CHAPTER – III

COMPENSATION UNDER MOTOR VEHICLES ACT, 1988

“Justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among all, fraternity assuring the dignity of individual and unity of nation.”

Effective access to justice has thus come to be recognized as the most basic requirement, the most basic human right in the modern egalitarian system, which purports to guarantee and not merely proclaim legal rights to all. Articles 14 and 28 of the Constitution clearly expresses the letter and spirit of equal justice to all citizens, irrespective of status, caste, color and creed was uppermost in the minds of founding fathers, who had framed the Constitution. Though Article 14 of the Constitution provides equality of opportunity before law, but in practice it is not so. The poor victims of the road accidents, in fact, do not even know the remedies available to them. The people in India are not well aware of the entitlement of the grant of compensation in case of injury or death in a road accident under the Motor Vehicles Act. The poor victims of the road accident, in fact, do not even know the remedies available to them. Thus, there is a need of bringing social awareness among the people. The State which is called as “Welfare State”, has not taken any step to propagate the remedies available to such unfortunate victims. Taking in to considerations the recommendations made by the Law Commission in its report, the recommendations made by various High Courts And Supreme Court of India in their judgments, the Motor Vehicles Act, 1939 has been amended many times, unfortunately, the piece meal and half-hearted legislation has left many loop holes and deficiencies even in present Act of 1988.

A victim on the street is never in a position to ask for adequate compensatory relief for his lawfully entitled claims from rich and privileged adversaries, because no sooner he sets his claims in action he finds himself in a maze of procedural wrong lings which will certainly sap his time, money and energy. Even for initiating a claim he has to go the courts with the bag full of money to dole out as court fees, and other miscellaneous expenses which is

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certainly beyond his means and capacity. The poor, illiterate and desperate victims of motor vehicle accidents are always exploited.

A Right which was otherwise available under common law for damages against a tortfeasor was incorporated in Motor Vehicles Act for expeditious disposal.\(^2\) In Cases of deaths or injuries in a motor vehicle accident compensation may also be claimed under Section 166 of this Act\(^3\). The main object of this Act is to provide a speedy remedy instead of a civil suit as is required under Fatal Accidents Act. Fatal Accidents Act is also narrower in this sense that it provides for compensation only to certain dependents of the deceased\(^4\) and does not apply unless death is caused. This Act on the other hand applies even in cases of injuries not causing death and also to damage to property\(^5\), and when death is caused application for compensation may be made by any representative of the deceased or his agent.\(^6\) But in one respect Motor Vehicles Act is narrower because it applies only in cases of accidents caused by motor vehicles\(^7\). The question of liability of the parties, which was governed by Law of Torts, is unaffected by the Act.\(^8\) It only changes the forum taking away the jurisdiction of the Civil Court.

As to principles of measure of damages under this Act the amount is to be determined as appears to the tribunal to be just. To analyze this wide discretion certain rules have been evolved, that, the amount of compensation must be reasonable and must be assumed with moderation, regards must be had to awards in comparable cases, the sums awarded should, to a considerable extent, be moderate.\(^9\)

While fixing the amount of damages the Tribunal should ascertain separately and determine under different heads pecuniary and non-pecuniary damages awarded. Although the sum awarded must be a lump sum it must be made up of its constituent parts, and it was decided in case *M.P.S.R.T. Corporation v. Jahiram.*\(^10\)

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\(^3\) The Motor Vehicles Act, 1988.
\(^4\) Section 1-A.
\(^5\) Section 110(1).
\(^6\) Section 110(A).
\(^7\) Section 110(1).
The Supreme Court in *Shekhupura Transport Co. v. N.I.T. Insurance Co.*,\(^{11}\) held that for fixing compensation under S.110-B of Motor Vehicles Act, 1939 (S. 168 of Motor Vehicles Act, 1988) the general principle that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other hand any pecuniary advantage, which from whatever source comes to them by reason of death, that is, balance of loss and gain to a dependent must be ascertained.

### 3.1 PROVISIONS REGARDING COMPENSATION UNDER MOTOR VEHICLES ACT, 1988

The Motor Vehicles Act, 1988, like the earlier Act of 1939, makes the insurance of motor vehicles compulsory. The owner of every motor vehicle is bound to insure his vehicle against third party risk. The insurance co. *i.e.* the insurer covers the risk of loss to the third party by the use of motor vehicle. Thus if there is insurance against third party risk, the person suffering due to accident(third party) caused by the use of motor vehicle may recover compensation either from the owner or the driver of the vehicle, or from insurance company, or from them jointly.

According to section 146,\(^{12}\) no person can use, except as a passenger, or cause or allow any other person to use a motor vehicle in a public place, unless an insurance policy against third party risks, in relation to use of the vehicle. Section 196,tells about Driving Uninsured Vehicle and it says, Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provision of sec 146 shall be punishable with imprisonment which may extend to 3 months, or with fine which may extend to one thousand rupees or with both.

Amendments India’s Motor Vehicles Act, 1988 have meant that there will be more compensation for those making accident claims. According to the latest official statistics from the Indian government, over 100,000 people were killed in road accidents in India in 2006 and nearly half a million were injured. That means one accident per minute and a fatal one every five minutes.

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The plan for amendments to the Motor vehicles Act form part of a national effort to control accidents, due to be introduced in the coming session of parliament. They include suspending the license of a drunk driver on the spot for up to three months. With the amendments to the Motor Vehicles Act, 1988, "the penalties for various traffic offences are proposed to be enhanced substantially to make it more deterrent". Another amendment proposes to raise the interim compensation to accident victims to Rs.100,000 in case of death or permanent total disablement and to Rs.50,000 in case of permanent partial disablement, the minister said. The claimants will be paid within three months from the date of filing the application in the Motor Accident Claim Tribunal (MACT) or civil court.

The Motor Accident Claims Tribunals have been constituted by different State Governments, for the speedy disposal of third party claims, in accordance with Section 110\textsuperscript{13} of the Act. Such tribunals are presided over by a person of the rank of a District Judge or High Court Judge. Only a nominal fee has to be paid for instituting a case and the court fee is not based on the value of the suit. Thus, poor third party claimants are not prevented from making proper claims. All third party claims for personal injury and property damage have to be filed with the tribunals. Section 165\textsuperscript{14} provides the form of constitution of Claim Tribunal in adjudging claims of compensation in respect of accidents involving the death of bodily injury to persons "arising out of the use of Motor Vehicle". Being welfare legislation the scope of this term have been widened which includes accident by a stationery vehicle, injuries suffered by passengers in bomb blast, injuries due to fire in petrol tanker. Murder in a motor vehicle has also been covered as a motor accident.

3.2 ROAD ACCIDENT SITUATION IN INDIA

The magnitude of road accidents in India has gone up to an alarming proportion. About 80,000 persons were killed and 382,700 persons were injured in India in the year 2001. This clearly demonstrates the gravity of road traffic problems in India, which continues to be worse primarily due to the ever-increasing growth of motor vehicles and the inadequacy of the road system to

\textsuperscript{13} The Motor Vehicles Act, 1939.
\textsuperscript{14} The Motor Vehicles Act, 1988.
cope with the saturated traffic flow. The actual trend in the total accidents, fatalities and injuries in India for the period 1970-2001 reflects the increasing trend of road accidents during this period. The total numbers of road accidents and fatalities have gone up significantly from 114,000 to 394,000 and from 14,500 to 80,000 resulting in an increase of 3.46 times and 5.51 times respectively over a period of 32 years.

Firstly, the grim truth is that India leads the rest of the world when it comes to the number of accidents per year. According to the National Crime Records Bureau (NCRB), the number of road accidents taking place annually has now passed the 1,35,000 mark, which works out to a chilling average of 15 accidents per hour every day. According to the Transport Research Wing (TRW) of the Ministry of Road Transport and Highways (Government of India) has furnished the following data, highlighting not only the number of fatalities and casualties, but also the variation of the trend over time.\(^{15}\)

**Table 3.1: Year wise distribution of road accidents and number of persons killed and injured on National Highways**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total no. of road accidents</th>
<th>No. of road accidents on National Highways</th>
<th>Total No. of persons killed</th>
<th>No. of persons killed on National Highways</th>
<th>Total no. of persons injured</th>
<th>No. of persons injured on National Highways</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>439255</td>
<td>129994</td>
<td>94968</td>
<td>35439</td>
<td>465282</td>
<td>145582</td>
</tr>
<tr>
<td>2006</td>
<td>460920</td>
<td>140158</td>
<td>105749</td>
<td>39820</td>
<td>496481</td>
<td>152807</td>
</tr>
<tr>
<td>2007</td>
<td>479216</td>
<td>138922</td>
<td>114444</td>
<td>40612</td>
<td>513340</td>
<td>1154880</td>
</tr>
<tr>
<td>2008</td>
<td>484704</td>
<td>137995</td>
<td>119860</td>
<td>42670</td>
<td>523193</td>
<td>149693</td>
</tr>
<tr>
<td>2009</td>
<td>486384</td>
<td>142511</td>
<td>125660</td>
<td>45222</td>
<td>515458</td>
<td>152816</td>
</tr>
</tbody>
</table>

The number of accidents is growing slowly but steadily, year after year. Trucks and two-wheelers are involved in more than 40% deaths, while the afternoon and evening rush hours constitute the period with the maximum rate of accidents.\(^{16}\)

\(^{15}\) Source: Transport research wing and NCRB (National Crime Records Bureau).

Table 3.2: Number of accidents, persons killed and injured as per road classification (2009)

<table>
<thead>
<tr>
<th>Road classification</th>
<th>Total</th>
<th>National Highways</th>
<th>State Highways</th>
<th>Other roads</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of accidents</td>
<td>486384</td>
<td>142511 (29.30)</td>
<td>115992 (23.85)</td>
<td>227881 (46.85)</td>
</tr>
<tr>
<td>No. of persons killed</td>
<td>125660</td>
<td>45222 (35.99)</td>
<td>34093 (27.13)</td>
<td>46345 (36.88)</td>
</tr>
<tr>
<td>No. of persons injured</td>
<td>515458</td>
<td>152816 (29.65)</td>
<td>131517 (25.51)</td>
<td>231125 (44.84)</td>
</tr>
</tbody>
</table>

Source: Transport Research Wing

Now, let us compare states based on their likelihood of accidents. The graph below shows the relative safety of roads in Indian states. Based on accidents per 10000 kilometers of roads, we see that Maharashtra (green) is quite close to the national average (blue). It turns out that it is the union territory of Lakshadweep that is the clear outlier on number of accidents per kilometer of road.\footnote{http://www.hindustantimes.com/India, visited on 20th Oct, 2011.}

Figure 3.1: State wise distribution of per 1000 km of roads
3.3 HISTORY

Before, the Motor Vehicle Act, 1988 came into existence, the Motor Vehicles Act, 1939 was applicable for all type of Motor Accidents. The Motor Vehicles Act, 1939, consolidates and amends the law relating to motor vehicles. This has been amended several times to keep it up to date. The need was; however, felt that this Act should; now inter alia, take into account also changes in the road transport technology, pattern of passenger and freight movements, developments, of the road network in the country and particularly the improved techniques in the motor vehicles management. Various Committees\textsuperscript{18}, like, National Transport Policy Committee, National Police Commission, Road Safety Committee, Low Powered Two – Wheelers Committee, as also the Law Commission have gone into different aspects of road transport. They have recommended updating, simplification and rationalization of this law. Several Members of Parliament have also urged for comprehensive review of the Motor Vehicles Act, 1939, to make it relevant to the modern – day requirements. A Working Group was, therefore, constituted in January, 1984 to review all the provisions of the Motor Vehicles Act, 1939 and to submit draft proposals for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestions and recommendations earlier made by various bodies and institutions like Central Institute of Road Transport (CIRT), Automotive Research Association of India (ARAI), and other transport organizations including, the manufacturers and the general public. Besides, obtaining comments of State Governments on the recommendations of the Working Group, these were discussed in a specially convened meeting of Transport Ministers of all States and Union territories. Some of the more important modifications so suggested related for taking care of -

a. The fast increasing number of both commercial vehicles and personal vehicles in the country.

b. The need for encouraging adoption of higher technology in automotive sector;

c. The greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances;

\textsuperscript{18}The Motor Vehicle Act, 1988, Statement of Objects and Reasons.
d. Concern for road safety standards, and pollution-control measures, standards for transportation of hazardous and explosive materials;
e. Simplification of procedure and policy liberalization’s for private sector operations in the road transport field; and
f. Need for effective ways of tracking down traffic offenders\(^{19}\).

### 3.4 THE MOTOR VEHICLES ACT, 1988

The Supreme Court in *M. K. Kunhimohammed v. P. A. Ahmedkutty*\(^{20}\), has made certain suggestions to raise the limit of compensation payable as a result of motor accidents in respect of death and permanent disablement in the event of there being no proof of fault on the part of the person involved in the accident and also in hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in the accident. The above suggestions made by the Supreme Court have been incorporated in the Bill of the Motor Vehicles. The proposed legislation has been prepared in the light of the above background. Some of the more important provisions of the Bill provide for the following matters, namely:-

a. Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.
b. Stricter procedures relating to grant of driving licenses and the period of validity thereof.
c. Laying down of standards for the components and parts of motor vehicles.
d. Standards for anti-pollution control devices.
e. Provision for issuing fitness certificates of vehicles also by the authorized testing stations.
f. Enabling provision for updating the system of registration marks.
g. Liberalized schemes for grant of stage carriage permit on non nationalized routes, all-India Tourist permits and also national permits for goods carriages.
h. Administration of the Solatium Scheme\(^ {21}\) by the General Insurance Corporation.

