defence to the Insurance Company to avoid liability. It was been held by the Supreme Court that the Insurance Company is not liable for claim if driver is not holding effective & valid driving licence. It has also been held that the learner's licence absolves the insurance Company from liability, but later Supreme Court in order to give purposeful meaning to the Act have made this defence very difficult. In Sohan Lal Pasi's case it has been held for the first time by the Supreme Court that the breach of condition should be with the knowledge of the owner. If owner's knowledge with reference to fake driving licence held by driver is not proved by the Insurance Company, such defence, which was otherwise available, can not absolve insurer from the liability. Recently in a dynamic judgment in case of Swaran Singh, the Supreme Court has almost taken away the said right by holding;

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\(^{90}\textit{Ibid}, \text{Section 152 (2)}\)
a. Proving breach of condition or not holding driving licence or holding fake licence or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of owner.

b. Learner’s licence is a licence and will not absolve Insurance Company from liability.

c. The breach of the conditions of the policy even within the scope of Section 149(2) should be material one which must have been effect cause of accident and thereby absolving requirement of driving licence to those accidents with standing vehicle, fire or murder during the course of use of vehicle.

This judgment has created a landmark history and is a message to the Government to remove such defence from the legislation as the victim has to be given compensation.

**XII. Gratuitous Passenger**

In *United India Insurance Co. Ltd. v. Bodali Bai*[^91] where the owner had permitted the truck to be used for taking a dead body for cremation and on return journey the driver allowed two passengers, then on death of those passengers as truck had dashed against a bridge, the insurer is not liable because the deceased were gratuitous passengers, but the owner was held vicariously liable.

In *New India Assurance Co. Ltd. v. Santra Devi*[^92] it was held by the court that so far as taking gratuitous passengers in goods carriage is concerned, the

[^91]: United India Insurance Co. Ltd. v. Bodali Bai, 2009 ACJ 2213 (Chhat.).
[^92]: New India Assurance Co. Ltd. v. Santra Devi, 2007 ACJ 2273 (P&H) DB.
law is settled that insurer cannot be made liable, since a commercial vehicle is not at all meant for carrying passengers.

The Liability of the insurance company to pay compensation on account of death or bodily injury to any person who was travelling by the vehicle does not depend upon whether the person concerned was a gratuitous passenger or had paid fare for the journey performed by him. What is important is whether the person was killed or injured while travelling in or upon or entering or mounting or alighting from the motor vehicle and not whether he had or had not paid any fare for such travel\textsuperscript{93}.

Status of passenger is matter of evidence. Where insurer has failed to prove that deceased was gratuitous passenger, it cannot avoid its liability\textsuperscript{94}.

Where the claimants were travelling as gratuitous passengers in a jeep covered by ‘Act only’ policy covering risk in respect of third party only in respect of such private vehicle let out on hire, and there was no mention in the policy for coverage of any occupants of jeep, no liability could be fastened on the insurer\textsuperscript{95}.

A gratuitous or fare paying passenger in a goods vehicle or fare paying passenger in private vehicle has been proved to be a good defence. In Motor Vehicle Act 1939 the gratuitous passenger was not covered under the insurance policy but a fare passenger in a goods vehicle was considered to be covered by 5 Judges Bench judgment of Rajasthan High Court. In new Motor Vehicle Act, a Division Bench of Supreme Court held that Insurance Company is liable for a passenger in goods vehicle. In another judgment of 3 Judges Bench of Supreme Court it was held that the Insurance Company is

\begin{footnotes}
\item[93] New India Assurance Co. Ltd. v. Vibhuti, 2004 ACJ 769 (Karn.) DB.
\item[94] United India Insurance Co. Ltd. v. Surinder, 2006 ACJ 1285 (P&H.) DB.
\item[95] Oriental Insurance C. Ltd. v. Arati Mishra, AIR, 2010 (NOC) 17
\end{footnotes}
not liable for the gratuitous passenger traveling in the goods vehicle. In number of other cases this judgment has been reiterated with a direction that the Insurance Company shall first make payment of the compensation to the claimant and then recover it from the owner.

XIII. Effect of Dishonour of Cheque of Insurance Premium

It has been held by the Supreme Court that once the Cover Note is issued the Insurance Company is bound to make payment to a third party and can recover amount from owner. This judgment deserves to be reviewed else Section 64 VB of Insurance Act will become non-existent. This judgment can give momentum to those persons who will get the insurance and will get their cheque been bounced as the liability of Insurance Company will run for another one year without there being a premium. This may be opposed to public policy also. Further there will be clash between the two provisions.

