

**1. Gohar Mohammed vs. Uttar Pradesh State Road Transport Corporation and Ors. (15.12.2022 - SC)**

MANU/SC/1649/2022

**Decision Date:** 15.12.2022**Subject:** Motor Vehicles**Subject:** Insurance**Citing Ref:**

- [Discussed:](#) 5



**Act:** Code of Criminal Procedure 1973 (CrPC) - Section 173 Constitution of India - Article 142 Delhi Motor Accident Claims Tribunal Rules 2008 Motor Vehicles (Amendment) Act 2019 Motor Vehicles (Amendment) Bill 2019 Motor Vehicles (Fifth Amendment) Rules 2022 - Rule 3 Motor Vehicles (Fifth Amendment) Rules 2022 - Rule 23 Motor Vehicles (Fifth Amendment) Rules 2022 - Rule 24 Motor Vehicles (Fifth Amendment) Rules 2022 - Rule 30 Motor Vehicles Act 1988 - Section 146 Motor Vehicles Act 1988 - Section 146(1) Motor Vehicles Act 1988 - Section 146(2) Motor Vehicles Act 1988 - Section 146(3) Motor Vehicles Act 1988 - Section 147 Motor Vehicles Act 1988 - Section 147(1) Motor Vehicles Act 1988 - Section 147(2) Motor Vehicles Act 1988 - Section 149 Motor Vehicles Act 1988 - Section 149(2) Motor Vehicles Act 1988 - Section 149(3) Motor Vehicles Act 1988 - Section 158(6) Motor Vehicles Act 1988 - Section 159 Motor Vehicles Act 1988 - Section 160 Motor Vehicles Act 1988 - Section 161 Motor Vehicles Act 1988 - Section 164 Motor Vehicles Act 1988 - Section 164(1) Motor Vehicles Act 1988 - Section 165(1) Motor Vehicles Act 1988 - Section 166 Motor Vehicles Act 1988 - Section 166(1) Motor Vehicles Act 1988 - Section 166(2) Motor Vehicles Act 1988 - Section 166(4) Motor Vehicles Act 1988 - Section 168 Motor Vehicles Act 1988 - Section 169 Right to Information Act 2005 Public Liability Insurance Act 1991

**Prior History:** Arising out of impugned final Judgment and Order dated 06.09.2018 in FAFO No. 3303/2018 passed by the High Court of Judicature at Allahabad (MANU/UP/6006/2018)

**Case Note:** Motor Vehicles - Compensation - Liability to pay - Sections 149, 159 and 166 of Motor Vehicles Amendment Act, 2019 - Instant appeal has been filed assailing the final order passed by the High Court vide which the appeal preferred by the Appellant against the award passed by the Motor Accident Claims Tribunal ('MACT') has been dismissed, MACT allowed the claim petition and awarded a compensation of Rs. 31,90,000 in favour of Respondent Nos. 6, 7 and 8 (legal representatives of deceased and 'claimants') to be paid by Respondent No. 5 (Insurance Company), with further direction to recover the same from Appellant (owner) who was saddled with liability - Whether High Court was right in affirming the findings of MACT ? Facts: On the date of accident, i.e., 29.07.2012, the deceased was 24 years old and working as Managing Director at DRV Drinks Pvt. Ltd. While he was returning from factory to residence, his car was hit from behind by a bus owned by Appellant on the by-pass road near Sanhwali village (U.P.). The deceased sustained severe injuries and died on the way to hospital. FIR was lodged against the driver as well as owner of the offending vehicle and on 19.01.2012, claim petition was filed by claimants before MACT seeking compensation of Rs. 4,19,00,000 under various heads. The MACT vide order allowed the claim petition and awarded a total sum of Rs. 31,90,000 alongwith 7% interest. While computing the loss of dependency, the annual income of the deceased was accepted as Rs. 3,09,660 after making deduction towards personal expenses, multiplier of 18 was applied. It was held that the vehicle was not being operated as per the terms of permit and was in violation of terms and conditions of insurance policy, therefore the owner of the offending vehicle was held liable to pay compensation. Appellant filed appeal before the High Court assailing the issue of liability contending, no violation of guidelines as such was there and submitted that the offending vehicle was insured with insurance company indemnifying the liability. Appellant further contended that he had Special Temporary Authorization ('permit') to operate the bus on the route for which the fee was paid. The High Court vide impugned order affirmed the findings of MACT and held that the vehicle owner failed to produce the original permit and also could not get the same proved calling the person from the Transport Department, in absence, the Claims Tribunal rightly decided the issue of liability against the owner. Held, while issuing directions 1. The M.V. Amendment Act and the Rules have been introduced with an advent to implement the steps taken by the Court issuing directions to carry out the purpose of the benevolent legislation. As per the M.V. Amendment Act, insurance of the vehicle, until exempted, is made necessary to carry out the purpose of the Act and the Rules subject to the conditions, as specified Under Section 147. [45] 2. The claimant(s) have been given three options to claim compensation before the Claims Tribunal. The option under Section 164 is without pleading the proof of negligence while option Under Section 166(1) & (2) by the claimant(s) is by proving the negligence of the offending vehicle. In addition, Section 149 is added by which the de novo procedure has been prescribed immediate on registration of FIR by taking action through the police officer before the Claims Tribunal. It is urged by learned Amicus Curiae that the said procedure is not being followed in most part of the country by the Claim Tribunals