\(^{19}\) Ibid.


i. Provision for enhanced compensation in cases of “no fault liability” and in hit and run motor accidents.

j. Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles.

k. Maintenance of State registers for driving licences and vehicle registration.

l. Constitution of Road Safety Councils.

The Bill also seeks to provide for more deterrent punishment in the cases of certain offences. The above suggestions which were incorporated in the Motor Vehicles Bill received the assent of the President on 14th October, 1988 and came on the Statute Book as Motor Vehicles Act, 1988. The Act came into force with effect from 1st July, 1989 replacing the Motor Vehicles Act, 1939. The erstwhile Motor Vehicles Act, 1939 was repealed by Section 217 of the Motor Vehicles Act, 1988. Said section 217 also repealed all laws corresponding to the Motor Vehicles Act, 1939, and then being in force in any State immediately before the commencement of the Act of 1988 in the respective states.

3.5 THE MOTOR VEHICLES (AMENDMENT) ACT, 1994

The Act was amended by the Motor Vehicles (Amendment) Act, 1994, which came into effect from 14.11.1994. After the coming into force of the Motor Vehicles Act, 1988, Government received a number of representations and suggestions from the State Government Transport Operators and members of public regarding the inconvenience faced by them because of the operation of some of the Provisions of the 1988 Act. A Review Committee was, therefore, constituted by the Government in March, 1990 to examine and review the 1988 Act. The recommendations of the Review Committee were forwarded to the State Governments for comments and they generally agree with these recommendations. The Government also considered a large number of representations received, after finalization of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The important

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suggestions made by the Transport Development Council relate to, or are on account of:

a. The introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country.
b. Providing adequate compensation to victims of road accidents without going into long drawn procedure.
c. Protecting consumers’ interest in Transport Sector.
d. Concern for road safety standards, transport of hazardous chemicals and pollution control.
e. Delegation of greater powers to State Transport Authorities and rationalizing the role of public authorities in certain matters.
f. The simplification of procedures and policy liberalization in the field of Road Transport.
g. Enhancing penalties for traffic offenders.23

3.6 THE MOTOR VEHICLES (AMENDMENT) ACT, 2000

The Act was again amended by the Motor Vehicles (Amendment) Act 2000 – Further amendments in the aforesaid Act have become necessary so as to reduce the vehicular pollution and to ensure the safety of the road users. It is, therefore, proposed to prohibit alteration of vehicles in any manner including change of tyres of higher capacity. However, the alteration of vehicles with a view to facilitating the use of eco-friendly fuel including Liquefied Petroleum Gas (LPG) is being permitted. Further, it is proposed to confer powers on the Central Government to allow the alteration of vehicles for certain specified purposes.24

At present, the educational institutions are not required to obtain permits for the operation of buses owned by them. It is proposed to bring the buses run by these institutions within the purview of the aforesaid Act by requiring them to obtain permits. It is also proposed to allow renewal of permits, driving licences and registration certificates granted under the Motor Vehicles Act, 1939 to be renewed under the Motor Vehicles Act, 1988, by inserting new section 217- A.

23 Ibid.
The proposed amendments are essential in the overall interest of securing road safety and maintaining a clean environment.25

3.7 THE MOTOR VEHICLES (AMENDMENT) ACT, 2001

Third times amendments to this act were brought by the Motor Vehicles (Amendment) Act, 2001. The Motor Vehicles Act, 1988 is a Central legislation through which the road transport is regulated in the country. By the Motor Vehicles (Amendment) Act, 1994, inter alia, amendments were made for make special provisions under sections 66 and 67 so as to provide that vehicles operating on eco–friendly fuels shall be exempted from the requirements of permits and also the owners of such vehicles shall have the discretion to fix fares and freights for carriage of passengers and goods. The intention in bringing the said amendments was to encourage the operation of vehicles with such eco-friendly fuels. However, it has been observed that during the last several years, not only the supply of eco-friendly fuels like CNG has increased tremendously, a large number of vehicles have come on the road which in terms of sections 66 and 67, as amended by the Motor Vehicles (Amendment) Act, 1994, are operating without any requirement of permits and are, therefore, not subject to any control of the State Governments. The number of such vehicles is likely to further increase substantially.26

The aforesaid situation is likely to lead to indiscipline on the road and consequent increase in the road accidents. It is, therefore, considered essential to remove exemption provided under sections 66 and 67 of the said Act to CNG operated vehicles so that vehicles which operate on eco-friendly fuels are also covered by the terms and conditions applicable to all other vehicles. The proposed amendments are essential in the overall interest of securing road safety and maintaining a clean environment.27

3.8 OBJECT AND SCOPE

The Motor Vehicles Act, 1988 has been applicable to whole India and has been prepared to achieve the following objectives:

25 Ibid.
27 Ibid.
1. To take care of the fast increasing number of both commercial vehicles and personal vehicles in the country.
2. The need for encouraging adoption of higher technology in automotive sector.
3. The greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances.
4. Concern for road safety standards, and pollution-control measures, standards for transportation of hazardous and explosive materials.
5. Simplification of procedure and policy liberalization’s for private sector operations in the road transport field.
6. Need for effective ways of tracking down traffic offenders.
7. Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.
8. Stricter procedures relating to grant of driving licences\textsuperscript{28} and the period of validity thereof.
10. Standards for anti-pollution control devices.
11. Provision for issuing fitness certificates of vehicles also by the authorized testing stations.
12. Enabling provision for updating the system of registration marks.
13. Liberalized schemes for grant of stage carriage permit on non nationalized routes, all-India Tourist permits\textsuperscript{29} and also national permits for goods carriages.
14. Administration of the Solatium Scheme\textsuperscript{30} by the General Insurance Corporation.
15. Provision for enhanced compensation in cases of “no fault liability” and in hit and run motor accidents.
16. Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles.

\textsuperscript{28} [The] Driving Licence (Conditions and Exemption) Rules, 1992.
\textsuperscript{30} [The] Solatium Scheme, 1989.
17. Maintenance of State registers for driving licences and vehicle registration.
19. The introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country.
20. Providing adequate compensation to victims of road accidents without going into long drawn procedure.
22. Concern for road safety standards, transport of hazardous chemicals and pollution control.
23. Delegation of greater powers to State Transport Authorities and rationalizing the role of public authorities in certain matters.
24. The simplification of procedures and policy liberalization in the field of Road Transport.
25. Enhancing penalties for traffic offenders.
26. Modification and amplification of certain definitions of new type of vehicles.
27. Simplification of procedure for grant of driving licenses.
28. Putting restrictions on the alteration of vehicles.
29. Certain exemptions for vehicles running on non-polluting fuels.
30. Ceilings on individuals or company holdings removed to curb “benami” holdings.
31. States authorized to appoint one or more State Transport Appellate Tribunals.
32. Punitive checks on the use of such components that do not conform to the prescribed standards by manufactures, and also stocking / sale by the traders.
33. Increase in the amount of compensation of the victims of hit and run cases.
34. Removal of time limit for filling of application by road accident victims for compensation.
35. Punishment in case of certain offences is made stringent.
36. A new pre-determined formula for payment of compensation to road accident victims on the basis of age / income, which is more liberal and rational.31

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3.9 DEFINITIONS – THE GENUS AND SPECIES OF MOTOR VEHICLES

Section 2 of the Motor Vehicles Act\textsuperscript{32} defines certain terms, which have been used in the act, having the meaning as provided in the Motor Vehicles Act, unless the context otherwise requires. Some of the definitions of such terms is as under:-

1. **Area**, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette.

2. **Articulated Vehicle** means a motor vehicle to which a semi-trailer is attached.

3. **Axle Weight** means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface on which the vehicle rests.

4. **Certificate of Registration** means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV of Motor Vehicles Act, 1988.

5. **Conductor**, in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed.

6. **Conductor’s Licence** means the licence issued by a competent authority under Chapter III of the Motor Vehicles Act, 1988, authorizing the person specified therein to act as a conductor.

7. **Driver** includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.

8. **Driving License** means the license issued by a competent authority under Chapter II of the Motor Vehicles Act, 1988, authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

9. **Fare** includes sums payable for a season ticket or in respect of the hire of a contract carriage.

\textsuperscript{32} Definitions of Terms and Expressions used in the Motor Vehicles Act, 1988 (59 of 1988).
10. **Goods** includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle.

11. **Goods Carriage** means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

12. **Heavy Goods Vehicle** means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms.

13. **Heavy Passenger Motor Vehicle** means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms.

14. **Learner’s License** means the license issued by a competent authority under Chapter II of Motor Vehicles Act, 1988, authorizing the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description.

15. **Licensing Authority** means an authority empowered to issue licence under Chapter II or, as the case may be, Chapter III.

16. **Motor Vehicle or Vehicle** means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters.

17. **Owner** means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an

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agreement of lease or an agreement of hypothecation, the person in
possession of the vehicle under that agreement.

18. **Permit** means a permit issued by a State or Regional Transport Authority or
an authority prescribed in this behalf under this Act authorizing the use of
motor vehicle as a transport vehicle.

19. **Public Place** means a road, street, way or other place, whether a
throughfare or not, to which the public have a right of access, and includes
any place or stand at which passengers are picked up or set down by a stage
carriage.

20. **Registering Authority** means an authority empowered to register motor

21. **State Government** in relation to a Union territory, means the Administrator
thereof appointed under article 239 of the Constitution.

22. **Traffic Signs** includes all signals, warning sign posts, direction posts,
markings on the road or other devices for the information, guidance or
direction of drivers of motor vehicles.

23. **Weight** means the total weight transmitted for the time being by the wheels
of a vehicle to the surface on which the vehicle rests.\(^{34}\)

**3.10 CONCEPT AND MEANING OF ACCIDENT**

The word ‘accident’ is not a technical legal term with a clearly defined
meaning but generally speaking with reference to legal liabilities, an accident
meant any unintended and unexpected occurrence which produces hurt or loss.
The word accident is also often used to denote the cause and effect, no attempt
being made to discriminate between them. The great majority of what are called
accidents are occasioned by carelessness from unintended and unexpected
events\(^{35}\). The term ‘accident’ has not been defined in the Motor Vehicles Act.
The term ‘accident’ was first time defined in *Fenton v. Thorley & Co. Ltd.*\(^ {36}\) as
unlooked for mishap which is not designed nor expected.

In *United India Insurance Co, Ltd. v. Somari Devi*,\(^ {37}\) it was observed by the
Patna High Court that the word ‘accident’ generally denotes an event that take

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\(^{34}\) The Motor Vehicles Act, 1988, Section 2.
\(^{35}\) *Saraswathi v. S. Narayanswami*, (1985) 1 TAC 233 (Mad).
\(^{36}\) (1903) AC 448 (HL).
\(^{37}\) 1999 ACJ 864(Pat.).
place without one’s foresight or expectation, i.e. an event which proceeds from an unknown cause or is unusual effect of a known cause or contingency. An accident which is unforeseen is accident which term means some unexpected and unforeseen event or overlooked mischief. It is an event happening without concurrence of will of the person by whose agency it was caused\(^{38}\). It may incidentally be stated that the term ‘accident’ for the purpose of law relating to compensation includes any injury not designed by the injured himself, and it is of consequence that the injury was designed and intended by the person inflicting the same.\(^{39}\)

In the matter of *Oriental Insurance Co. Ltd. v. Dongkholam*\(^{40}\) it was held by the High Court that the difference between a murder which is not an accident and a murder which is an accident depends on the proximity of the cause of such murder.

If the dominant intention of the act of felony is to kill any particular person then such killing is not accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder within the meaning of Motor Vehicles Act.

### 3.11 ACCIDENT AND OTHER ALLIED EXPRESSIONS LIKE ACT OF GOD, INEVITABLE ACCIDENT, LATENT DEFECT, ETC.

All causes of inevitable accident may be divided into two classes:

1. Those which are occasioned by the elementary forces of nature are connected with the agency of man or other causes; and
2. Those which have their origin either in whole or in part in the agency of man, whether in acts of commission or omission, non-feasance or of malfeasance, or in any other cause independent of the agency of natural forces\(^{41}\).

The term ‘Act of God’ is applicable to the former class. The expression ‘act of God’ signifies operation of natural forces free from human intervention, such as lightning or severe gale, snow storming, hurricanes, cyclones and tidal

\(^{38}\) Ramdev Singh *v.* Chudasma *v.* Hansrajbai *v.* Kodala 1999 ACJ 1129(Guj.) DB.

\(^{39}\) Varkeychan *v.* Thomman, 1979 ACJ 319 (Ker.); Mathew Joseph *v.* Johny Sunny, 1995 ACJ 1183 (Ker.).