XIV. Effect of Transfer of Vehicle

Transfer of a vehicle prior to accident has been held to be not valid defence for the purpose of third party liability. It can be a defence for own damage but as far as third party liability, even the vehicle has been transferred and policy has not been transferred, liability of Insurance Company shall remain there.

XV. Saving Clause

Section 153 of the Act is a saving clause stating that 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.
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.

XVI. Effect of Insolvency of Insured

Section 154 of the ACT deals with effect of insolvency of insured. 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.

XVII. Effect of Death on Certain Causes of Action.

Section 155 of the Act deals with effect of death on certain causes of action. It provides that notwithstanding anything contained in section 306 of the Indian Succession Act, 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.

XVIII. Effect of Certificate of Insurance.

Section 156 of the Act provides the 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.

XIX. Effect of Transfer of Certificate of Insurance.

Section 157 of the Act stated the effect of transfer of certificate of insurance. It provides that 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.

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

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96 Ibid, Explanation to Section 157 (1)
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\textsuperscript{97}.

In \textit{G. Govindan v. New India Assurance Co. Ltd.}\textsuperscript{98} it was held by the Supreme Court that compensation to the victim cannot be denied merely on the ground that the policy had not been transferred.

In \textit{Ram Chander v. Naresh Kumar}\textsuperscript{99} it was held by the High Court that there should be no error in making the transferee owner liable instead of the insurer.

**XX. Production of Certain Certificates, Licence and Permit etc.**

Section 158 of the Act, provides the details as to production of certain certificates, licence and permit in certain cases. This section states that any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, should produce the following:

a) the certificate of insurance;

b) the certificate of registration;

c) the driving licence; and

\textsuperscript{97} \textit{Ibid.}, Section 157 (2)
\textsuperscript{98} \textit{G. Govindan v. New India Assurance Co. Ltd}, AIR 1999 SC 1398
\textsuperscript{99} \textit{Ram Chander v. Naresh Kumar}, 2000 ACJ 727 (P&H) DB
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.

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.\footnote{The Motor Vehicles Act, 1988, Section 158 (2)}

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.\footnote{Ibid, Section 158 (3)}

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.\footnote{Ibid, Provisio to Section 158 (3)}

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

\footnote{The Motor Vehicles Act, 1988, Section 158 (2)}
\footnote{Ibid, Section 158 (3)}
\footnote{Ibid, Provisio to Section 158 (3)}
occasion when the driver was required under this section to produce his certificate of insurance\textsuperscript{103}.

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\textsuperscript{104}.

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\textsuperscript{105}.

**XXI. Production of Certificate of Insurance on Application for Authority to Use Vehicle.**

Section 159 of the ACT provides for the production of certificate of insurance on application for authority to use vehicle. It provides that 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 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

\textsuperscript{103} Ibid, Section 158 (4)
\textsuperscript{104} Ibid, Section 158 (5)
\textsuperscript{105} The Motor Vehicles Act, 1988, Section 158 (6)
persons on his order or with his permission, or the vehicle is a vehicle to which section 146 does not apply.

XXII. Duty to Furnish Particulars of Vehicle Involved in Accident.

Section 160 of the Act deals with duty to furnish particulars of vehicle involved in accident. It states that 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.

XXIII. Special Provisions as to Compensation in Case of Hit and Run Motor Accident.

Section 161 of the Act provides for special provisions as to compensation in case of hit and run motor accident. It provides that 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.

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.

Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 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 106.

Subject to the provisions of this Act and the scheme, compensation shall be paid in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees and in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees 107.

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 108.

In Moosola Rama Rao v. District Collector, Srikakalum 109 it was held by the high court that the applications for compensation under that Scheme have to be decided expeditiously. Where an application for compensation in a hit and run accident had been kept pending for more than four years, direction was issued, in writ jurisdiction, to decide the application within three months.

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106 Ibid, Section 161 (2)
107 Ibid, 1988, Section 161 (3)
108 Ibid, Section 161( 4)
109 Moosola Rama Rao v. District Collector, Srikakalum, 2002 ACJ 1085 (AP)
XXIV.  Refund of Compensation Paid Under Section 161.

