



E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2024; 4(1): 56-60
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www.criminallawjournal.org

Received: 17-01-2024
Accepted: 24-02-2024

Anant Gupta
Advocate, Western Wing, Tis
Hazari Courts, Delhi, India

Law relating to public liability insurance in India

Anant Gupta

Abstract

Insurance may be described as a social device to reduce or eliminate risks or loss to life and property. It is a provision which a prudent man makes against inevitable contingencies, loss or misfortune. Public liability insurance policy covers all sums which the Insured becomes legally liable to pay as damages to the third party in respect of accidental death/bodily injury/disease and loss of or damage to property. The Public Liability Insurance Act, 1991 regulates mandatory liability insurance. Under the law, companies must commit to installing and handling hazardous materials that have been reported under the Environmental Protection Act, 1986. This is an Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. In present paper an attempt has been made to analyze the major provisions of the Public Liability Insurance Act, 1991.

Keywords: Insurance, public liability, accident, handling, hazardous substance

Introduction

India met one of its first and worst industrial disasters in 1984, when a major gas leak took place in Bhopal. The severity of the gas leak was depicted by the casualties 5,200 people lost their lives and thousands more were left injured due to the leakage of toxic Methyl Isocyanate from the Union Carbide Plant. As a result of this, a complex litigation ensued where in an enormous claims were made against Union Carbide for compensation ^[1]. Interestingly, when the Bhopal gas case was still being fought in the courts, another accident took place in New Delhi, in one of the chemical plants of Shriram Ltd. This accident did not result in any casualty but the proceedings which were ensued in furtherance of this accident changed the path of Indian jurisprudence in Environmental law. In the Oleum Gas Leak Case ^[2], the Indian Supreme Court laid down important principles in the realm of relief for mass torts, which was deemed to be ground breaking in the area of liability for mass torts ^[3]. The Supreme Court deviated from the principle of 'Strict Liability' as provided under the landmark case of *Rylands v. Fletcher* ^[4] and laid down the principle of 'Absolute Liability' which led to important consequences for industries engaged in hazardous activities ^[5].

The growth of dangerous industries affects everyone either directly or indirectly. Such accidents result in death and injury to people and other living things and damage personal and public property. Very often, most of those affected come from economically weaker regions and suffer great hardship due to late release and compensation. While employees of hazardous facilities are protected the community is not guaranteed assistance, except through lengthy legal procedures. Industrial facilities are rarely willing to easily compensate victims of accidents, and the only way now available to victims is to bring prolonged litigation to court. Some units may not have the funds to provide the slightest assistance.

The principle of 'Absolute Liability' was given legislative backing in the year 1991, when the Public Liability Insurance Act ^[6] was passed. The Act sought to make it mandatory for every owner of an industry handling hazardous substances to opt for an insurance policy for covering any liability arising out of the handling of such hazardous substance. In spite of its noble objectives, the Act still has not been amended once in the previous 26 years, with most of its provisions becoming archaic in the face of constant economic development. With the current government's proclivity towards making India the most Foreign Direct Investment (FDI) friendly nation in the world, the Act assumes a significant place in the endeavour of country's sustainable development.

The purpose of this Act is to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto ^[7].

Corresponding Author:
Anant Gupta
Advocate, Western Wing, Tis
Hazari Courts, Delhi, India

Liability to Give Relief in Certain Cases on Principle of no Fault

Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage^[8]. In any claim for relief under sub-section (1) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person^[9]. Explanation-for the purposes of this section - (i) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923 (8 of 1923); (ii) "injury" includes permanent total or permanent partial disability or sickness resulting out of an accident.

Duty of Owner to Take out Insurance Policies

Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (1) of section 3^[10]; Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement. Every owner shall get the insurance policy, referred to in sub-section (1), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued^[11].

No insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crore rupees, as may be prescribed. Explanation - for the purposes of this sub-section, "paid-up capital" means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contract of insurance. The liability of the insurer under one assurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance policy. Every owner shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under section 7A, such further amount, not exceeding the sum equivalent to the amount of premium, as may be prescribed. The insurer shall remit to the authority specified in sub-section (3) of section 7A the amount received from the owner under sub-section (2C) for being credited to the Relief Fund in such manner and within such period as may be prescribed and where the insurer fails to so remit the amount, it shall be recoverable from insurer as arrears of land revenue or of public demand^[12].

The Central Government may, by notification, exempt from the operation of sub-section (1) any owner, namely:- (a) the Central Government; (b) any State Government; (c) any corporation owned or controlled by the Central Government or a State Government; or (d) any local authority: Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under sub-section (1) of section 3^[13].

Verification and Publication of Accident by Collector

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 such accident and cause publicity to be given in such manner as he deems fit for inviting applications under sub-section (1) of section 6^[14].

Application for Claim for Relief

An application for claim for relief may be made^[15]

1. By the person who has sustained the injury.
2. By the owner of the property to which the damage has been caused.
3. Where death has resulted from the accident, by all or any of the legal representatives of the deceased.
4. By any agent duly authorized by such person or owner of such property 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 relief, 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.

Every application under sub-section (1) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed^[16]. No application for relief shall be entertained unless it is made within five years of the occurrence of the accident^[17].

Award of Relief

On receipt of an application under sub-section (1) of section 6, the Collector shall, after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid^[18]. The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award^[19].

When an award is made under this section^[20]

1. The insurer, who is required to pay any amount in terms of such award and to the extent specified in sub-section (2B) of section 4, shall, within a period of thirty days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct.
2. The Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under section 7A, to the person or persons referred to in sub-section (1) such amount as may be specified in that scheme.
3. The owner shall, within such period, deposit such amount in such manner as the Collector may direct.

In holding any inquiry under sub-section (1), the Collector may, subject to any rules made in this behalf, follow such summary procedure as he thinks fit^[21]. The Collector shall have all the powers of Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI

of the Code of Criminal Procedure, 1973 (2 of 1974) ^[22]. Where the insurer or the owner against whom the award is made under sub-section (1) fails to deposit the amount of such award within the period specified under sub-section (3), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand ^[23].

A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within three months of the receipt of the application for relief under sub-section (1) of section 6 ^[24]. Where an owner is likely to remove or dispose of his property with the object of evading payment by him of any amount of award, the Collector may, in accordance with the provisions of rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), grant a temporary injunction to restrain such act ^[25].

Establishment of Environmental Relief Fund

The Central Government may, by notification, establish a fund to be known as the Environmental Relief Fund. The Relief Fund shall be utilised for paying, in accordance with the provisions of this Act and the scheme made under sub-section (3), relief under the award made by the Collector under section 7. The Central Government may, by notification, make a scheme specifying the authority in which the Relief Fund shall vest, the manner in which the Relief Fund shall be administered, the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief therefrom ^[26].

Provisions as to Other Right to Claim Compensation for Death, etc.

The right to claim relief under sub-section (1) of section 3 in respect of death of, or injury to, any person or damage to any property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force ^[27]. Notwithstanding anything contained in sub-section (1), where in respect of death of, or injury to, any person or damage to any property, the owner, liable to give claim for relief, is also liable to pay compensation under any other law, the amount of such compensation shall be reduced by the amount of relief paid under this Act ^[28].

Power to Call for Information

Any person authorised by the Central Government may, for the purposes of ascertaining whether any requirements of this Act or of any rule or of any direction given under this Act have been complied with, require any owner to submit to that person such information as that person may reasonably think necessary ^[29].

Power of Entry and Inspection

Any person, authorised by the Central Government in this behalf, shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provisions of this Act or of any rule or of any direction given under this Act is being or has been complied with and such owner is bound to render all assistance to such person ^[30].