\(^{40}\) 2007 ACJ 1973 (Gau.).

waves and the like, though every non-expected wind or storm cannot operate as excuse from liability if there is reasonable possibility of anticipating their happening e.g. the possibility of extraordinary floods in any particular region being within competence of authorities to take precautionary steps,\textsuperscript{42} i.e., some casualty which human foresight could not discern and from consequences of which no human protection could be provided.\textsuperscript{43}

In \textit{United India Insurance Co. Ltd. v. Economic Roadways}\textsuperscript{44} case it was held that since Act of God is a ground for defence, it is for the defendant to prove that accident had occurred for reasons beyond his control. In claims for compensation, governed by beneficial legislations, the defence of Act of God or of latent defect is a feeble defence. Tyres fleeing off running vehicle and hitting deceased was not held an act of God by the Rajasthan High Court.\textsuperscript{45} In \textit{Sarda Devi v. Birbal Ram}\textsuperscript{46} case, where the accident had occurred because of tyre burst but the owner had failed to establish that tyre was road worthy, the finding of tribunal that it was an act of God was reversed by appellate court holding that owner and driver were negligent in operating the bus with unroad-worthy tyres.

\section*{3.12 DEFENCE OF ACT OF GOD, OR OF LATENT DEFECT FEEBLE UNDER COMPENSATION LAWS}

In the matter of \textit{Sharma v. Kartar Singh}\textsuperscript{47} where a driver, continuing to drive a jeep when there was storm despite request of occupants to stop, cannot plead that accident was an act of God. In \textit{R.J.Foujdar Bus Service v. Ganpat Singh}\textsuperscript{48} where a driver took the bus on the bridge when water was overflowing. The bus was washed away, resulting in death of several passengers. Accident was not an act of God and negligence of driver was writ large. In \textit{Madhya Pradesh State Road Transport Corporation v. Bhoj Singh},\textsuperscript{49} the bus collided against a tree which caused tyre burst in the rear wheel, causing injury to a passenger. The defence was that the tyre was in good condition and that the burst was a vi major.

\textsuperscript{42} Sankardan Das \textit{v. Grid Corporation of Orissa Ltd}, 1998 ACJ 1420 (Ori.) DB.
\textsuperscript{43} A.Krishna Patra \textit{v. Orissa State Electricity Board}, 1998 ACJ 155 (Ori.) DB.
\textsuperscript{44} 2002 ACJ 2024 (Mad.).
\textsuperscript{45} Ali Khan \textit{v. Vijay Singh}, 2007 ACJ 350 (Raj.).
\textsuperscript{46} 2009 ACJ 2780 (Raj.).
\textsuperscript{47} 2008 ACJ 892 (MP) DB.
\textsuperscript{48} 2007 ACJ 1591 (MP) DB.
\textsuperscript{49} 1992 ACJ 1151 (MP).
The evidence was that the bus was overloaded. It was held that the tyre burst was due to overloading and that the driver was negligent in having the bus overloaded.

Claim for compensation was made under the Workmen’s Compensation Act, 1923, in respect of death of a lady worker who died of an accident which took place on account of lightning. The defence was that lightning was Act of God. Repelling such defence, the court observed:

“… the concept of the liability under the Act is wide enough to cover a case of this nature in as much as death has taken place arising as result of accident in the course of employment. It is no doubt true that accident must have a causal connection with the employment and arise out of it. If the workmen is injured as a result of natural force such as lightning though in itself has no connection with employment, she can recover compensation by showing such employment exposed her to such injury. In this case, the finding is that the said….was working on the site and would not have been exposed to such hazard of lightning striking her had she not been working so”.

3.13 SALIENT FEATURES OF MOTOR VEHICLES ACT, 1988 RELATING TO AWARDING OF COMPENSATION IN MOTOR ACCIDENT CASES

The relevant provisions relating to awarding of compensation in Motor Vehicle Accidents has been provided in Chapter X, Chapter XI and Chapter XII of the Motor Vehicles Act, 1988. These chapters deal with following subjects:

1. Chapter X deals with No Fault Liability in certain cases.
2. Chapter XI of the Act deals with Insurance of Motor Vehicles against Third Party Risk, and
3. Chapter XII of the Act deals with establishment of Claims Tribunals, application for and award of compensation in cases of accidents arising out of use of Motor Vehicles, recovery of amount of compensation from insurer as arrears of land revenue and other procedural and incidental matters.

3.14 LIABILITY TO PAY COMPENSATION IN CERTAIN CASES ON THE PRINCIPLE OF NO FAULT

Sections 140 to 144 of the Act,\textsuperscript{51} provides for payment of compensation on the principle of no fault liability i.e. without any fault on the part of any party. Section 140 of the Motor Vehicles Act, 1988 provides for liability to pay compensation in certain cases on the principle of no fault. 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 vehicles 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.

(a) The amount of compensation which shall be payable under section 140 (1) in respect of the death of any person shall be a fixed sum of \textsuperscript{52}[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\textsuperscript{53} [twenty – five thousand rupees].

(b) In any claim for compensation under section 140 (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.

(c) A claim for compensation under section 140 (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.

(d) Notwithstanding anything contained in Section 140(2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to

\textsuperscript{52} Substituted for “twenty – five thousand rupees” by Act 54 of 1994, Section 43 (w.e.f. 14-11-1994).
\textsuperscript{53} Substituted, for “twelve thousand rupees” by Act 54 of 1994, Section 43 (w.e.f. 14-11-1994).
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 163-A’. Section 140 of the Act provides that in case of death or permanent disablement of any person resulting from an accident which arise out of use of a Motor Vehicle/s, the owner of offending vehicle/s shall be liable jointly or severally to pay compensation in respect of such death or permanent disablement. Under this section amount of compensation is a fixed amount of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement. For claiming such compensation, claimant is not required to plead that such accident is occurred due to negligence or fault of the owner/driver of the vehicle and death or permanent disablement is result of that accident. Moreover, such claim shall not be defeated by reason of any wrongful act, neglect or default on the part of the person whose death or disablement has been occurred. Nor the quantum of compensation shall be reduced due to contributory negligence on the part of person who sustained disablement or death.

3.15 INTERIM COMPENSATION ON THE BASIS OF ‘NO FAULT’

If a person has died in an accident or has suffered permanent disability, the Act creates an obligation on the owner of the vehicle to pay an interim compensation fixed by the Act. He is not allowed to plead that he was not at fault or that the accident occurred because of negligence of the victim. Permanent disability means loss of sight of either eye, hearing of either ear, loss of any member or joint, permanent impairment of powers of any members or joint or permanent disfigurement of head or face. In case of death, the amount payable is Rs.50,000/- and in case of permanent disability, compensation payable is Rs.25,000/- . This amount cannot be reduced and is independent of the liability to pay compensation in a claim petition.

Thus, even if ultimately the claim petition is dismissed, the interim compensation is not refundable. However, if the award made on the claim petition is higher than the interim compensation, the interim compensation

54 Note- Section 140 Corresponds to old Section 92-A of the Motor Vehicles Act, 1939.
already paid will be deducted. The claimant is not required to show that the death or permanent disability was caused due to fault or negligence of the owner; the owner is liable to pay the amount as long as death or permanent disability was caused as a result of an accident with his vehicle. For instance, if the car was stolen and driven by a disqualified person, and that person hits someone resulting in injuries, neither the insurance company nor the owner will be liable for there was no negligence. However, if it results in the death of third party, then the owner/insurer will be liable. The interim compensation will be awarded by the Tribunal though it is not specifically asked for in the claim petition.

Compensation awarded under this section does not barred the victim to claim compensation under any other law being in force, though the amount of such compensation to be given under any other law shall be reduced by the amount of compensation payable under no fault liability under this section or in accordance with the structured formula laid down under schedule -2 to this Act read with Section 163A of the Act.

In *Satvantkumar Harjit Singh Vig v. Aarti Jayant Lalwani*\(^{55}\) case it was held by the Double Bench of the Mumbai High Court that the phrase ‘has resulted from’ occurring in section 140 of the Motor Vehicles Act, 1988 does not require the death to have occurred in the accident itself. The section is attracted even where death is result or the consequence of the accident arising out of a motor vehicle. What is necessary to see is whether the death is the consequence of an accident arising out of use of motor vehicle. In *New India Assurance Co. Ltd v. Mehebubanbibi*\(^{56}\) case the deceased was deputed by his employer to carry a damaged transformer in a tractor. The tractor fell in to a ditch. The deceased was pressed under the damaged transformer, sustained injuries and died in hospital. Death of the deceased had arisen out of and in course of his employment. Though the case was not one of no fault liability, but as the accident had occurred due to negligence of the driver of the tractor, yet the fact of the case attract for a claim of double compensation under two different laws, irrespective of whether the claim is based on fault liability or on no fault liability. What is material is that a claim under the Motor Vehicles Act is no bar to claiming compensation, if

\(^{55}\) 2005 (1) ACJ 255 (Mum) DB.
\(^{56}\) 2003 (2) TAC 639 (Guj.) DB.
permissible, also under a different law. The Double Bench of Gujarat High Court held that the heirs of deceased in such case could claim compensation both under the Motor Vehicles Act for negligence of the driver of the tractor and also under Workmen’s Compensation Act, 1923 for death occurring out of and in the course of employment. In *Ram Singh v. Anil*\(^{57}\) it was held by the High Court that when occurrence of accident is proved to have arisen out of use of Motor Vehicle, it is not necessary to plead or prove negligence of driver of vehicle under Section 163A.

The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163 – A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force\(^{58}\). A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.\(^{59}\)

Notwithstanding anything contained in section 141(1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation and also if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned

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\(^{57}\) 2009 ACJ 73 (MP) DB.

\(^{58}\) Section 141 (1), The Motor Vehicles Act, 1988.

\(^{59}\) Ibid, Section 141 (2).
compensation, he shall not be liable to pay the second-mentioned compensation.\textsuperscript{60}

3.16 NECESSITY OF INSURANCE AGAINST THIRD PARTY RISK

Chapter XI of the Motor Vehicles Act, 1988 deals with Provisions regarding insurance of motor vehicles against third party risks. Section 145 of the Act defines certain terms like authorized insurer, certificate of insurance, liability, policy, property etc., which terms are relevant to motor insurance against third party. Some of the definitions are as under:

(a) Authorised Insurer

The term Authorized Insurer means an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalization) Act, 1972, and any Government insurance fund authorised to do general insurance business under that Act.

(b) Certificate of Insurance

The expression Certificate of Insurance means a certificate issued by an authorized insurer in pursuance of sub-section (3) of section 147 and 59 includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

(c) Liability

The word Liability is here used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140.

(d) Policy of Insurance

Policy of Insurance includes “certificate of insurance”.

(e) Property

The word property includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile-stones;

In \textit{United India Insurance Co. Ltd. v. Kadviben Udabhai Rathwa}\textsuperscript{61} it was held by the Full Bench of the Gujarat High Court that insurer is not entitled to raise any defence under section 149 (2) in an application under section 140.

\textsuperscript{60} Ibid, Section 141 (3).
(f) Goods

Goods as defined in section 2 (13) of the Act includes livestock and anything carried by a vehicle except living persons. In *National Insurance Co. Ltd. v. Khushboo* 62 it was held by Patna High Court that goods does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle.

(g) Reciprocating Country

This word means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter.

(h) Third Party

The word third party includes the Government. Section 146 of the Act provides for the necessity for insurance against third party risk. According to subsection 1 no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter. Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991. 63

Public place

The word public place has been defined under section 2(34) of the act to mean a road, street way or other place, whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage.

The word public place was interpreted in the case of *Chairman, The Trustee of Port of Madras v. Suganesan & Co.* 64 as place accessible to members of public and available for their use, enjoyment, avocation and other purposes though right of access thereto may be permissive, limited, restricted or regulated

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62 2009 (3) ACC 460 (Pat.).
64 1996 ACJ 1224 (Mad.).
by tickets, passes, payment or oral or written permission and any place restricted
generally or to a particular purpose or purposes, such as harbor, port trust, or
railway station. In National Insurance Co. Ltd. v. William Jenifar Ajitha\(^{65}\) it was
held by Madras high Court that even those places of private ownership where
members of public have access whether free or controlled, falls under public
place. It was held in Chinna Gangappa v. B. Sanjeeva Reddy\(^{66}\) that an accident
which occurred in garage in the process of reversing a tractor, would be held as
accident in a public place, since access to garage is not prohibited to members of
public.

The provision of compulsory insurance shall not apply to any vehicle
owned by the Central Government or a State Government and used for
Government purposes unconnected with any commercial enterprise\(^{67}\). Sub
Section -3 of Section 146 authorised the appropriate Government to exempt the
operation of sub-section (1) for any vehicle owned by the Central Government or
a State Government, if the vehicle is used for Government purposes connected
with any commercial enterprise or any local authority or any State transport
undertaking. Provided that no such order shall be made in relation to any such
authority unless a fund has been established and is maintained by that authority in
accordance with the rules made in that behalf under this Act for meeting any
liability arising out of the use of any vehicle of that authority which that authority
or any person in its employment may incur to third parties.

Explanation to Section 146 (3) states that for the purposes of this sub-
section, “appropriate Government” means the Central Government or a State
Government, as the case may be, and, a. In relation to any corporation or
company owned by the Central Government or any State Government, means the
Central Government or that State Government.
b. In relation to any corporation or company owned by the Central Government
 & one or more State Governments, means the Central Government.
c. In relation to any other State transport undertaking or any local authority,
   means that Government which has control over that undertaking or authority.