though the said Section is a complete code in itself in the matter of distribution of the compensation. Therefore, appropriate directions are required. [46] 3. As prescribed under M.V. Amendment Act and Rules, the police officials and the registering authority are bound to take action in the event when an accident takes place and the information is received by them. Further, it is seen that as per Rule 3 of the M.V. Amendment Rules, the police officer is required to furnish the details to the victim(s) regarding his/their rights in a road accident and the flow chart of the scheme along with Form-II is required to be furnished to them. The said flow chart and all other documents, as specified in the Rules, must be either in vernacular language or in English and shall be furnished to the claimant(s) or other affected persons, as per their convenience. They are required to take immediate action and submit the report to the Claims Tribunal informing the victim(s), driver(s), owner(s), insurance company and other stakeholders with an intent to facilitate them, subject to the directions of the Claims Tribunal. The Claims Tribunal is also duty bound to take immediate action and to proceed in the matter as required under the Act and the Rules. [47] 4. The police officers and registering authority are duty bound to act as per the M.V. Amendment Act and the Rules and are required to submit the FAR, IAR and DAR within the prescribed period under the Rules. The registering authority is also bound to take action in the matter of verification of the permit, fitness of vehicle, driver licence and on other ancillary issues. The insurance company is bound to appoint the Nodal Officer as per Rule 24 to facilitate the Investigating Officer in the matter of enquiry and investigation, submitting details regarding insurance and co-ordinate with the stakeholders. [48] 5. The procedure carved out Under Section 149 of the Amendment Act is de novo on filing the FAR before the Claims Tribunal and Tribunal is required to register such proceedings as Miscellaneous Application. On filing IAR and DAR by the police officer within the time as specified, it shall be made part thereof. If the claimant(s) has not opted for taking recourse Under Section 166(1) within the time limit of six months, such Miscellaneous Application may be treated as an application Under Section 166(4) of M.V. Amendment Act and be adjudicated in accordance with law. Therefore, the procedure as prescribed Under Section 149 is in addition to the proceedings of Sections 164, 166 of M.V. Amendment Act and such mandate of law is required to be followed in true sense and spirit. [49] 6. It is directed that the Designated Officer, while making offer, shall assign detailed reasons to show that the amount which is offered is just and reasonable. In case, the said offer is not accepted by the claimant(s), the onus would shift on the claimant(s) to seek for enhancement of the amount of compensation and the said enquiry Under Section 149(3) would be limited for enhancement only. [55] 7. If the claimant(s) wants to exercise the option Under Section 166(2) of the M.V. Amendment Act, he/they are free to take such recourse by joining the Designated Officer/Nodal Officer of the insurance company of the place where the accident occurred as Respondent in the claim petition. [57] 8. Where the insurance company disputes the liability, the Claims Tribunal is duty bound to record the evidence through the local commissioner and the fee/expenses of such local commissioner shall be borne by the insurance company. [61] 9. The appeal filed by the owner challenging the issue of liability is hereby dismissed confirming the order passed by the High Court and MACT. On receiving the intimation regarding road accident by use of a motor vehicle at public place, the SHO concerned shall take steps as per Section 159 of the M.V. Amendment Act. After registering the FIR, Investigating Officer shall take recourse as specified in the M.V. Amendment Rules, 2022 and submit the FAR within 48 hours to the Claims Tribunal. The IAR and DAR shall be filed before the Claims Tribunal within the time limit subject to compliance of the provisions of the Rules. The registering officer is duty bound to verify the