

**CHAPTER THREE**

**NO FAULT LIABILITY :  
SECTION 3**

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### **3.1 Section 3: No fault liability**

With Section 3 begin the operative provisions of the Public Liability Insurance Act. Sub-section (1) lays down the principle that the owner (that is to say, the person who owns or has control over handling any hazardous substance) is liable to "give relief" for death etc. resulting from an accident. The quantum of relief is as per the Schedule. The nature of this liability is laid down in Section 3(2). That sub-section (so far as is material), provides that the claimant for relief need not plead or establish that the death etc. was due to any "wrongful act, neglect or default" of any person. In effect, Sub-section (2) introduces the principle of no fault liability. Of course, there are several points of detail that require consideration, which will be mentioned in due course.

### **3.2 Section 3(1): Actionable situation**

One should first examine the situation that gives rise to no fault liability under the Act. Section 3(1) describes it as the situation where "death or injury to any person (other than a workman) or damage to any property has resulted from an accident". The word "accident", it may be recalled, is defined in Section 2(a). Thus, following ingredients must be satisfied before liability in terms of Section 3(1) can arise:-

- (a) There must be a hazardous substance.
- (b) There must be a handling of the hazardous substance.
- (c) An accident must occur while handling it.
- (d) From this accident death, injury or damage, as mentioned above, must result.

If these conditions are satisfied, then the owner is liable to "give relief" as specified in the Schedule.

### **3.3 Section 3(1): Person entitled to relief**

Section 3(1) does not tell us who is the person entitled to claim relief thereunder. However, from the terms of Section 6, it is clear that relief is to be given to the persons mentioned in Section 6(1), clause (a), (b), or (c) as may be applicable.

### **3.4 Section 3: Liability for pollution**

One limitation of the scope of Section 3(1) should be noted. Section 3(1) is confined to relief for death or injury etc. arising from an accident that occurs while handling an hazardous substance. The word "accident", as defined in Section 2(a), lays emphasis on something sudden or unexpected. A state of things which has been in existence for a long time, but which does not give rise to a fortuitous or sudden or unexpected event, is outside the scope of Section 3(1). Thus, the provisions of that sub-section do not apply, where

there is a gradual process of pollution resulting from the use of an hazardous substance, even if such pollution causes harm to person or property. Of course, this does not mean that such pollution can never create liability to pay damages. But the matter will be governed by the principles of the common law or (where applicable) by the relevant statutory provision. But Section 3(1) will not apply and consequentially, the no fault liability laid down by Section 3(2) will also not apply. Nor will the duty to take out insurance under Section 4 be attracted.

### 3.5 Section 3(1): "injury"

The expression "injury" is defined in Section 3, Explanation (II) as including permanent total disability, permanent partial disability or sickness resulting "out of" an accident. Section 3(1) itself contemplates injury resulting "from" an accident. There may not be much difference between the two expressions. The disability or sickness may be physical or mental (though the Act is not specific on this point). Expressions relating to "disability" and the word "sickness" have some utility for the purpose of determining the amount of "no fault" relief. See the Schedule, paragraphs (iii) and (iv).

### 3.6 Section 3(1): Exclusion of workmen

Section 3(1) excludes, from the entitlement to relief, a "workman"- an expression defined in Section 3, Explanation (1) which refers us to the Workmen's Compensation Act, 1923 - again a situation raising interesting questions connected with referential or incorporating legislation.

### 3.7 Section 3(1): Death or injury

There is one more verbal query pertaining to Section 3(1). Its opening words are - "Where death or injury to any person (other than a workman) has resulted...." What seems to be excluded are -

- (i) death of any person (other than a workman);
- (ii) injury to any person (other than a workman).

But the first situation mentioned above is not fully brought out in Section 3(1), as it speaks of "death" *simpliciter*. Of course, there is hardly any doubt about the intention, but the language can be improved.

### 3.8 Section 3(1): "Relief"

The liability under Section 3(1) is described as liability "to give relief". It is not clear why words like "compensation" or "damages" were not used. It may be mentioned that in the Motor Vehicles Act, 1988, Section 140(1) provides for liability to pay "compensation" for death or permanent disablement of any person which has resulted from an accident arising out of the use of a motor vehicle.

### 3.9 Section 3(1) : Joint liability

What is the position where death, injury or damage has resulted from the acts or omissions of two or more owners? Section 3(1) uses the word "owner" in the singular, by providing that "the owner shall be liable to give relief". Of course, by virtue of the provisions of Section 13, General Clauses Act, 1897,

two or more owners are also covered. But the question that arises is - what is the nature of the liability of the respective owners? Is it -

- (a) joint, or
- (b) several, or
- (c) joint and several?