\(^{65}\) 2009 ACJ 1042.
\(^{66}\) 1998 (1) TAC 268 AP.
\(^{67}\) Section 146 (2), The Motor Vehicles Act, 1988.
3.17 AWARD OF COMPENSATION TO THE VICTIMS OF MOTOR ACCIDENT IN INDIA: JUDICIAL TRENDS

The case law relating to Motor Vehicle Accident Cases, which have been judicially determined in High Courts and the Supreme Court of India have been studied, examined, analyzed and critically commented upon for the purpose of appreciating the judicial invocation and application of the evidentiary principles of No Fault Liability, Contributory Negligence, \textit{res ipsa loquitur}\textsuperscript{68} in negligence cases, Act of God, Absolute and Vicarious Liability etc.. These cases cover motor accidents of the nature of both collision as well as non-collision. The word “collision” is used in this chapter as a case where there is collision between two or more motor vehicles, like collision between car and bus etc. The word “non-collision” is used in this chapter as a case where there is no collision between two or more motor vehicles, although these may have been hitting a wall or tree or a human being.

Accidents and compensation are fundamentally the incidents of Law of Torts. Accident connotes a casualty caused by neglect of duty to others. The \textit{causa causans} of an accident is not \textit{mens rea}, but remissness. The attributes like animus, motive, intention etc., all tending somewhat to a future consequence are simply misfit to explain the phenomenon of accident, which very often speaks for itself, and is covered by the maxim \textit{res ipsa loquitur}. The word approximately representing its formal cause finds its legal nomenclature in the term in negligence. It is this element of negligence which distinguishes an accident simpliciter from the anathema of inevitable accident, conceived in common parlance as Act of God, a stock phrase often deployed as defence to counter a claim for compensation on account of an accident.

In the scriptural sense, all that happens is ordained by God, as the Bhagwad Gita proclaims: “all actions are performed by the modes of nature but the fool with his mind perverted by ego arrogates himself as the doer”\textsuperscript{69}.

It is a pre-condition of any civil society that no one shall conduct his affairs in a way so as to result in loss, damage or injury to the mind, body, reputation or property of another. Accident, being casualty, cannot, therefore, be

\textsuperscript{68} \textit{Res Ipsa Loquitur} means ‘the things speaks for itself’.

a matter of contract and being a wrong independent of contract, it is a tort litigated under the hammer of negligence wherein compensation is the usual relief granted to the aggrieved. The quantum of compensation cannot be equal in two cases, even if the origin of wrong be identical, since the same accident may cause death of one but only a scratch or abrasion to the other. It is the difference which imports the idea of liability, quantitatively, the extent and qualitatively, the kind of liability. Whatever the injury or damage, no compensation can be awarded unless there are grounds to make the wrongdoer liable.

India has one of the highest number of road accidents in the world. Though the term ‘accident’ implies that there is no one to blame, more often than not, accidents are caused by rash and negligent driving and therefore the law requires that the wrongdoer must compensate the victim for the loss suffered.

In India, we have separate machinery for dealing with compensation claims involving motor accidents. Separate forums called Motor Accidents Claims Tribunals (MACT) have been set up under Motor Vehicles Act, 1988 to deal with compensation claims involving motor accidents.

### 3.18 LEGAL DEFENCE AVAILABLE TO THE INSURANCE COMPANIES TOWARDS THIRD PARTY

The Insurance Company cannot avoid the liability except on the grounds and not any other ground, which have been provided in Section 149(2). In recent time, Supreme Court while dealing with the provisions of Motor Vehicle Act has held that even if the defence has been pleaded and proved by the Insurance Company, they are not absolve from liability to make payment to the third party but can receive such amount from the owner insured. The courts one after one have held that the burden of proving availability of defence is on Insurance Company and Insurance Company has not only to lead evidence as to breach of condition of policy or violation of provisions of Section 149(2) but has to prove also that such act happens with the connivance or knowledge of the owner. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defence is available.
3.19 PURPOSE FOR AWARDING COMPENSATION

The purpose of awarding compensation is not punitive, but to compensate for the loss suffered by the victim and it was decided in case\(^70\) in which the appellant has not brought on record any material to show that for this injury he had to be confined to bed for several months or needed any special medicine or treatment except the plastering of the fractured arm and its follow up which he had got in Safdarjung Hospital and for that he had not alleged or proved that he had incurred any expenditure. The fracture got healed up in due course. No doubt that for the purpose his arm had to be kept in plaster causing inconvenience to him. In the absence of any medical evidence or other material like purchase of medicines/bills it cannot be said that the appellant had to incur any other extra expenditure for his treatment. The appellant was entitled to recover expenses actually and reasonably incurred as a result of the accident. The Tribunal has awarded Rs 8,000/- on account of pain and suffering and Rs 12,00/- on account of conveyance for his visits from Allahbad to Safdarjung Hospital. Another sum of Rs 1,800/- towards special diet and Rs 1,000/- towards medicines and treatment. Tribunal has further awarded Rs 7,000/- on account of loss of studies and consequently for loss of one year in his studies and career. From the material on record these amount cannot be said to be unreasonably low requiring any interference in appeal.

3.20 PROCEDURE FOR CLAIMING COMPENSATION

Claim application can be filed under Section 163A for claim to be determined on structural formula basis provided in Schedule-II. Schedule-II has been adjudged as suffering from severe mistakes and the Supreme Court has held that total reliance cannot be placed on this schedule. Further the Schedule do not provide any computation chart for the persons having more than Rs.40,000/- annual income. Claim petition can also be filed under Section 166\(^71\) of Motor Vehicle Act pleading negligence where the claim shall be assessed by the Judge not on the basis of structural formula but on the basis of evidence led.

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\(^{70}\) Bhagwat Prasad Keshri v. Nafe Singh, 1997 (1) TAC 557, 562 (Del).

\(^{71}\) Section 166, of the Motor Vehicles Act, 1988, mandates that the Tribunal should consider the facts and circumstances of each case and determine just compensation.
The injured or the legal representatives of deceased can file claim application in a prescribed format making driver, owner and insurer as party. Driver is not a necessary party in some states. For e.g. in the Rajasthan Motor Accident Claims Tribunal Rules only owner and insurer are required to be party. No limitation has been prescribed for filing of the claim application. Initially when the law has come into force the limitation was 6 months which was later increased to one year and ultimately in the garb of welfare legislation the provision of limitation has been deleted. In my humble view when there is limitation prescribed for all type of causes, some limitation of 2 or 3 years must be prescribed for filing of claim application.

Check out the following scenarios:

Scenario 1:

Accident happens but victim is still alive

In such a case, you will have to file an FIR (First Information Report). Laws are now strict and any hospital has to start emergency treatment for the victim (private or government hospital), even if you don't have an FIR yet. Once treatment has started, you may withdraw the complaint if you wish to do so.

Scenario 2:

Accident happens; victim is alive but passes away soon after in the hospital

Here, you will have to file an FIR. You may have withdrawn the case, but after that as soon as the victim passes away, you will have to file the FIR again. This is extremely important since you will need an NOC from the police station stating that the cops have no objection to you cremating / burying the body. The cops will only issue the NOC if a post mortem is done. There is no way around this.

Post Mortem Rules

If the victim passes away within 24 hours of the accident or 24 hours of being admitted to the hospital, you will have to get the post mortem done. THERE IS NO OPTION. Do not try to fight against this. Cops will not budge. It is a protocol in India and in most of the other countries around the world. Once the post mortem is done, the coroner will issue you a cause of death certificate. You need to show this certificate to the police who will then issue you the NOC.

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If the victim passes away after 24 hours, then it is the prerogative of the hospital if they want to request for a post mortem or not. On their own discretion they can give a death certificate on their own. You can then take this certificate and show to the police for the NOC. Once you get the NOC, you need to take that and the post mortem report / death certificate from the hospital to the crematorium. Based on this, they will let you cremate the body and issue a receipt to you. After 15 days you can take this receipt to the local ward office to claim the official death certificate. You can request any number of copies when you collect the certificate and they will give it to you within 15-20 minutes.

3.21 APPLICATION FOR COMPENSATION

An application claiming compensation arising out of an accident has to be made by:73

- The person who has sustained the injury
- The owner of the property which has suffered damage
- The legal representative of the deceased
- An agent duly authorized by the injured person.

The claim is summary civil proceedings wherein the claimant is required to prove the rash and negligent driving of the vehicle. The non-registration of a police case regarding the accident does not give rise to any inference that no such motor accident occurred.74 Application for compensation under Motor Vehicles Act is not a plaint governed by the provisions of C.P.C. Form prescribed for making application for compensation does not require averments to be made in so many words.75

Accident victims, who are below 18 years of age, cannot file for compensation themselves; they have to go through their advocates. The application has to be made before the Claims Tribunal and no civil court has the power to entertain any question relating to any claim for compensation. The claimant has to prove rash and negligent driving on the part of the respondent in order to be entitled for compensation. Where more than one vehicle is involved in

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73 Section 165, sub-section (1) of The Motor Vehicles Act, 1988.
75 Maharashtra State Road Transport Corporation v. Ram Chandra Ganpatrao Chincholkar, 1993 ACJ 165 (Bom).
the accident, the claimants are required to furnish the registration numbers, names of the owners and the insurers of all the vehicles\textsuperscript{76}. Right to claim compensation by the claimants in respect of motor vehicle accidents should not be defeated on technical ground.\textsuperscript{77}

\subsection*{3.22 AN ACCIDENT ARISING OUT OF THE USE OF A MOTOR VEHICLE}

Section 165 provides the form of constitution of Claim Tribunal in adjudging claims of compensation in respect of accidents involving the death of bodily injury to persons "arising out of the use of Motor Vehicle". Being welfare legislation the scope of this term have been widened which includes accident by a stationery vehicle, injuries suffered by passengers in bomb blast, injuries due to fire in petrol tanker. Murder in a motor vehicle has also been covered as a motor accident.

The expression ‘an accident arising out of the use of a motor vehicle’ is the foundation of a claim for compensation and is, therefore, of vital significance which, of course, needs an independent chapter for the construction and meaning thereof. In construing the scope of the expression ‘accident arising out of the use of a motor vehicle’, it can be said that the word ‘use’ is used in the Act in a wide sense so as to cover all employments of a motor vehicle, so that whichever the vehicle is put into action or service, there is ‘user’ of the vehicle within the meaning of the Act, whether the vehicle was being driven or repaired or simply parked or kept stationary or left unattended and in that sense, the vehicle is used, whenever the vehicle is driven out for any purpose, whatsoever. This, without anything more, is sufficient to attract the provisions of the Act. Thus, whenever any accident occurs causing death of or bodily injury to persons because of the vehicle or in the course of its user, the jurisdiction of the Claims Tribunal arises.\textsuperscript{78} In \textit{Union of India v. Satish Kumar Patel}\textsuperscript{79} and \textit{Gujarat State Road Transport Corporation v. Union of India}\textsuperscript{80}, matters where accidents do often

\textsuperscript{76} Karnataka State Road Transport Corporation v. Reny Mammen, 1990 (2) TAC 471: 1991 ACJ 403 (kant).

\textsuperscript{77} Sohanlal Passi v. Sesh Reddy, 1996 (2) TAC 733.

\textsuperscript{78} Padmanabhan Nair v. Narayaniutty, 1988 ACJ 58 (Ker.) DB

\textsuperscript{79} AIR 2001 MP 41.

\textsuperscript{80} AIR 1988 Guj13.
occur because of collision between a train and a motor vehicle, usually on unmanned level crossing, and such accidents may take one of the following modes, namely:

a. Where there is negligence only on part of the driver of the train.
b. Where the railway, or the driver of a train and the driver of a motor vehicle are both jointly responsible for the accident in question.
c. Where the driver of a motor vehicle is alone responsible for the accident in question.

In cases falling within (a.) above, the accident cannot be said to have arisen out of the use of motor vehicle and a claim for compensation cannot lie before a Motor Accidents Claims Tribunal, but in cases covered by (b) and (c) above, the accident shall be held to have arisen out of the use of a Motor Vehicle, and a claim for compensation shall lie before the Motor Accidents Claims Tribunal.81

**Vehicle Must Be In Use**

Claim application under Motor Vehicles Act can be filed when death arises out of use of vehicle. The Act provides for liability for damage caused by use of a vehicle in public place. It must therefore be in use at time of causing damage. The expression “use” does not here mean that the vehicle must be running at the time. It will be taken to be in use even when it is parked or its battery has been taken out.82 In *Oriental Fire & General Insurance Co. v. S.N. Rajguru*,83 an oil tanker was parked on the footpath near a public road, suddenly it burst and due to explosion a person was thrown at a distance of about 10 feet. He was badly injured and later died. It was contention of the insurer that the tanker was not in use at the time. The court rejected this argument and held the insurer liable.

If the victim was also negligent along with the respondent, then it is a case of contributory negligence. In such cases, the Tribunal will reduce the compensation to such an extent that it seems just and equitable to it having regard to the “claim shared in the responsibility for the damages”. Thus where a

83 (1985) A.C.J. 243 (Bom.).
passenger in a bus was keeping his hand outside the window and the hand got injured because of the negligence of the driver; the compensation entitled to the passenger will be reduced because the injury would not have occurred had he been careful in not putting his hand outside.

