

AS INTRODUCED IN THE RAJYA SABHA
ON 9TH DECEMBER, 2022

Bill No. LXX of 2022

THE MOTOR VEHICLES (AMENDMENT) BILL, 2022

A

BILL

further to amend the Motor Vehicles Act, 1988.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Motor Vehicles (Amendment) Act, 2022.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

59 of 1988.

2. In the Motor Vehicles Act, 1988 (hereinafter referred to as the principal Act), in section 147,—

Amendment of section 147.

(1) in sub-section (1), in clause (b), for sub-clause (ii) and Explanation thereto, the following shall be substituted, namely:—

"(ii) against the death of or bodily injury to any passenger of a motor vehicle including, but not limited to, gratuitous passengers and pillion riders, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle."

(2) in sub-section (3), after the words "any other prescribed matters," the words ", save as otherwise provided by or under this Act," shall be inserted. 5

Amendment
of section
150.

3. In section 150 of the principal Act,—

(1) in sub-section (2), in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

"(ii) a condition excluding driving, with the connivance of or knowledge of the owner, by a named person or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or" 10

(2) after sub-section (4), the following proviso shall be inserted, namely:—

"Provided that on occurrence of any of the eventualities set forth in clause (a) of sub-section (2), the insurer shall pay the awarded compensation in the first instance to third parties including gratuitous passengers and pillion riders, and may thereafter recover the same from the insured persons." 15

(3) in sub-section (5), after the words "otherwise than in the manner provided for in sub-section (2)", the words "subject to the proviso to sub-section (4)," shall be inserted. 20

Amendment
of section
157.

4. In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The transferee may apply 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: 25

Provided that nothing contained in this sub-clause, or failure in compliance thereof, shall render the provisions of sub-section (1) invalid." 30

Amendment
of section
166.

5. In sub-section (3) of section 166 of the principal Act,—

(1) in sub-section (3), for the words "six months", the words "three years" shall be substituted.

(2) after sub-section (3), the following proviso shall be inserted, namely:—

"Provided that an application for compensation may be entertained after the prescribed period, if the claimant satisfies the Claims Tribunal that he had sufficient cause for not making an application within such period." 35

STATEMENT OF OBJECTS AND REASONS

The Motor Vehicles Act, 1988 [Act No. 59 of 1988] contained certain timeframes under sub-section (3) of section 166 for filing application for compensation in respect of accidents before the Motor Accidents Claims Tribunals. However, those periods of limitation were subsequently removed by omitting sub-section (3) of section 166, *vide* section 53 of the Motor Vehicles (Amendment) Act, 1994. This expunging of timeframe might have been made by taking into consideration of the hardships faced by the victims of the accidents in complying the said time limit. Thenceforth, the victims of accidents have been at liberty to file application for compensation before the Motor Accident Claims Tribunals without reckoning the period between the date of accident and filing of application.

However, the Government promulgated the Motor Vehicles (Amendment) Act, 2019 on 09.08.2019, whereby a new sub-section (3) was inserted to section 166, by virtue of section 53 of the Amendment Act, *viz.*—

"(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident."

The Government notified the implementation of the above provision with effect from 01.04.2022. It is to be noted that the above amendment, in reality, shall be advantageous to insurance companies as innumerable number of applications for compensation can be denied merely on the grounds of the delay in filing applications. If a victim of an accident is bedridden for more than six months, he may not be able to file an application for compensation within the presently stipulated time period of six months. Though, the victim can, in such a circumstance, authorize an agent for filing application by invoking clause (d) of sub-section (1) of section 166 of the principal Act, the same would not always be feasible on practical considerations since the person so injured has to 'duly authorize' the agent.

Similarly, a claimant needs several information like the registration details of the vehicle involved in the accident, insurance details, driving licence details, etc. for filing an application which may not always be effortless to collect. Prior to the latest amendments, the victims of accidents generally inclined to rely on the charge sheet filed by the police authorities before the courts, to get hold of the above mentioned details. It is true that a new section 159 has been inserted in the principal Act by virtue of the Amendment Act No. 32 of 2019 thereby making the police officers duty-bound, during the investigation, to prepare an accident information report to facilitate the settlement of claim in such form and manner, within three months and containing such particulars and submit the same to the Claims Tribunal and such other agency as may be prescribed. Further, another newly inserted section 160 *vide* the Amendment Act No. 32 of 2019 makes it imperative that the registering authorities and officer-in-charge of police stations shall furnish to the claimants, 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. However, on a practical consideration, the investigation of police authorities generally tends to exceed the prescribed time limits if we examine the history of motor accident investigations. Several factors may lead to the delay in completion of investigations. Besides the usual factors, the investigation may get delayed in cases of requirement of availing the Forensic Science Laboratory (FSL) Reports in cases where there arises a dispute as to who was driving the vehicle at the time of accident, ascertaining the identity of vehicle involved in an accident in cases where the driver ran off with the vehicle, etc. These extraneous reasons are beyond the control of investigation agencies, thereby

also rendering the provision contained in sub-section (4) of section 166 of the principal Act toothless in many cases in so far as the time-frame is concerned. These aspects were not seen duly envisaged while introducing the new timeframe.