Power of Search and seizure

If a person, authorised by the Central Government in this behalf, has reason to believe that handling of any hazardous substance is taking place in any place, premises or vehicle, in contravention of sub-section (1) of section 4, he may enter into and search such place, premises or vehicle for such handling of hazardous substance ^[31]. Where, as a result of any search under sub-section (1) any handling of hazardous substance has been found in relation to which contravention of sub-section (1) of section 4 has taken place, he may seize such hazardous substance and other things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act: Provided that where it is not practicable to seize any such substance or thing, he may serve on the owner an order that the owner shall not remove, part with, or otherwise deal with, the hazardous substance and such other things except with the previous permission of that person ^[32]. He may, if he has reason to believe that it is expedient so to do to prevent an accident dispose of the hazardous substance seized under sub-section (2) immediately in such manner as he may deem fit ^[33]. All expenses incurred by him in the disposal of hazardous substances under sub-section (3) shall be recoverable from the owner as arrears of land revenue or of public demand ^[34].

Power to give Directions

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in exercise of its powers and performance of its functions under this Act, issue such directions in writing as it may deem fit for the purposes of this Act to any owner or any person, officer, authority or agency and such owner, person, officer, authority or agency shall be bound to comply with such directions. Explanation.-For the removal of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct- (a) prohibition or regulation of the handling of any hazardous substance; or (b) stoppage or regulation of the supply of electricity, water or any other service ^[35].

Power to Make Application to Courts for Restraining Owner from Handling Hazardous Substances

If the Central Government or any person authorised by that Government in this behalf has reason to believe that any owner has been handling any hazardous substance in contravention of any of the provisions of this Act, that Government or, as the case may be, that person may make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate first class for restraining such owner from such handling ^[36]. On receipt of the application under sub-section (1), the Court may make such order as it deems fit ^[37].

Where under sub-section (2), the Court makes an order restraining any owner from handling hazardous substance; it may, in that order ^[38].

(a) Direct such owner to desist from such handling.

(b) Authorise the Central Government or, as the case may be, the person referred to in sub-section (1), if the direction under clause (a) is not complied with by the owner to whom such direction is issued, to implement the direction in such manner as may be specified by the Court.

All expenses incurred by the Central Government, or as the case may be, the person in implementing the directions of Court under clause (b) of sub-section (3), shall be recoverable

from the owner as arrears of land revenue or of public demand^[39].

Penalty for Contravention of Sub-Section (1) or Sub-Section (2) of Section 4 or Failure to Comply with Directions under Section 12

Whoever contravenes any of the provisions of subsection (1) or sub-section (2) or sub-section (2A) or sub-section (2C) of section 4 or fails to comply with any direction issued under section 12, he shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both^[40]. Whoever, having already been convicted of an offence under sub-section (1), is convicted for the second offence or any offence subsequent to the second offence, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees^[41]. Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age^[42].

Penalty for Failure to Comply with Direction under Section 9 or Order under Section 11 or Obstructing any Person in Discharge of his Functions under Section 10 or 11

If any owner fails to comply with direction issued under section 9 or fails to comply with order issued under sub-section (2) of section 11, or obstructs any person in discharge of his functions under section 10 or sub-section (1) or sub-section (3) of section 11, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to ten thousand rupees, or with both^[43].

Offences by Companies

Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence^[44].

Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly^[45]. Explanation-For the purposes of this section,- (a) "company" means anybody corporate and includes a firm or other association of individuals; (b) "director," in relation to a firm, means a partner in the firm.

Offences by Government Departments

Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall

be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence^[46].

Cognizance of Offences

No court shall take cognizance of any offence under this Act except on a complaint made by^[47] - (a) the Central Government or any authority or officer authorised in this behalf by that Government.

(b) Any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

Power to Delegate

The Central Government may, by notification, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power under section 23) as it may deem necessary or expedient to any person (including any officer, authority or other agency)^[48].

Protection of Action taken in Good Faith

No suit, prosecution or other legal proceeding shall lie against the Government or the person, officer, authority or other agency in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder^[49].

Advisory Committee

The Central Government may, from time to time, constitute an Advisory Committee on the matters relating to the insurance policy under this Act^[50]. The Advisory Committee shall consist of^[51].