An application can be made to the Tribunal under whose jurisdiction the claimant resides or carries on business or under whose jurisdiction the respondent resides or under whose jurisdiction the accident occurred. For example, where an accident occurs in Bangalore between a person residing in Delhi and a person residing in Mumbai, an application can be made before the Claims Tribunal in Bangalore, Delhi or Mumbai. As soon as information regarding an accident involving death or bodily injury is reported to the police station, the police officer is required to forward such report to the Claims Tribunal within 30 days and the Claims Tribunal considers such reports as an application for compensation.

3.23 PERSONAL INJURY CLAIM

The items of compensation in personal injury claim cases are:
1. Shock, pain and suffering and loss of amenities of life;
2. Injury itself, depending upon the disability, permanent, temporary, partial or complete;
3. Medical and incidental expenses;
4. Loss of income till the date of petition and from the date of petition till the date of award and future loss;
5. Loss of earning capacity;
6. Shortened life expectancy;
7. Loss of prospects of marriage, avocation, education, social, economic, cultural and political opportunities;
8. Loss of beauty due to disfigurement;
9. Disability, both physical, mental and social;
10. Medical expenses towards future treatment, if any;
11. Loss of property during the accident; and
12. Any other item depending upon the facts and circumstances of each case.

3.24 METHODS OF CALCULATION OF COMPENSATION

After holding inquiry, the Tribunal will make an award determining the amount of compensation which appears to be just. The Tribunal takes into account the actual loss which arose out of the accident which includes hospital expenses, lost income during treatment period etc. In case of death, it is primarily the loss of dependency that determines the compensation amount. This is calculated using the multiplier method which is an exercise involving factors such as number of dependants, age of the deceased, nature of his profession, future prospects of the deceased, age of the claimants etc; and hence is not explained here. For instance in a case where a person aged 23, earning income of around Rs. 3,000/- per month, doing business met with an accident and died, the compensation of Rs. 4,17,500/- was given. Similarly in another case where an MBA graduate earning Rs. 18,000 per month died and Tribunal awarded an amount of Rs. 24,65,000/- though the Madras High Court found the amount to be exorbitant and reduced it later to Rs.15,14,000/-. Where an accident victim is a housewife, the Tribunal will first do the evaluation of her gratuitous services and will arrive at a notional income. The compensation will be calculated on the basis of this notional income. In one of the latest judgment where a housewife suffered injuries, the court awarded a compensation of Rs.1,45,129/-.

In case of accidents involving death or permanent disability, the Act also provides for a structured formula for calculating compensation in its schedule. It is for the claimant to decide whether to claim compensation based on the formula given in the schedule. The advantage of opting for this procedure is that the claimant is not required to prove negligence or fault of the respondent and thus the liability of the owner is on ‘no-fault’ basis. However, the disadvantage is that the claimant cannot simultaneously claim the interim compensation (above, Rs.50,000/- in case of death and Rs. 25,000/- in case of permanent disability). Further, the structured formula in the schedule does not contemplate calculation of compensation for those earning above Rs.40,000/-.

Full compensation is to be made for pecuniary loss suffered which does not mean a wooden formula of annual income multiplied by years. Past and future prospects of loss have to be determined in terms of money and have to be

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kept in mind. Compensation for injuries is to be calculated keeping in view the injuries suffered, the pain and suffering undergone or likely to be undergone, physical as well as psychological effects on the health of the sufferer, the expenses incurred including the prospective expenses, the medical treatment and its nature, nursing, special medical appliance, domestic help, consortium, expenses to cure, loss of ability to enjoy pleasant things of life and the qualitative difference made in life by the injuries causing loss to avail the amenities. The broad principle well recognized by judicial precedents regarding the assessment of compensation by the Tribunals for the injuries received in accident requires the Tribunal to award such sum of money which would place claimant in the same position as he would have been had he not sustained the injuries. The principle is known as *restitution in interregnum* and involves the assessment of the compensation broadly in three categories for general damages:

1. Consolatory damages are awarded for pain and suffering (Past, Present and Future) on account of accident;
2. Compensatory damages are provided to cover the expenses on account of services required for the claimant which he would not have needed for the accident;\(^{87}\)
3. Damages for loss of expectation of life of the parents or dependants of the deceased.\(^{88}\)

Damages for loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened, can be awarded. In case of Loss of marital prospects etc., compensation can be awarded.\(^{89}\)

**Factors to be considered**

Factors to be considered are, amount the deceased would have earned during the remainder of his life; amount he would have contributed to the dependants; and chances that the deceased might have got better employment and thus earned more.\(^{90}\) Determination of compensation cannot be arbitrary and must

\(^{87}\) *Raj Kumar v. State of Haryana*, 2000(2) TAC 58 (P&H).
be based on certain data establishing reasonable nexus between the loss incurred and the compensation to be awarded. The basis of computation of compensation could not be altered if the life span gets curtailed because Court proceeds on the basis of the theory of reasonable expectancy and it cannot work backwards. Living expenses of the deceased should be taken into account while calculating compensation. Sum awarded must be fair and reasonable by accepted legal standard.

**Compensation for future treatment**

It has been held by the Supreme Court in *Sapna Devi v. United Insurance company*\(^91\) that under the Motor Vehicles Act, claim cases cannot be reopened in future if in case the petitioner requires further amount for treatment and fresh award cannot be passed. Because, the Award qua the Tribunal is final, while passing the award, some provision should also be made for future treatment of the claimant.

**Rights of the parties**

The rights of the parties were required to be determined on the date of the accident. It is therefore, difficult to hold that a subsequent event and that too by raising a presumption in terms of Section 108 of the Evidence Act, 1872, can give rise to fructification of claim, save and except in very exceptional cases.\(^92\)

### 3.25 EVALUATION OF GENERAL DAMAGES

Evaluation of general damages or non-pecuniary damages for pain, suffering, loss of amenities, disfigurement and loss of expectation of life has been the subject of fundamental jurisprudential thought in various superior Courts in other countries and before deciding what is to be the proper approach in our country, it is necessary to refer to the different schools of thoughts. Such consideration might indeed help in avoiding *ad hoc* or haphazard assessments in individual cases. An idea of a proper range of damages for different types of injuries is also a necessity therefore, the following aspects are:

1. Full and fair compensation has to be paid for non-pecuniary damages and not as a matter of solace.

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\(^92\) *Oriental Insurance Co. Ltd. v. Sorumai Gogoi and Ors.*, 2008 (2) TAC 5 (SC).
2. Victims who are unconscious be awarded for loss of amenities and loss of expectation of life.

3. Victims who are unconscious be also awarded for pain and suffering because the tortfeasor was not to gain an advantage by involving the victim in an accident which made him unconscious.

4. Awards already made for similar injuries may be taken into consideration but it would be necessary to increase the figure keeping in mind the effect of inflation over the period.

5. Both positive and negative factors may be taken into account, extent to which the good things of life were taken away and the positive infliction of unpleasant things.

6. Cases of injuries can be classified into four major categories:
   (a) Total wreck;
   (b) Partial wreck;
   (c) Where limbs or eyes and other specific parts of body are lost; and
   (d) Small injuries.

7. Non-pecuniary damages cannot be kept low because pecuniary damages are high.

8. There should be no discrimination between rich and poor victims for evaluating non-pecuniary damages.\(^93\)

   The ‘general damages’ include compensation for pain and suffering, for permanent disability and for loss of earning power. In assessing loss of earning power, the life expectancy is a factor to be considered. Now the average life expectancy has gone up high in this country. Indians are fairly long-lived, 70 to 75 years may be considered as a reasonable span of Indian’s life. The compensation awarded under the Workmen’s Compensation Act purely on the basis of permanent disability without taking the aforesaid factors into consideration under the Motor Vehicles Act. General damages can be granted in case of death under the heads of funeral expenses and loss of consortium. If beneficiary is the spouse, loss of estate and medical expenses shall be payable in addition to the compensation.

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3.26 COMPUTATION OF COMPENSATION

The whole essence of grant of compensation is computation of the loss sustained and adjudicated by pragmatic parameters. Payment of solatium is not permissible. So far assessment of compensation is concerned, unit system is well recognized and well accepted mode of assessing the same. Once the income of the deceased is spelt out, multiplier is to be selected keeping in view the number of years of dependency of the various dependants, the number of years by which the life of the deceased, his becoming incapable of supporting the dependants due to illness or any other natural handicap or calamity, the prospects of remarriage of the widow, the coming up of the age of the dependants and their independent sources of income as well as the pecuniary benefits which might accrue to the dependants on account of the death of the person concerned. A case was decided where employer of the deceased gave employment to the widow of the deceased on compassionate grounds, it was held not a relevant factor in computing compensation.

3.27 ASSESSMENT OF CLAIM

The assessment of compensation, however, be made good but cannot be said to be foolproof. In every such assessment certain assumptions are to be made and there is all possibility of variance from Judge to Judge in applying the various principles enunciated by the Courts from time to time. Lord Viscount Simon has evolved a method of assessment known as "Nance's method" more popularly as "discounting method". Another popular method, which is known as Davis Method was evolved by Lord Wright. Motor accident has become an everyday affair. The number of persons losing their life or limb in motor accident is ever increasing. In accident cases perfect compensation is hardly possible as money cannot renew a physical frame that has been battered and shortened. However, it is clear principle of law that a person injured is entitled to full compensation for the financial loss suffered. In India, the state of things in the province of awarding compensation is uncertain and far from satisfaction.

The compensation shall be awarded under two general heads i.e., pecuniary and non-pecuniary damages. For calculating the yearly loss of

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95 New India Assurance Co. Ltd. v. Angoori Devi, 1987 (2) TAC 94.
dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicant so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which must be estimated. Hon'ble Supreme Court while dealing with a matter evolved a formula. Yearly Income Yearly expenditure on Deceased gives the sum expended on legal representatives. If this amount is capitalized subject to certain deductions, pecuniary loss to the family can be assessed. In the same period Lord Diploc has evolved Interest Capitalization method by calculating net pecuniary loss on annual basis and multiplied with number of years purchase. The Hon'ble Supreme Court of India with the development of accident claims has decided the landmark case of Susamma Thomas\textsuperscript{96} has started giving appreciation to the annual income of deceased. This appreciation ranges to the double of income depending upon the nature of job, age, future prospects etc. Supreme Court has held that after determining and doubling annual income, 1/3 should be deducted towards the expenses to be incurred on the deceased and the remaining amount should be multiplied by a multiplier depending on the age of deceased and beneficiary. The maximum multiplier approved by Supreme Court in this case was 16. Later, Supreme Court's 3 Judges bench have approved the Davis formula along with determination of dependency on unit basis in which the adults have been taken as 2 units and the minors has been taken as 1 unit. The multiplier, which was approved as 16 in Sushma Thomas case\textsuperscript{97}, was increased to maximum of 18. In this case the court did not allow double of the amount except that a premium may be given looking to the future prospects. But, in a recent Supreme Court judgment, in order to make compensation just and to take consideration of overall factors multiplier was reduced from 16 to 12 in case of deceased of 38 years. In same facts and circumstances, in another case Supreme Court has said for determination of multiplier depends upon (1) age of deceased (2) age of claimants (3) marital status (4) education and employment of the claimants; and

\textsuperscript{96} General Manager, Kerala State Transport Corporation v. Susamma Thomas, 1994 ACJ 1(SC).
\textsuperscript{97} Ibid.
(5) *loss of pecuniary benefits.* The Supreme Court has also held that criteria of awarding compensation include some guess work, some hypothetical consideration and some amount of sympathy linked with the nature of disability caused are all involved. But, all such elements are required to be viewed with the objective standard.

In view of the above case laws, one can say that the assessment of compensation is to be guided by way of applying precedents on the facts and circumstances of a particular case. It should not be misunderstood that an injured or legal representatives of the deceased should be given exorbitant claim, but the law restrict them to be "just compensation" so as to save the injured or legal representatives of deceased from possible pecuniary and non-pecuniary losses guided by the above judgments.

**Multiplier method**

Multiplier method is more scientific which takes care of loss of contribution to the family, loss of dependency and loss to the estate and it was decided in a case. Multiplier method is logically sound and well-established for computing compensation. Age of the deceased as well as age-group of the claimants is required to be taken into consideration while adopting a multiplier. In multiplier method, while fixing multiplier, there is no consideration that children are nearing the age of majority. Awarding reasonable lump sum compensation by applying relevant multiplier is just and proper. It not only takes care of uncertainties but also takes care of future interest. The multiplier method must be accepted method for determining ensuring payment of just compensation as it is the method which brings uniformity and certainty towards made all over the country. This method is based on the assessment that yearly loss of dependency should be equal to interest that could be earned in normal course on the capital sum invested. The capital sum would be the compensation for loss of dependency or the pecuniary loss suffered by the dependants. Uniformly applying the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.

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The multiplier system is sound in computing compensation is now well settled but what multiplier should be applied would depend on various circumstances. The age of deceased, age of the dependants, not only existing salary when he died, if any additional sum payable to the deceased depending upon nature of job in which he was working, his chances of promotion, the life expectancy, etc.

