

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5122 of 2005 (O&M)
Date of Decision :01.06.2018

United India Ins. Co. Ltd.

...APPELLANT

VERSUS

Kuldip Kaur & ors.

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. D.P. Gupta, Advocate for the appellant.

None for the respondents.

B.S. WALIA, JUDGE (ORAL),

1. The matter was heard at length on 31.5.2018 whereupon the learned counsel for respondent Nos.1 to 3 requested that the matter be kept for today. However, despite case having been called out, none is present on behalf of the respondents. In the circumstances, I am not inclined to adjourn the case.

2. The only point involved in the instant case is as to whether liability can be imposed under Section 140 of the Motor Vehicles Act, 1988 (for short 'the Act') in case the offending vehicle is unidentified.

3. Learned counsel by referring to Section 161 of the Act states that separate provisions exist in respect of accident caused by an unidentified vehicle whereas Section 140 of the Act provides for grant of ₹50,000/- as 'No Fault

Liability' only in respect of a vehicle which has been identified.

Section 140 as well as Section 161 of the Motor Vehicles Act, 1988 are reproduced as under:

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

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

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of 1[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 2[twenty-five thousand rupees].

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

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

3[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]

161. Special provisions as to compensation in case of hit and run motor accident.—

(1) For the purposes of this section, section 162 and section 163—

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

(b) “hit and run motor accident” means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

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

(2) Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(3) Subject to the provisions of this Act and the scheme, there shall be paid as compensation—

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of 1[twenty-five thousand rupees]; 1[twenty-five thousand rupees];"

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of 2[twelve thousand and five hundred rupees]. 2[twelve thousand and five hundred rupees]."

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

4. Having considered submissions of learned counsel for the appellant and perused aforementioned provisions of law, I am of the considered view that the appeal is liable to succeed in view of the clear provisions of the Act. Section 140 of the Act provides that where death or permanent disability has occurred on account of accident arising out of the use of motor vehicle etc. the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement whereas Section 161 deals with a hit and run motor accident i.e an accident arising out of the use of a motor vehicle, the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose. Section 161 provides for a fixed compensation of ₹25,000/- in case of death and ₹12,500 in case of grievous

5. On account of the clear cut provisions of law, the appeal is allowed.

Award dated 6.9.2005 passed by the learned MACT (Adhoc), Patiala awarding sum of ₹50,000/- on account of 'No Fault Liability' is set aside.

6. However, the respondent-claimants having lost a family member cannot be deprived of compensation provided under Section 161 of the Act and the Solatium Scheme, 1989 framed thereunder.

7. Learned counsel for the appellant states that the time within which an application can be submitted for grant of compensation under Section 161 of the Act read with the Solatium Scheme is six months from the date of accident and delay upto six months can be condoned. Learned counsel contends that in the circumstances, the respondent-claimants cannot claim the benefit of compensation under Section 161 of the Act read with Solatium Scheme, 1989 unless specific orders are passed permitting them to file the claim by extending the time.

8. I have considered the submissions of learned counsel for the appellant. The Motor Vehicles Act, 1988 is a welfare legislation enacted for providing succour inter alia amongst others to those who have lost their family members. In the peculiar facts of the case, I deem it appropriate to direct that in case the respondent-claimants submit an application within a period of three months from the date of receipt of certified copy of this order, the same would be considered by the competent Authority under Section 161 of the Act read with the

Solatium Scheme, 1989 for award of compensation and the payment released to the respondent-claimants.

9. It is made clear that in case the payment is not made within the time allowed in case of claim being submitted by the respondent-claimants, then the same shall thereafter be released along with interest @ 7.5 per annum with effect from the date of accident till the date of payment.

10. Copy of this order be transmitted by the Registry to the respondent-claimants through registered speed

11. post.

11. Allowed in the aforementioned terms.

(B.S. WALIA)
JUDGE

June 01, 2018

ps

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No