1. Three officers representing the Central Government.
2. Two persons representing the insurers.
3. Two persons representing the owners.
4. Two persons from amongst the experts of insurance or hazardous substances to be appointed by the Central Government.

The Chairman of the Advisory Committee shall be one of the members representing the Central Government, nominated in this behalf by that Government^[52].

Effect of Other Laws and Power to Make Rules

The provisions of this Act and any rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law^[53]. The Central Government may, from time to time, constitute an Advisory Committee on the matters relating to the insurance policy under this Act^[54].

Conclusion

The Public Liability Insurance Act 1991 plays a vital role in safeguarding the interests of the public and promoting responsible business practices. By mandating public liability insurance for businesses dealing with hazardous substances, the act ensures that victims receive adequate compensation for any harm caused. It emphasizes the importance of risk

management and encourages businesses to prioritize safety measures to prevent accidents and damage to the public. Compliance with the act is essential for businesses to mitigate potential liabilities and uphold their social and legal responsibilities.

The amount of mandatory compensation provided under Section 3, in the event of an injury or death arising out of an accident needs to be overhauled immediately. It is suggested to include 'Workmen' within the ambit of this Act. As explained earlier, such exclusion defeats the Act's objective of providing an immediate relief to victims of an accident on a no-fault basis. The definition of 'handling' should be extended to cover other modes of transport such as air, water and railways. The Act needs to clear the confusion surrounding the dual compensation schemes provided under Section 3 as well as Section 7(1) of the Act.

39. Section 13 (4), Ibid.
40. Section 14 (1), Ibid.
41. Section 14 (2), Ibid.
42. Section 14 (3), Ibid.
43. Section 15, Ibid.
44. Section 16 (1), Ibid.
45. Section 16 (2), Ibid.
46. Section 17, Ibid.
47. Section 18, Ibid.
48. Section 19, Ibid.
49. Section 20, Ibid.
50. Section 21 (1), Ibid.
51. Section 21 (2), Ibid.
52. Section 21 (3), Ibid.
53. Section 22, Ibid.
54. Section 23, Ibid.

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2. M.C. Mehta v. Union of India, 1 SCC 395; c1987.
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6. Act No. 6 of 1991 (22nd January, 1991).
7. Preamble, the Public Liability Insurance Act, 1991.
8. Section 3 (1), the Public Liability Insurance Act, 1991.
9. Section 3 (1), *ibid*.
10. Section 4 (1), *ibid*.
11. Section 4 (2), *ibid*.
12. Section 4 (2A- 2D), *ibid*, Inserted by Act 11 of 1992, s. 3 (w.e.f. 31-1-1992).
13. Section 4 (3), the Public Liability Insurance Act, 1991.
14. Section 5, *Ibid*.
15. Section 6 (1), *Ibid*.
16. Section 6 (2), *Ibid*.
17. Section 6 (3), *Ibid*.
18. Section 7 (1), *Ibid*.
19. Section 7 (2), *Ibid*.
20. Section 7 (3), *Ibid*.
21. Section 7 (4), *Ibid*.
22. Section 7 (5), *Ibid*.
23. Section 7 (6), *Ibid*.
24. Section 7 (7), *Ibid*.
25. Section 7 (8), *Ibid*.
26. Section 7A, *Ibid*, Inserted by Act 11 of 1992, s. 4 (w.e.f. 31-1-1992).
27. Section 8 (1), the Public Liability Insurance Act, 1991.
28. Section 8 (2), *Ibid*.
29. Section 9, *Ibid*.
30. Section 10, *Ibid*.
31. Section 11 (1), *Ibid*.
32. Section 11 (2), *Ibid*.
33. Section 11 (3), *Ibid*.
34. Section 11 (3), *Ibid*.
35. Section 12, *Ibid*.
36. Section 13 (1), *Ibid*.
37. Section 13 (2), *Ibid*.
38. Section 13 (3), *Ibid*.