**Notional Income Method**

As regards quantum of the compensation, the Tribunal, for example, has taken the notional income of the deceased to be Rs. 12000/- per year which deserves to be enhanced to Rs. 15000/- per year as the notional income in case of non earning person according to Schedule appended to Motor Vehicles Act, 1988 has to be taken as Rs 15000/- per year. The Tribunal has taken the multiplier of 15, which Court do not find to be improper. Adopting the multiplier of 15, the compensation amount would come to Rs 1,12,500/-. In addition to this the claimant would be entitled to Rs 25,00/- towards to estate and Rs 2000/- for funeral expenses. Thus, the total award payable to the claimant would be Rs 1,17,000/- with interest @ 9% per annum and it was decided in a case 99.

As set out in the Second Schedule to the Motor Vehicles Act 1988, a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule he being the non earning person, a sum of Rs 15,000/- must be taken as income. Thus compensation comes to Rs 2,25,000/- in a case 100. In another case 101 it was contended that the Assessment of compensation on basis of notional income was not correct when injured own 5 acres of land. However, there was no convincing evidence placed to prove income out of agricultural land. Therefore, it could not be said that there was a total loss of income due to injury suffered by the injured. Such calculation of amount on basis of notional income held cannot faulted with.

**Unit Method**

In cases where the deceased was a married man with a wife and children to support, it was very unlikely that he would be spending Rs 1,557/- out of his salary of Rs 3,577/- on himself making his family dependent on him only to the

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99 Shaikh Israj v. Rekha, 2004 (3) TAC 630.
100 Manju Devi v. Musafir Paswan, 2005(1) TAC 609.
101 Ponnunany alias Krishnan & Anr. v. V. A. Mohanan & Others, 2008 (2) TAC 390 (SC).
extent of Rs 2,000/-. It is felt that demands of growing children have been somewhat underestimated. Therefore in assessing compensation the unit system works quiet satisfactory. In a family of two adults and three minors, two units each are awarded to the adults and one each to the minor. Thereafter, the dependency is worked out in proportion to the units awarded to the dependents. In the present case the family of the deceased had five units out of seven, two units belonged to the deceased himself. Therefore, the dependency of the deceased works out $5/7$ of Rs 3,577/- per month. This comes to Rs 2,455/- per month. The annual dependency comes to Rs 30,660/-. The annual dependency multiplied by 16 gives us the figure of Rs 4,90,566/-. By applying the unit method the total dependency of the appellants works out to Rs 4.9 lacs.102

3.28 HIT AND RUN CASES

A ‘hit and run’ motor accident means an accident involving a motor vehicle whose identity cannot be ascertained (for instance, a car hits a pedestrian and speeds away). In such cases, it is unfair to deny compensation to the pedestrian on the ground that the respondent cannot be identified. Therefore, the Act empowers the Central Government to make a scheme to pay compensation in such cases. Accordingly, a victim of a ‘hit and run’ accident can file an application before the Claims Tribunal claiming compensation and once the Tribunal has allowed the application, the General Insurance Corporation is liable to pay to the claimant a fixed compensation of Rs. 25,000/- in case of death and Rs. 12,500/- in case of grievous injury. Thus, the amount allowed under a hit and run case is meager as compared to a regular claim petition.

Essential Documents

You need to attach several documents along with your compensation claim:

- FIR copy
- Panchnama copy (this is a list of damages that is drawn by cops in the presence of witnesses)
- Medical reports (in case of injury)
- Post-Mortem Report Or Death Certificate (in case victim has died and a legal heir is filing for compensation)

102 Shoba Rani v. Punjab Electricity Board, 2005 (1) TAC 861 (P & H).
- RTO certificate (showing name and address of owner and insurance particulars of vehicle/s involved in the mishap)
- Passport-size photograph
- Court-fee stamp

**The Costs of Compensation**

- Affix a court-fee stamp of Rs. 10 if the compensation you are claiming is less than Rs 5,000/-.
- Affix a court-fee stamp that is worth 0.25% of your claim if you are asking for compensation that is between Rs 5,001/- and Rs 50,000/-.
- Affix a court-fee stamp that is worth 0.5% of your claim if you are asking for compensation that is between Rs 50,001/- and Rs 100,000/-.
- Affix a court-fee stamp that is worth 1% of your claim if you are asking for compensation that is more than Rs 100,000/-; but the maximum fee that you have to pay is Rs 15,000/-.

To claim the compensation in case of hit and run cases, the applicant will have to make an application\(^{103}\) in *Form I* along with discharge receipt in *Form II* and an undertaking in *Form V* to the chief inquiry officer, who could be a sub-divisional officer, tehsildar or any other officer in charge of revenue sub-division of the district or such other officer not below the rank of sub divisional officer or a tehsildar. Keep all the medical bills, transport expenses due to expenditure, any special expenditure (e.g. if because of accident an individual loses one leg, then the bill for the artificial foot replacement; or if the accident makes the victim immobile then ask the doctor to specify that for rest of the life two attendants will be required to take care of the victim). In case of an accident resulting in death, one should annex proper documentation in terms of the income of the deceased.

### 3.29 TREATMENT OF COMPENSATION AMOUNT

In a case, *General manager, Kerala State Transport Corporation v. Susamma Thomas\(^ {104}\)* tells regarding treatment of compensation awarded to claimants like minor, illiterate and widow etc. The guidelines stipulated by the apex court are as under:

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\(^{103}\) Relevant Forms under Central Motor Vehicles Rules, 1989.

I. Award of Compensation in Favour of Minor Claimants

The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor to be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn.

II. Compensation Awarded to Illiterate Claimants

In the case of illiterate claimants also the Claims Tribunal should follow the procedures set out in case of minors above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaws, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money.

III. Compensation to Semi-Literate Claimants

In the case of semi/literate persons the Tribunal should ordinarily resort to the procedure set out in case of minors above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some property as mentioned in case of illiterate claimants above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid.

IV. Compensation Amount Awarded to Literate Claimants

In the case of literate persons also the Tribunal may resort to the procedure indicated in case of Minor Claimant above, subject to the relaxation set out in case of Illiterate and Semi-literate claimants above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other consideration, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so order.

V. Award of Compensation to Widow Claimants

In the case of widows the Claims Tribunal should invariably follow the procedure set out in case of Minor Claimant above.
VI. **Withdrawal of Amount in case of Personal Injury**

In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment.\(^{105}\)

VII. **Withdrawal of Amount in Case of Emergency**

In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one fixed deposit so that if need be one such FDR can be liquidated.\(^{106}\)

VIII. **No Loan or Advance against the Fixed Deposit Amount of Compensation**

In all cases in which investment in long term fixed deposits is made it should be on condition that the bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be.

IX. **Duty of Bank to Affix Note on Fixed Deposit Receipt**

We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the fixed deposit receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the court/Tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be up to 80 percent of the amount invested and thereby defeating the very purpose of the order. We do hope that the courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. We are sure that the courts/Tribunals will realize their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the court/Tribunals.

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\(^{105}\) Ibid.

\(^{106}\) Ibid.
X. Cases Settled Outside the Court

It has been observed that in claims that are settled in or outside the court or Tribunal, including Lok Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between parties, the court/Tribunal must apply these guidelines.

3.30 DRIVING LICENCE AND LIABILITY OF INSURANCE COMPANY

In the case titled *New India Assurance Company v. Kamla*\(^{107}\) it was held by the Hon’ble Supreme Court as under:

I. Driving Licence

Contention that insured made all due enquiries and believed bonafidely that the driver employed by him had a valid driving license, in which case there was no breach of the policy condition. As we have not decided on that contention, it is open to the insured to raise it before the Claims Tribunal.

II. Forgery of Driving Licence

Driving Licence cannot get its forgery outfit striped off merely on account of same officer renewing the same with or without knowing it to be forged. The insured bonafidely believing in the validity of a forged driving licence employing the holder of a fake driving licence renewed by a competent authority would not amount to violation of the conditions of contract or of the insurance policy. It would not be violating either conditions of indemnity or the insurance policy or the contract or violation of any statutory provisions. Under these circumstances, merely employing a driver with a forged driving licence would not absolve the insurer of its liability.\(^ {108}\)

III. Liability of Insurance Company

When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance, the burden is on the insurer to pay the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed

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\(^{107}\) 2001(1) P.L.R. 831.

to be recovered from the insured if as per the policy conditions, the insurer had no liability to pay such sum to the insured.

IV. Amount paid by Insurance Company

Now the Claims Tribunal has to decide the next question whether the insurance company is entitled to recover that amount from the owner of the vehicle on account of the vehicle being driven by a person who had no valid licence to drive the vehicle-For that purpose, we remit the case to the Claims Tribunal.

V. Policy of Insurance

If the insurance company succeeds in establishing that there was a breach of the policy condition the claims Tribunal shall direct the insured to pay that amount to the insurer-In default, the insurer shall be allowed to recover that amount from the insured person.

3.31 THIRD PARTY AND LIABILITY OF INSURANCE COMPANY

In National Insurance co. Ltd. v. Savitri Devi and others109 the Hon’ble Supreme Court has discussed liability of insurance companies in validly renewed driving licence cases as under:

I. Insurance Company cannot Refuse to Meet its Liability Qua Third Party

The insurance company cannot refuse to meet its liability qua third party for any act or omission bonafidely or otherwise committed by the insured or its liability in as much as third party for whose benefit the insurance has been provided, is not a privity to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the insurance company cannot refuse to meet its liability qua third party.

II. Fraud Committed by the Third Party

The insurance company can neither refuse to indemnify nor is discharged from its liability to the insured or the claimants for an act of fraud committed by the third party qua the insured though it has a right to recover any loss suffered by it from the person, who committed the fraud or from any other authority, as permissible either under tort or any other statute.110

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110 Ibid.
3.32 Grant of Compensation: Miscellaneous Trends

In *Jai Prakash v. National Insurance Co. Ltd.*, Supreme Court of India has issued a number of important guidelines for motor accidents and incidental issues. These are as under:

I. Ensuring Compensation to all victims

To ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third party insurance. For example, in South Africa and some other Africans countries, Road Accident Funds have been created, managed by Road Accident Fund Commissions, thereby eliminating the need for third party insurance. A fuel levy/ surcharge is collected on the sale of petrol and diesel and credited to such fund. All accident victims, without exception, are paid compensation from out of the said Fund by the Commission. But the feedback from operational statics relating to such funds is that the scheme, while successful in smaller countries, may encounter difficulties and financial deficits in larger countries like South Africa or developing countries with infrastructural deficiencies.

II. Collection of one time life time third party insurance premium

An alternative scheme involves the collection of a one time (life time) third party insurance premium by a Central Insurance Agency in respect of every vehicle sold (in a similar manner to the collection of life time road tax). The fund created by collection of such third party insurance can be augmented/ supplemented by an appropriate road accident cess/ surcharge on the price of petrol/ diesel sold across the country. Such a hybrid model which involves collection of a fixed life time premium in regard to each vehicle plus imposition of a road accident cess may provide a more satisfactory solution in a vast country like India. This will also address a major grievance of insurance companies that their outgoings by way of compensation in motor accident claims is four times the amount received as motor insurance premium. The general insurance companies may however continue with optional insurance to provide cover against damage to the vehicle and injury to the owner.

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112 Ibid.
III. Alternate to present system of third party insurance

A more realistic and easier alternative is to continue with the present system of third party insurance with two changes:

a. Define third party to cover any accident victim (that is any third party, other than the owner) and increasing the premium, if necessary.

b. Increase the quantum of compensation payable under section 161 of the Act in case of hit and run motor accidents.\textsuperscript{113}

IV. Establishment of Road Safety Bureau

India has the dubious distinction of being one of the countries with the highest number of road accidents and the longest response time in securing first aid and medical treatment. There is therefore an urgent need for laying down and enforcing road safety measures and establishment of large numbers of Trauma Centers and First Aid Centers. It is also necessary to consider the establishment of a road safety bureau to lay down road safety standards and norms, enforce road safety measures, establish and run trauma centres, establish first aid centres in petrol stations and carry out research/data collection for accident prevention.

V. Unified and Comprehensive law required

Several countries have comprehensive enactments dealing exclusively with accidents. In place of the provisions relating to the Accident Tribunal and award of compensation in the Motor Vehicle Act, 1988 and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be considered.

VI. Rectification of Second Schedule to Motor Vehicles Act, 1988

The central government may consider amendment of the Second Schedule to the Act to rectify the several mistakes therein and rationalize the compensation payable there under, repeatedly pointed out by the Supreme Court.\textsuperscript{114}

The case law relating to Motor Vehicle Accident Cases, which have been judicially determined in High Courts and the Supreme Court of India have been studied, examined, analyzed and critically commented upon for the purpose of appreciating the judicial invocation and application of the evidentiary principles

\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
of No Fault Liability, Contributory Negligence, *res ipsa loquitur* in negligence cases along with Act of God, Absolute and Vicarious Liability etc. These cases cover motor accidents of the nature of both collision as well as non-collision.