Section 162 of the Act deals with refund in certain cases of compensation paid under section 161. It provides that 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 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.

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.\textsuperscript{110}

For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending, if such application has been rejected, till the date of the rejection of the application, and in any other case, till the date of payment of compensation in pursuance of the application.\textsuperscript{111}

XXV. \textit{Scheme for Payment of Compensation in Case of Hit and Run Motor Accidents.}

Section 163 of the Act deals with scheme for payment of compensation in case of hit and run motor accidents. It provides that 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.

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

\textsuperscript{110} \textit{The Motor Vehicles Act, 1988}, Section 162 (2)

\textsuperscript{111} \textit{Ibid}, Explanation to Section 162(2)
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\textsuperscript{112}.

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\textsuperscript{113}.

A hit and run accident is one in which the identity of the offending vehicle cannot be ascertained since it had hit and run away.

In \textit{New India Assurance Co. Ltd v. Rajendra Prasad Bhatt}\textsuperscript{114} it was held by the court that a Scheme under section 163 in the name of Solatium Scheme, 1989 has been framed and Rule 20 of that Scheme makes it clear, that an application for compensation thereunder has to be filed in Form 1 before the Claims Enquiry Officer of the Sub-Division in which the accident has taken place and not before the Motor Accidents Claims Tribunal.

In \textit{Mohammed Iyub v. Muzaheed Pasha}\textsuperscript{115} it was held that in a case when an uninsured vehicle is involved and the standing of the owner or the user of

\begin{footnotes}
\item[112] \textit{Ibid.}, Section 163 (2)
\item[113] \textit{Ibid.}, Proviso to Section 163 (2)
\item[114] \textit{New India Assurance Co. Ltd v. Rajendra Prasad Bhatt}, 2002 ACJ 1762 (MP)
\item[115] \textit{Mohammed Iyub v. Muzaheed Pasha}, 2010 (1) TAC 313 (Del.)
\end{footnotes}
the vehicle is not known, the vehicle itself is the most proximate asset, in respect of which, the claimant in a motor accident, could proceed. Notwithstanding that the vehicle may have been under the use of a person other than the owner for hire or otherwise, a charge ought to be fastened on the vehicle, disabling any disposal of the vehicle to protect claimants such as the petitioner from recovering some portion of the compensation by bringing the vehicle to sale. There is no such legal provision available which would operate to ensure the recovery of money by bringing such a vehicle to sale.

XXVI. Special Provisions as to Payment of Compensation on Structured Formula Basis.

Section 163A of the Act provides for special provisions as to payment of compensation on structured formula basis. It provides that 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 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.

For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923\textsuperscript{116}.

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

\textsuperscript{116} \textit{Ibid}, Explanation to Section 163A(1)
neglect or default of the owner of the vehicle or vehicles concerned or of any other person\textsuperscript{117}.

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\textsuperscript{118}.

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\textsuperscript{119}.

In \textbf{United India Insurance Co. Ltd. v. Mehtab Bai}\textsuperscript{120} it was held by the High Court that unless the legislature had made Section 163A of the Motor Vehicles Act, 1988, operative retrospectively, its operation shall only be prospective.

In \textbf{Shantaben Gordhandas Bhatt v. Gujarat State Road Transport Corporation}\textsuperscript{121} case it was held that in passing award for compensation in cases of accidents occurring prior to coming in to force of Section 163A, guidance can be taken from Second Schedule at least in the selection of multiplier, so as to avoid innumerable mistake likely to occur in the calculation of income of the victim and in selection of a proper multiplier\textsuperscript{122}.

In \textbf{Ramadevsing v. Hansrajbai v. Kodala}\textsuperscript{123} it was held by the High Court of Gujarat that it is with this purpose that the legislature has introduced a

\textsuperscript{117} \textit{The Motor Vehicles Act, 1988}, Section 163 A(2)
\textsuperscript{118} \textit{Ibid}, Section 163A (3)
\textsuperscript{119} \textit{Ibid}, Section 163B
\textsuperscript{120} \textit{United India Insurance Co. Ltd. v. Mehtab Bai}, AIR 1999 Raj. 293
\textsuperscript{121} \textit{Shantaben Gordhandas Bhatt v. Gujarat State Road Transport Corporation}, 2002 ACJ 1714
\textsuperscript{122} \textit{U.P. State Road Transport Corporation v. Trilok Chandra}, (1996) 4 SCC 362
\textsuperscript{123} \textit{Ramadevsing v. Hansrajbai v. Kodala}, 1999 ACJ 1129
predetermined formula to award compensation by selecting a proper multiplier with a view to maintaining consistency and uniformity.