It is equally pertinent to note that the limitation period prescribed in the Limitation Act, 1963 for filing even money suits, in most of the circumstances, is three years. All the above aspects make it exigent that the victims of accidents are to be provided with reasonable time period for filing application for compensation before Motor Accidents Claims Tribunals. There should also be a provision for condoning the delay for the cases filed after the prescribed period, if there are sufficient causes for the delay occasioned.

Likewise, in a catena of judgments the Supreme Court held on the basis of the existing provisions of the Motor Vehicles Act, 1988, that 'Liability Only Policy' (Act Only Policy) by itself, being a statutory policy, won't cover the risk of death of or bodily injury to gratuitous passengers including pillion riders. Though the Supreme Court, in a few of such cases, directed the insurer to pay the amount of compensation to the claimants in the first instance and thereafter to recover it from the insured, the same is seen to be by invoking the inherent powers of Supreme Court under article 142 of the Constitution of India. The term 'third party' shall include all persons other than the insured, who is the first party, and the insurer, who is the second party. All other persons, including gratuitous passengers and pillion riders, who are neither the insured nor the insurer, shall be treated as 'third party' for the purpose of insurance coverage in a Liability Only Policy. As such, it is imperative to amend the existing Act, to cover gratuitous passengers including pillion riders also within the ambit of Liability Only Policy so as to protect their interests in the case of an accident. It is equally significant to omit the condition in sub-clause (ii) of clause (b) of sub-section (1) of section 147 of the Act restricting the coverage of insurance to only those accidents occurred in a public place. Sub-clause (ii) of clause (a) of sub-section (2) of section 150 of the existing Act empowers the Insurer to raise the following ground as a defence for claiming impunity from payment of compensation in case of an accident, viz.:

"(ii) a condition excluding driving by a named person 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 driving under the influence of alcohol or drugs as laid down in section 185;"

It is pertinent to note that one of the grounds, i.e. *driving under the influence of alcohol or drugs as laid down in section 185*, was not there in the original Act and that the same was subsequently incorporated *vide* the Motor Vehicles (Amendment) Act, 2019. The real intention of Legislature while passing the original Act was to protect the interests of third parties in an accident. Their insurance coverage shall not be absolved by the reason of consumption of alcohol or drugs by the driver of the offending vehicle, against which the latter can be prosecuted as per the penal provisions. It shall not preclude third parties from claiming insurance coverage. As such, it is the need of the hour to omit the said defence from the existing Act. Similarly, a condition shall also be inserted in sub-clause (ii) to protect the interests of the owner who doesn't have any knowledge or connivance in permitting a person to drive in violation of the stipulated conditions.

Furthermore, other defences provided in clause (a) of sub-section (2) of section 150 shall be restricted in such a way that the insurer shall, in such a circumstance, pay the awarded compensation in the first instance to third parties including gratuitous passengers and pillion riders and may thereafter recover the same from the insured. The Act shall perform as a welfare legislation for the benefit of third parties by ensuring that they receive the fruits of the awards obtained by them straightaway with an element of certainty and not to make them wait for a prolonged recovery proceeding as against the owner of the vehicle.

Similarly, sub-section (2) of section 157 of the principal Act is apparently trying to limit the protection granted under sub-section (1) thereof of deemed transfer of insurance in case of transfer of vehicle. Further, sub-section (2) does not contain any provision explaining the

consequence of not taking any such procedural steps stipulated therein by the transferee. Absence of such a provision emphasises the fact that transfer of insurance policy is controlled by sub-section (1) only, and it takes place the moment there is transfer of ownership of a vehicle together with its insurance policy. Hence sub-section (2) of section 157 of the Principal Act needs to be modified suitably.

The Motor Vehicles Act, 1988 is a benevolent social legislation in so far as the protection of interests of victims of motor accidents is concerned. It is a pressing priority that the principal Act, therefore, be amended to ensure the said purpose.

The Bill seeks to achieve the aforesaid objectives.

DR. JOHN BRITTAS.

ANNEXURE

EXTRACTS FROM THE MOTOR VEHICLES ACT, 1988

(ACT No. 59 OF 1988)

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Requirement of policies and limits of liability.

147. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

Explanation.—For the removal of doubts, it is hereby clarified 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.

* * * * *

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

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Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

150. (1)* * * * *

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

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

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

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

(B) for organised racing and speed testing; or

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

(D) without side-car being attached where the vehicle is a two-wheeled vehicle; or

(ii) a condition excluding driving by a named person 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 driving under the influence of alcohol or drugs as laid down in section 185; 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 nondisclosure of any material fact or by representation of any fact which was false in some material particular; or

(c) that there is non-receipt of premium as required under section 64VB of the Insurance Act, 1938 (4 of 1938).

(3) * * * * *

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

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

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157. (1) Where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, transfers to another person the ownership of the motor 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.

Transfer of certificate of insurance.

Explanation.—For the removal of doubts, it is hereby clarified that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour, and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

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Application
for
compensation.

166. (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application:

Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

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further to amend the Motor Vehicles Act, 1988.

(Dr. John Brittas, M.P.)