Today road accidents in our country has touched a new height and are increasing day by day and resultant cases relating to motor accidents are increasing in our courts. In majority of road accident cases because of rash and negligent driving, innocent person becomes victims and because of this their dependents in many cases are virtually on the streets. Because of increasing number of motor accidents and their victims, question of payment of compensation is assuming great importance in public as well as for the courts. Generally as a rule, victims of road accidents have to first establish that the accident was due to fault of the person causing injury or damage, then only court will direct for payment of compensation. The quantum of compensation cannot be equal in two cases, even if the origin of wrong be identical, since the same accident may cause death of one but only a scratch or abrasion to the other. It is the difference which imports the idea of liability, quantitatively, the extent and qualitatively, the kind of liability. Whatever the injury or damage, no compensation can be awarded unless there are grounds to make the wrongdoer liable.  

In *M.K.Kunhimohammad v. P.A.Ahmedkutty’s* matter, the apex court had made suggestions to raise limit of the compensation payable in respect of death or permanent disablement, as a result of motor accidents, in the event of there being no proof of fault on the part of the person involved in the accident, and also in hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in accident. Whether force majeure or *vis major* can be a defence in cases of absolute or strict liability, as opposed to liability simpliciter, since the doctrine propounded in late nineteenth century must have undergone mitigation, modification or made more absolute in course of years, is a debatable question.

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116 1987 (4) SCC 284.
Normally no person is held responsible for the wrongs done by someone else. However, there are few instances wherein a person can be held liable for the conduct of another person. This liability is known as Vicarious Liability. In *Rani Devi @ Usha Rani v. Devilal*\(^\text{117}\) it was held that if vehicle is used for purpose of owner or owner’s business, the act of servant would make the owner vicariously liable for payment of compensation, but where the vehicle was driven by an unauthorized person not for owner’s purpose or owner’s business, owner would not be vicariously liable.

Rules of Strict and Absolute Liability are based on the concept of ‘No fault liability’. At times a person may be held responsible for some wrong though there was no negligence or intention on his part to do such wrong. This rule was laid down by the House of Lords in *Rylands v. Fletcher*. In India, this rule was formulated in the case of *M.C. Mehta v. Union of India*\(^\text{118}\), wherein the Supreme Court termed it as ‘Absolute Liability’. Further, section 92A of the Motor Vehicles Act, 1938 also recognises this concept as ‘liability without fault’.

Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe for the protection of the interests of another person, the degree of care, precaution and vigilance, which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are correlative. Negligence means either subjectively a careless state of mind or objectively careless conduct. Negligence is not an absolute term, but is a relative one, it is rather a comparative term.

Doctrine of last opportunity is explained in simplest way in the matter of *Municipal Corporation of Greater Bombay v. Laxman Iyer*,\(^\text{119}\) wherein an accident caused due to negligence of both parties, substantially, there would be contributory negligence yet even in such a case, whichever party could have avoided the consequence of other’s negligence would be liable for the accident. It provides that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the

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\(^{117}\) 2009 ACJ 858 (Raj.) .

\(^{118}\) *M.C. Mehta v. Union of India*, AIR, 1987 SC 1086 .

motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

**Contributory Negligence**

Contributory negligence is negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunities are afforded to do so. It is the non-exercise by the plaintiff of such ordinary care, diligence and skill, as would have avoided the consequences of the defendant's negligence. The doctrine of contributory negligence rests upon the view that "though the defendant has in fact been negligent, yet the plaintiff by his own carelessness severed the causal connection between the defendant's negligence and the accident which has occurred; and that the defendant's negligence accordingly is not the true proximate cause of the injury. The doctrine is founded on the maxim *in jure non remota causa sed proxima spectatur*. The law takes into consideration any act or conduct of the party injured or wronged which may have immediately contributed to that result. And the one who has by his own negligence contributed to the injury of which he complains cannot maintain an action against another in respect of it.

There are cases in which the negligence of the parties is contemporaneous or so nearly contemporaneous as to make it impossible to say that either could have avoided the consequences of the other's negligence, and in which both have contributed to the accident. Thus, when an accident is caused by the simultaneous negligence of two people, neither of whom has time or opportunity to avoid it, neither can recover damages. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a

\(^{120}\) *Swaddling v. Cooper*, (1931) A.C. 1.
defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It is well settled that in case of contributory negligence, Courts have the power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damages are reduced to such an extent as the Court thinks just and equitable having regard to the claim shared in the responsibility for the damages. Where a person is injured without negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense.

In the case, *Municipal Board, Jaunpur v. Brahm Kishore*¹²¹, the plaintiff who was going on his cycle without a headlight on a road in darkness, fell into a ditch dug by the defendant who had not provided any light, danger signal or fencing to prevent such accidents in the darkness. It was held that the accident could not have been avoided even if the cyclist had fixed a kerosene lamp in front of his cycle, which is generally used by the cyclists and, therefore, there was no contributory negligence in this case.

### 3.33 LOK ADALATS: THE EXPEDITIOUS SETTLEMENT OF CASES

The concept of Lok Adalats has been enlivened by the passage of the Legal Services Authorities Act, 1987. Every litigant who is tired of the hazards of long litigation can take advantage of the Lok Adalat and get his matter settled on the spot and get the required relief. Lok Adalats all over the country have assumed their own utility and significance. Lok Adalat is thus a significant institution, and if it works as it should, it can prove a powerful aid in resolving the problem of heavy backlog of cases. It operates on the principle of a settlement between the parties.¹²²

The reason to create such Lok Adalat camps were only because of the pending cases and to give relief to the litigants who were in a queue to get justice. Seekers of justice are in millions and it is becoming rather difficult for the Courts to cope up with the ever-increasing cases with the present infrastructure and manpower. Courts are clogged with cases. There is serious problem of overcrowding of dockets. Because of the ever-increasing number of cases the

Court system is under great pressure. Therefore, if there was at the threshold a permanent mechanism or machinery to settle the matters at a pre-trial stage, many matters would not find their way to the Courts. Similarly, if there are permanent forums to which Courts may refer cases, the load of cases could be taken off the Courts. In order to reduce the heavy demand on Court time, cases must be resolved by resorting to 'Alternative Dispute Resolution' Methods before they enter the portals of Court. Here comes the significance of Lok Adalat which has showed its significance by settling huge number of Third Party claims referred by Motor Accident Claim Tribunal (MACT). Except matters relating to offences, which are not compoundable, a Lok Adalat has jurisdiction to deal with all matters. Matters pending or at pre-trial stage, provided a reference is made to it by a court or by the concerned authority or committee, when the dispute is at a pre-trial stage and not before a Court of Law it can be referred to Lok Adalat.

A large number of cases are settled expeditiously through Lok Adalats and with lesser costs to the parties. Initially, there was no statutory backing for its functioning and decisions and Lok Adalats were working as voluntary and conciliatory agency. It was becoming popular day by day for providing a speedier system of administration of justice. In view of its growing popularity there has been a demand for providing a statutory backing to the institution of and the awards given by the Lok Adalats. It was felt that such a statutory support would not only reduce the burden of the arrears of work in regular courts, but would also take justice to the doorsteps of the poor and the needy and make justice quicker and less expensive.\(^\text{123}\)

In order, therefore, to constitute Legal Services Authorities to provide free and competent legal service to the weaker sections of the society, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities, and to organize Lok Adalats to secure that the operations of the legal system promotes justice on a basis of equal opportunity, the Legal Services Authorities Act, 1987, was enacted which received the assent of the President on 11th October, 1987 and came on the statute book. Sections 19

\(^\text{123}\) Legal Services Authorities Act, 1987, Statement of Objects and Reasons.
to 22 of Legal Services Authorities Act, 1987, deal with formation, organization and functions of Lok Adalats.

### 3.34 RELEVANT PROVISIONS OF LEGAL SERVICES AUTHORITIES ACT, 1987 DEALING WITH LOK ADALATS

Section 19 to 22 of Legal Services Authorities Act, 1987, deals with organization and functions of Lok Adalats, which reads as under:

**Organization of Lok Adalats**

Section 19 of Legal Services Authorities Act, 1987\(^{124}\) deals with Organization of Lok Adalats:

**a)** Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

**b)** Every Lok Adalat organized for an area shall consist of such number of-(a) serving or retired judicial officers; and (b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee or, as the case may be, the Taluk Legal Services Committee, organizing such Lok Adalat.

**c)** The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organized by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

**d)** The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

**e)** A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of (j) any case pending before; or (ii) any matter which is falling within the jurisdiction

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\(^{124}\) Motor Vehicles Act, 1988, Subs. by Act 59 of 1994, sec. 15, for section 19 (w.e.f. 29.10.1994).
of, and is not brought before, any court for which the Lok Adalat is organized.

The Legal Services Authorities Act, 1987 provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

3.35 COGNIZANCE OF CASES BY LOK ADALATS

Section 20 of the Legal Services Authorities Act, 1987 deals with Cognizance of cases by Lok Adalats

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19:

(i) (a) the parties thereof agree; or (b) one of the parties thereof makes an application to the court for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat: Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organizing the Lok Adalat under subsection (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

125 Ibid., Subs. by Act 59 of 1994, sec. 15, for section 20 (w.e.f. 29.10.1994).
(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).

3.36 AWARD OF LOK ADALAT

Section 21 of The Legal Services Authorities Act, 1987\textsuperscript{126} deals with Award of Lok Adalat

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870.

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

3.37 POWERS OF LOK ADALAT OR PERMANENT LOK ADALAT

Section 22 of The Legal Services Authorities Act, 1987\textsuperscript{127} deals with Powers of Lok Adalat or Permanent Lok Adalat –

(1) The Lok Adalat “or Permanent Lok Adalat” shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a

\textsuperscript{126}Ibid., Subs. by Act 59 of 1994, sec. 16, for sub-section (1) (w.e.f. 29.10.1994).

\textsuperscript{127}Ibid., Subs. by Act 37 of 2002, sec. 3, for “Lok Adalat” (w.e.f. 11.6.2002).
civil court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit in respect of the following matters, namely:

a) The summoning and enforcing the attendance of any witness and examining him on oath;

b) The discovery and production of any document;

c) The reception of evidence on affidavits;

d) The requisitioning of any public record or document or copy of such record or document from any court or office; and

e) Such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat or Permanent Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat “or Permanent Lok Adalat” shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat or Permanent Lok Adalat shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Refund of Court Fee

Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (5 of 1908) the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint.”

3.38 JURISDICTION OF LOK ADALATS

In State of Punjab v. Jalour Singh’s case Hon’ble Supreme Court of India held that the Lok Adalat has no jurisdiction to decide matters without the consent of parties to the matters. In National Insurance Co. Ltd. v. Vijay Kumar Sharma’s case it was held by the court that Permanent Lok Adalats have

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128 Court Fees Act, 1870, Section 16.
130 National Insurance Co. Ltd. v. Vijay Kumar Sharma, 2009 ACJ 403 (JHAR).
jurisdiction to decide matter relating to accident claims in which insurer disputed the claim.

**Idea behind Formation of Lok Adalats**

The idea behind formation of Lok Adalats is no doubt to expeditiously settle the claims and disputes between the parties. But at the same time the court should not forget its obligation under law to protect the interest of the parties, specially the claims of minors and persons of unsound mind. In fact, the court should keep a watch while making settlements of claims in Lok Adalats. It cannot be lost sight of that a litigant under pressure of time and money spent in courts easily succumbs to the pressure and agrees to the small amounts which may not be adequate to compensate the actual loss suffered. The court should keep a watch that no such pressure prevails on a litigant. This responsibility becomes heavier when the court or tribunal is dealing with cases of minors or persons of unsound mind. In the matter of *Manju Gupta v. National Insurance Co. Ltd* 131, it was observed by Hon’ble Allahabad High Court that Lok Adalats in the name of speedy justice, the courts should not sacrifice the real cause of justice for which confidence has been reposed on them by the society.

**Dismissal of Claims by Lok Adalats in Case of Default by Parties**

In case of absence of claimant or for any other reasons, the Lok Adalats cannot dismiss the claims of the claimants on the basis of default of claimant. The Lok Adalats must return the records of the matter to the concerned Court or Tribunal by making a noting that compromise or settlement failed. In the matter of *Gangi v. Second Additional District Judge, Hamirpur* 132’s case Allahabad High Court held that it is not proper on the part of Lok Adalat to dismiss the claim for default of claimant to appear.

**3.39 AWARD OF LOK ADALAT AND APPEAL**

It is settled law that no appeal lies against the award of a Lok Adalat as Lok Adalat’s award is always based on consent decree. In the matter of *S.Kesar Singh v. Balbir Singh* 133 High Court of Jammu and Kashmir held that though such decree can be interfered with if same is result of fraud and misrepresentation.

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132 2001 (1) TAC 519.
133 2004 (3) TAC 241 (J & K).

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or such like factors and mere vague allegation against the counsel entering in to compromise on behalf of the claimant without there being any proof or material cannot lead to a conclusion or inference that consent of claimants were result of fraud played by the counsel for the claimants. In *New India Assurance Co. Ltd. v. Boda Hari Singh*134 High Court of Andhra Pradesh had mentioned in the award that the parties had compromised the matter before the Lok Adalat. A mere reading of the award had revealed that the award was passed not by the Lok Adalat but by the Claims Tribunal. There was no material to show that any compromise memo signed by both the parties was ever filed in the Tribunal. Moreover, section 20 of the Legal Services Authorities Act, 1987 prescribes the procedure of the Lok Adalat to take cognizance of cases. There must be a reference by the court concerned in all pending cases. There was nothing to show that any such reference was made. The award having not been passed by the Lok Adalat, the bar under section 21(2) of that Act in respect of Appeal was, hence, not attracted and the appeal was maintainable.