Section 3(1) is not specific on this point. Here again, the Motor Vehicles Act, 1988 is more specific. Section 140(1) of that Act provides that the owners shall be "jointly and severally" liable. As regards the Public Liability Insurance Act, which contains no such provisions, two views are theoretically possible.

(i) The view can be taken that the liability is joint, because there is no specific provision to the contrary and the legislature has departed from the precedent of Section 140(1), Motor Vehicles Act, 1988.

(ii) In the alternative, it can be contended that the liability is joint and several, on the analogy of the law of torts.

The difficulty with the second alternative view put forth above is, that the liability under Section 3(1) (even where fault exists) is given a statutory form and the question can therefore arise if the rules regulating non-statutory liability can be applicable. It is, however, felt that notwithstanding the theoretical attraction of this objection, practical considerations demand that the liability should be regarded as joint and several, at least if the act or omission giving rise to the liability under Section 3(1) is joint. It is not just and fair to compel the claimant to present a strict analysis of the proximate and immediate cause of the event, to find out whom he can sue. This reasoning has been adopted<sup>1</sup> in the sphere of law of torts because it is equitable and there is good reason to follow it even where the liability has acquired a statutory form. It also promotes action by all concerned to comply with precautions against risks arising from the handling of hazardous substances.

What, then, is the position in the law of torts? Both in English law<sup>2</sup> and the Indian law,<sup>3</sup> joint tortfeasors are jointly and severally liable for the whole damage resulting from the tort. The same position would seem to hold good for the purposes of Section 3(1) also. In fact, besides the principle of joint and several liability, it may become necessary to borrow, from the law of torts, many other principles relevant to tortious liability. Convenience demands at least that much. To regard Section 3(1) as totally self contained, would be unrealistic.

### 3.10 Section 3(2) : Liability without fault

The quality of the liability flowing from Section 3(1) is dealt with in Section 3(2). So far as is material, it provides that the claimant shall not be

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1. *Palghat Coimbatore Transport Co. v. Narayanan*, I.L.R. (1939) Mad.306.  
 2. *Petrie v. Lamont*, (1841) Car & Mar 93, 96; *Blair and Summer v. Deakin*, (1887) 57 L.T. 533.  
 3. *Khusro S. Gandhi v. Guzder*, A.I.R. 1970 S.C. 1468.

required to plead and establish that the death etc. was due to any "wrongful act, neglect or default of any person". Similar (but not identical) phraseology has been used in Section 140(3) of the Motor Vehicles Act, 1988 while providing for no fault liability for death etc. resulting from an accident caused by the use of motor vehicle. However, the Motor Vehicles Act uses the expression "owner..... or any other person ", while the Public Liability Insurance Act uses the shorter form "any person". The verbal difference may not, it appears, matter much.

### 3.11 Section 3(2) and strict liability

By excluding the defence of absence of "wrongful act, neglect or default", Section 3(2) of the Public Liability Insurance Act enacts a rule of strict liability. This formula has been borrowed from Section 140(3), Motor Vehicles Act, 1988 which itself repeats the language of Section 92A, Motor vehicles Act 1939. Introduction of "no fault" liability in the Motor Vehicles Act of 1939 (by Act 47 of 1982), was the result of the recommendation of the Law Commission of India.

### 3.12 Contributory negligence

However, it should be noted that Section 92A(4), Motor Vehicles Act, 1939 (when that Act was in force) also excluded the defence of the contributory negligence of the victim. This provision is re-enacted in Section 140(4), Motor Vehicles Act, 1988. But it is not found in the Public Liability Act. This raises the question whether contributory negligence continues to have any relevance to liability flowing from Section 3 of the Public Liability Insurance Act. It may be recalled that at common law, contributory negligence was a defence to an action in tort. In England, the position was, in certain respects, changed by Section 1(1) of the Law Reform (contributory Negligence) Act, 1945. Instead of total immunity of the tortfeasor on the ground of the victim's contributory negligence, that Act substituted the principle of apportionment.

In India, only the Kerala State has enacted similar legislation on the subject, through the Kerala State Torts (Miscellaneous Provisions) Act, 1976. In other States, no statutory reform has been enacted so far. But, in general, courts in India have been acting on the principle<sup>1</sup> of the English Act, of 1945.

It may be mentioned that the relevant provision in Section 140(4), Motor Vehicles Act, 1988 is as under:-

"(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."

It will be noticed that provisions of this type eliminate any possibility even of making contributory negligence the basis for apportionment.

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1. See Ratanlal and Dhirajlal, *Law of Torts* (1987) (1991 Reprint), page 438 and cases in footnote 477.