registration of the vehicle, driving licence, fitness of vehicle, permit and other ancillary issues and submit the report in coordination to the police officer before the Claims Tribunal. The flow chart and all other documents, as specified in the Rules, shall either be in vernacular language or in English language, as the case may be and shall be supplied as per Rules. The Investigating Officer shall inform the victim(s)/legal representative(s), driver(s), owner(s), insurance companies and other stakeholders with respect to the action taken following the M.V. Amendment Rules and shall take steps to produce the witnesses on the date, so fixed by the Tribunal. For the purpose to carry out the direction No. (iii), distribution of police stations attaching them with the Claim Tribunals is required. Therefore, distribution memo attaching the police stations to the Claim Tribunals shall be issued by the Registrar General of the High Courts from time to time, if not already issued to ensure the compliance of the Rules. In view of the M.V. Amendment Act and Rules, the role of the Investigating Officer is very important. He is required to comply with the provisions of the Rules within the time limit, as prescribed therein. Therefore, for effective implementation of the M.V. Amendment Act and the Rules framed thereunder, the specified trained police personnel are required to be deputed to deal with the motor accident claim cases. Therefore, we direct that the Chief Secretary/Director General of Police in each and every State/Union Territory shall develop a specialized unit in every police station or at town level and post the trained police personnel to ensure the compliance of the provisions of the M.V. Amendment Act and the Rules, within a period of three months from the date of this order. On receiving FAR from the police station, the Claims Tribunal shall register such FAR as Miscellaneous Application. On filing the IAR and DAR by the Investigating Officer in connection with the said FAR, it shall be attached with the same Miscellaneous Application. The Claims Tribunal shall pass appropriate orders in the said application to carry out the purpose of Section 149 of the M.V. Amendment Act and the Rules. The Claim Tribunals are directed to satisfy themselves with the offer of the Designated Officer of the insurance company with an intent to award just and reasonable compensation. After recording such satisfaction, the settlement be recorded Under Section 149(2) of the M.V. Amendment Act, subject to consent by the claimant(s). If the claimant(s) is not ready to accept the same, the date be fixed for hearing and affording an opportunity to produce the documents and other evidence seeking enhancement, the petition be decided. In the said event, the said enquiry shall be limited only to the extent of the enhancement of compensation, shifting onus on the claimant(s). The General Insurance Council and all insurance companies are directed to issue appropriate directions to follow the mandate of Section 149 of the M.V. Amendment Act and the amended Rules. The appointment of the Nodal Officer prescribed in Rule 24 and the Designated Officer prescribed in Rule 23 shall be immediately notified and modified orders be also notified time to time to all the police stations/stakeholders. If the claimant(s) files an application Under Section 164 or 166 of the M.V. Amendment Act, on receiving the information, the Miscellaneous Application registered Under Section 149 shall be sent to the Claims Tribunal where the application Under Section 164 or 166 is pending immediately by the Claims Tribunal. In case the claimant(s) or legal representative(s) of the deceased have filed separate claim petition(s) in the territorial jurisdiction of different High Courts, in the said situation, the first claim petition filed by the claimant(s)/legal representative(s) shall be maintained by the said Claims Tribunal and the subsequent claim

petition(s) shall stand transferred to the Claims Tribunal where the first claim petition was filed and pending. It is made clear here that the claimant(s) are not required to apply before this Court seeking transfer of other claim petition(s) though filed in the territorial jurisdiction of different High Courts. [62]