In Lalchandhari Shah v. Raj Nath Shah124 it was held by the Division Bench of the Madhya Pradesh High Court that section 163A is a special provision which eliminates pleading and proof with regard to wrongful act, neglect or default of the owner of vehicle or of any other person.

In Kanai Manna v. United India Insurance Co .Ltd.125 it was held that where the income of the victim was more than claim under Section 163A was held not maintainable.

In Sapna v. Oriental Insurance Co. Ltd.126 It was held that since fault has not to be proved, benefit under section 163A of the Motor Vehicles Act, 1988, which is beneficial legislation cannot be denied to legal representatives of the deceased.

In Rajasthan State Road Transport Corporation v. Siraj Ahmed127 where amount of compensation has been determined on structured formula basis under the Second Schedule to the Motor Vehicles Act, no interest is payable on the principle amount unless there are special circumstances to justify the same or the principle amount of compensation is too meager or abnormally low.

It was held by the Supreme Court of India in the case of Padma Srinivasan v. Premier Insurance Co. Ltd128 that if on the date of the accident the 1988 Act had not come into force and under the old Act there was no Schedule,
then the multipliers then being applied were on the basis of ratio laid down by the Supreme Court in various cases\textsuperscript{129}.

**XXVII. Power of Central Government to Make Rules.**

Last Section in Chapter XI of the Act is Section 164 which confers powers on Central Government to make rules. This section provides that 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.

Sub Section (2) of Section 164 provides that 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;

\textsuperscript{129} Maitri Koley v. New India Assurance Co. Ltd., 2004 ACJ 46 (SC)
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;

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.

G. Review

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 negligence. This enactment has worked in India for a comfortable long period. Before the Motor Vehicle Act, 1988 came in to existence, the Motor Vehicles Act, 1939 was applicable. This Act was amended several times to keep it up to date. Various Committees and the Law Commission have gone into different aspects of road transport. They have recommended for updating, simplification and rationalization of this law. The Motor Vehicle Act, 1988, has been enacted with following objectives:

a. Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.

b. Stricter procedures relating to grant of driving licences and the period of validity thereof.

c. Laying down of standards for the components and parts of motor vehicles.
d. Standards for anti-pollution control devices.

e. Provision for issuing fitness certificates of vehicles also by the authorized testing stations.

f. Enabling provision for updating the system of registration marks.

g. Liberalized schemes for grant of stage carriage permit on non nationalized routes, all-India Tourist permits and also national permits for goods carriages.

h. Administration of the Solatium Scheme by the General Insurance Corporation.

i. Provision for enhanced compensation in cases of “no fault liability” and hit and run motor accidents.

j. Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles.

k. Maintenance of State registers for driving licences and vehicle registration.

l. Constitution of Road Safety Councils.

Section 140 of the Act provides that in case of death or permanent disablement of any person resulting from an accident which arise out of use of a Motor Vehicle/s, the owner of offending vehicle/s shall be liable jointly or severally to pay compensation in respect of such death or permanent disablement. Under this section amount of compensation is a fixed amount of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement. Compensation awarded under this section does not bar the victim to claim compensation under
any other law for the time being in force, though the amount of such compensation to be given under any other law shall be reduced by the amount of compensation payable under no fault liability under this section or in accordance with the structured formula laid down under schedule -2 to this Act read with Section 163A of the Act.

The Insurance Company cannot avoid the liability except on the grounds, which have been provided in Section 149(2) and not any other ground. In recent times, Supreme Court while dealing with the provisions of Motor Vehicle Act has held that even if the defence has been pleaded and proved by the Insurance Company, they are not absolved from liability to make payment to the third party but can receive such amount from the owner insured. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defence is available.

Section 161 of the Act provides for special provisions as to compensation in case of hit and run motor accident and Section 163 of the Act deals with scheme for payment of compensation in case of hit and run motor accidents.

Section 163A of the Act provides for special provisions as to payment of compensation on structured formula basis. It provides that 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 authorised 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.