

**CHAPTER FIVE**

**ACCIDENTS AND CLAIMS FOR  
RELIEF:  
SECTIONS 5, 6(1), AND 6(2)**

## **ACCIDENTS AND CLAIMS FOR RELIEF: SECTION 5, 6(1) AND 6(2)**

### **5.1 Section 5: Verification of accidents**

Section 5 of the Public Liability Insurance Act provides that whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of the accident and cause publicity "in such manner as he deems fit" for inviting applications under Section 6(1). The applications under Section 6(1) are for claims for relief.

Section 5 does not prescribe any particular period within which the Collector should verify and publicise the accident. But the Collector will be expected to act without much delay, having regard to the nature of the subject. Further - although the Act does not say so- the Collector, in the notice under Section 5, will give guidance as to the form prescribed for the application under Section 6(2).

### **5.2 Application for claim for relief: Section 6(1) and 6(2)**

Section 6(1) enumerates the persons entitled to claim relief, while Section 6(2) provides that the application should be made to the Collector. The form, contents and accompaniments to the application are to be prescribed under Section 6(2) read with Section 23(2)(b).

### **5.3 Persons entitled to relief**

It needs to be pointed out that though Section 6(1) may appear to be a procedural section, it is of substantive importance, because it is for the first time that the Act tells us who are the persons who can make a claim for relief. The liability to give relief provided by Section 3(1) should remain incomplete unless one knows who is the person to whom the liability is owed. It is Section 6(1) which makes a provision on the subject, though it does not use the word "right". In other words, the picture left incomplete by Section 3(1) is completed by Section 6(1), and the "liability-right" nexus finds its full expression, only when one reads Section 3(1) and Section 6(1) together.

Section 6(1) opens with the words "claim for relief"- and one has to remember that these words are explained in Section 3(2) as the claim for relief under Section 3(1).

The persons who can claim relief as enumerated in Section 6(1) are the following:-

(a) The person who sustained the injury. "Injury" here obviously refers to the injury to a person as mentioned in Section 3(1). Obviously, it must mean injury resulting from an accident.

(b) The owner of the property damaged- which again must mean damage resulting from an accident-see Section 3(1).

(c) Legal representatives of the deceased, where death has "resulted from the accident".

(d) An agent duly authorised by the above.

#### 5.4 Section 6(1) (c) and legal representatives

Where death has resulted from an accident, the person entitled to apply for relief under Section 6(1) (c) is the legal representative. If there be more than one legal representative, then all or any of them can apply, subject to the proviso to Section 6(1). The point that is likely to arise is as to the meaning to be given to the expression "legal representative". The expression is not defined in the Act. The definition given in the Code of Civil Procedure, 1908 is not automatically attracted. Although the Fatal Accidents Act itself enumerates persons entitled to compensation, that Act will not apply for the interpretation of the Public Liability Insurance Act, because the latter Act appears to be intended to be self-contained, at least on this particular point, i.e. so far as the right to relief under Section 6(1) read with Section 3 is concerned. It may be stated that Section 3(2) creates a no fault liability, while the Fatal Accidents Act envisages fault based liability, that is to say, liability based on "wrongful act, neglect or default" of the person sought to be made liable. Of course, as provided in Section 8(1) of the Public Liability Insurance Act, rights under "any other laws" are saved, and, presumably, where the "other law" is itself the Fatal Accidents Act, then the totality of that Act will become applicable. But so far as the expression "legal representative" in Section 6(1)(c) is concerned, the question raised above would still remain. Section 6 is borrowed largely from Section 166 of the Motor Vehicles Act, 1988 and one can presume that the expression "legal representative" would be assigned the same meaning in both the Acts.

#### 5.5 Supreme Court judgment under the Code

The Supreme Court has taken a broad view of the expression "legal representative", as defined in the Code of Civil Procedure and pointed out that the definition is inclusive in character and its scope is wide. It is not confined to legal heirs only. It includes heirs as well as persons who represent the estate even without title, either as executors or administrators, in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased.<sup>1</sup>

In this case, the Supreme Court referred to an earlier case decided by it,<sup>2</sup> where it had recognised the principle of representation of the estate by some heirs; in that case, the court had held that if, after a bona fide enquiry, some heirs of the deceased defendant, but not all the heirs are brought on record, the heirs so brought on record represent the entire estate of the deceased and the decision of the court, in the absence of fraud or collusion, binds even those

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1. *Custodian of Branches of BHANCO National Nitramarino v. Nalini Bai Naique*, A.I.R. 1989 S.C. 1589.
  2. *Daigaram v. Shyam Sundari*, A.I.R. 1965 S.C. 1049.

who are not brought on record as well as those who are impleaded as legal representatives of the deceased defendant.

### **5.6 Position under Motor Vehicles Act**

It is also worth noting, that so far as the expression "legal representative" as occurring in the Motor Vehicles Act goes, the Supreme Court has held<sup>1</sup> that it is not confined to the persons who are mentioned as beneficiaries under the Fatal Accidents Act, 1855, but will cover all persons entitled to succeed under the personal law applicable to the parties.

### **5.7 Position under Workmen's Compensation Act**

Under the Workmen's Compensation Act, this problem does not arise, because the beneficiaries entitled to compensation under that Act (in the case of death of the workman) are the "dependants" of the workman. The Act does not use the expression "legal representative".

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1. *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai*, (1987) 3 S.C.C. 234.