However, in the matter of *Mst. Anachi v. Ram Chandra*135 an appeal against the award passed by the Lok Adalat on compromise between the parties was preferred on the ground that interest was not awarded. Dismissing the appeal, it was held by the Hon’ble High Court that once principal amount was accepted by way of compromise, question of interest cannot be reopened in appeal after a delay of 1½ years and more so when interest on award of compensation is not a separate cause of action. In *Deputy General Manager & Divisional Controller, Karnataka State Road Transport Corporation v. Kamappa*136 the State Transport Corporation had filed this appeal against a compromise award passed by the Lok Adalat, contending that the compromise petition presented before the Lok Adalat was not signed by it or its law officer on its behalf on basis of which the compromise award had been passed. However, the compromise petition was signed by the Advocate for the corporation, whose Vakalatnama had been filed in the court and clause in vakalatnama had authorized the Advocate to enter in to a

134 2000ACJ 1580 (AP).
135 2002 (1) AJR 643 (Raj.).
136 1993 ACJ 539 (Kar.).
compromise on behalf of the executants of the vakalatnama. It was held by the High Court that the award passed in terms of the compromise petition was valid and the appeal had to be dismissed.

In State of Punjab & another v. Jalour Singh\footnote{ILC 2008 SC MAC – JAN-6}’s case it was held by the Supreme Court that functioning and procedure of Lok Adalat is based on principles of nature justice, equity and fair play and they are the guiding principles for Lok Adalat. In this case it was also held by the Supreme Court that duties of Lok Adalat are to explain and persuade the parties for compromise\footnote{Ibid.}. In this case it was further held by the Supreme Court that modification of award by Lok Adalat in absence of parties - not valid and liable to be set aside\footnote{Ibid.}.

**Award of Lok Adalat not open to interference merely because amount awarded was not adequate**

In General Manager, Karnataka State Road Transport Corporation v. Pandu\footnote{1998 ACJ 1389(Karn).} it was held by the High Court that the Tribunal has responsibility to see that due sanctity is given to a compromise made before the Lok Adalat and merely because the Tribunal holds that the amount awarded is not just, it can be no ground to reject the compromise particularly when there is no grievance or protest against such compromise alleging fraud, misrepresentation or coercion compelling the parties to arrive at compromise. The Tribunal cannot refuse to record the compromise on ground that amount compromised was not just and reasonable.

In a case\footnote{New India Assurance Co. Ltd. v. Ponnamma Thomas, 2009 ACJ 1331(Ker.).} it was held by the Double Bench of Kerala High Court that Tribunal was not empowered to review an award by enhancing the compensation awarded by Lok Adalat, where Tribunal reviewed an award stating error in calculation.

**Exemption from Court Fee**

In Chandrakanti Das v. State of Orissa\footnote{2010 (1) TAC 339 (Oriissa).} it was held by the High Court that where the party has not paid the prescribed fee at the time of filing of claim petition and the Lok Adalat did not insist the party to pay the fee, it was deemed

\footnotesize{\textsuperscript{137} ILC 2008 SC MAC – JAN-6 .} \\
\footnotesize{\textsuperscript{138} Ibid.} \\
\footnotesize{\textsuperscript{139} Ibid.} \\
\footnotesize{\textsuperscript{140} 1998 ACJ 1389(Karn).} \\
\footnotesize{\textsuperscript{141} New India Assurance Co. Ltd. v. Ponnamma Thomas, 2009 ACJ 1331(Ker.).} \\
\footnotesize{\textsuperscript{142} 2010 (1) TAC 339 (Oriissa).}
that the party was exempted from paying fees under Rule 22(2) of the Orissa Motor Vehicles (Accident Claims) Rules 1960.

**Provision In Civil Procedure Code For Settlement Of Disputes Out Of Court**

Section 89 of Code of Civil Procedure, 1908\(^\text{143}\) deals with Settlement of disputes outside the Court.

1. Where appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:
   a. Arbitration;
   b. Conciliation;
   c. Judicial settlement including settlement through Lok Adalat; or
   d. Mediation.

2. Where a dispute has been referred:
   a. For arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration of conciliation were referred for settlement under the provisions of that Act;
   b. To Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute referred to the Lok Adalat;
   c. For judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
   d. For mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

\(^\text{143}\) Inserted by C.P.C. (Amendment) Act, No. 46 of 1999.
Appearance before the Court consequent to the failure of efforts of conciliation

Where a suit is referred under rule 1A of Order X, Civil Procedure Code, 1908 and the Presiding Officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it\textsuperscript{144}.

A large number of cases are settled expeditiously through Lok Adalats and with lesser costs to the parties. Initially, there was no statutory backing for its functioning and decisions and Lok Adalats were working as voluntary and conciliatory agency. It is becoming popular day by day for providing a speedier system of administration of justice. In view of its growing popularity there was a demand for providing a statutory backing to the institution of and the awards given by the Lok Adalats. It was felt that such a statutory support would not only reduce the burden of the arrears of work in regular courts, but would also take justice to the doorsteps of the poor and the needy and make justice quicker and less expensive.

Sections 19 to 22 of Legal Services Authorities Act, 1987, deals with organization and functions of Lok Adalats. Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles. Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received for disposal in accordance with law.

Award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be and award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award. In the matter of Life Insurance Corporation of India v. State of Rajasthan\textsuperscript{145}, Double Bench of Rajasthan High Court held that in a dispute

\textsuperscript{144} Ibid., Order X, Rule 1C, (inserted by CPC (Amendment) Act, 1999).

\textsuperscript{145} Life Insurance Corporation of India v. State of Rajasthan, 2007 (1) ACC 899 (Raj.).
arising from a public utility service, Permanent Lok Adalat can pass an award even without a compromise having been arrived at between parties.

3.40 INDIAN RAILWAY NETWORK

The Indian Railway network (IRN) is one of the largest and busiest Railway networks in the world, handling massive numbers of passengers and quantities of goods daily. Railways are the most popular means of long-distance transportation in India, hence the IRN is often described as the backbone of this nation's economy. The present scenario in the transportation sector in India gives further motivation for a detailed analysis of the IRN. It is a commonly voiced opinion among economists that the current transportation network in India is too weak to meet the demands of the country's rapidly growing economy.

For instance, factors such as the track between major cities exceeding the planned capacity and over-utilized railway tracks are resulting in trains having to travel at reduced speeds and carry lesser amounts of freight, thus increasing the cost and time of transportation. Moreover, Indian Railways have been established way back by British, and have evolved over the years to its present state. Since the railway network forms the backbone of connectivity in India, the evolution of the IRN can serve as an indicator of the economic growth of the country too.

3.41 RECENT SPATE OF ACCIDENTS

The Indian Railways has long served as the backbone of this nation's economy by being the most popular means of long distance transportation in India. However, the IR is facing several grievous problems in the recent years. More alarmingly, there has been a spate of Railway Accidents in India in the year 2010, leading to loss of a significant number of human lives and frequent disruption of trace over large regions of the country. Here we consider only those accidents that were caused due to collision among trains or derailment of trains and not due to terrorist activity or natural calamities like floods. There have been 11 such accidents in 2010 alone as compared to 7 such accidents in the 5-year period of 2005-2009\(^\text{146}\). Commissioner of Railway Safety, who conducts an enquiry into an accident, has been given the powers of the civil court in respect of summoning and enforcing the attendance of persons, requiring the recovery and

\(^{146}\) http://www.indianrailways.gov.in, visited on 25\(^\text{th}\) April 2012.
production of documents, receiving evidence on affidavit and requiring production of any public record from any court or office\textsuperscript{147}.

**Liability of Railway Administration for Death and Injury to Passengers due to accidents**\textsuperscript{148}

- The word “dependant” has been redefined so as to include the parents in the case of a minor deceased passenger. [Section 123]
- Under the previous Act\textsuperscript{149} the maximum amount of compensation was fixed at Rs. One lakh. Under the new provision, it has been left to the Central Government to prescribe the amount of compensation. Thus it won’t be necessary to amend the Act to increase the maximum liability from time to time. [Section 124]
- It has been clarified that if a Railway employee on duty travelling on a train is involved in an accident he will be entitled to receive compensation under this special provision. [Section 124]

Number of road and railway accidents is increasing every day. We all hear about road mishaps everyday in news and are worried about our safety. Many of us are worried about our safety while we get on the road to travel. There is no surety if we will reach our destination safely or not. According to data released by transport department and police thousands of people lost their lives on roads every year. An estimated 1.2 million people are killed in road crashes each year, and as many as 50 million are injured, occupying 30 percent to 70 percent of orthopedic beds in developing countries hospitals\textsuperscript{150}. And if present trends continue, road traffic injuries are predicted to be the third-leading contributor to the global burden of disease and injury by 2020\textsuperscript{151}.

Negligence by the citizens is one of the important factors for causing accidents.\textsuperscript{152} Every law fails to have its impact if the citizen doesn't support it. Everyone should understand his responsibility in adhering to the laws because it

\textsuperscript{147} Section 114 to 120, The Railways Act, 1989.
\textsuperscript{149} The Railway Act, 1890.
\textsuperscript{152} Usha Rajkhowa and others v. M/s . Paramount industries and others, Case No. 1088, 2009.
is for their benefit. There are numerous cases of rash driving, drunken driving, driving by children under 18 years. People do not care for the safety of others on the road and drive carelessly. This has lead to creation of complete chaos on the roads especially in metro cities like Delhi or Mumbai.

Right to life and safety is the fundamental right of any citizen. This is guaranteed under the Constitution of every country in the world including India. However, more people die every year from road accidents all over the world than the number killed during the whole of the Second World War. Studies by World Bank have estimated that about 5, 00,000 people lose their life each year as a result of road accidents and over 15 million suffer injuries. About 70 percent of these occur in developing countries, particularly in African and Asian countries.

There are many factors responsible for road accidents, some of which are as under:

**Pathetic conditions of roads**

Pathetic conditions of roads are also responsible for the increasing rate of accident fatalities in the country. Road conditions are not improving with the rate of increasing rate of vehicles and the roads which are present are also not of international standards. The sin of corruption is responsible for this. The contracts of roads are given to contractors of choice by corrupt officials without inspecting their experience and resources.

While the government claims construction of multi lane highways loudly in their advertisements still India doesn't have a single highway like European or American motorways. The roads are not designed with proper methods and the material used in the construction is of substandard quality. In developed country the contractor gives 10 year warranty on the roads constructed but in India the roads start washing away in first rainy season. The World Economic Forum has ranked 139 economies in its 2010-2011 Global Competitiveness Report. In overall competitiveness India scores a passable 51st place. It ranks notably ahead of Latin America’s powerhouse Brazil (58) and way ahead of its neighbours Pakistan (123), Sri Lanka (62) and Bangladesh (107), but behind China (27). One of the indicators that compose the index is quality of roads. And here India ranks at a lowly 90th place, behind China, Sri Lanka and Pakistan.\(^{153}\)

The index does not say what roads are to blame. But overcrowded local roads and substandard highways are the main problem. The hope is that the government should build more toll roads to take the pressure of the troubled roads.\textsuperscript{154}

**Figure 3.2: Overall Economic Competitiveness 2010**

![Bar chart showing overall economic competitiveness 2010 with scores for China, India, Sri Lanka, Bangladesh, Pakistan, and Nepal.]

**Figure 3.3: Quality Roads 2010**

![Bar chart showing quality roads 2010 with scores for China, Sri Lanka, Pakistan, India, Bangladesh, and Nepal.]

Source: *The Global Competitiveness Report 2010-2011 by the World Economic Forum*

Unsafe vehicle design

It is also a reason behind increasing accidents. We know the cars which are available in India from international auto companies like BMW or Audi etc can cruise to more than 200kmph without any delay after pushing pedal. BMW accidental cases known for their high speeding and drunken driving are very much in news from last few years. But the maximum speed allowed on any road in country is not more than 95kmph. So who can stop people to violate speed limits when they have rocket under their foot. Most of Indian roads are not safe for driving beyond speeds beyond 70kmph, and believe me most of the accidents occur due to over speeding and loss of control over vehicle high speeds. The international auto companies when launch the models in Indian market generally avoid security features present in their European or American versions to increase their profits. They charge prices for security features like ABS airbags which are strictly required in developed countries. In less developed they take the benefits of loose rules.

Lack of proper laws

Another reason is the lack of proper laws and enforcement. The laws for the traffic is obsolete now and don't match with current scenario; also there is less enforcement of existing laws. People generally consider traffic rules to be linked with fines or challans they do not understand the importance of the rule as a measure to protect themselves from mis-happenings. For e.g. people wear helmet only to save challan and not as a protective instrument.

3.42 SOME ALARMING STATISTICS FOR INDIA

In India, 1,20,000 people die and 12,70,000 sustain serious injuries every year in Road Traffic Accidents. As per the statistics, there is one death on the Indian road every six minutes and this is expected to escalate to one death every three minutes by 2020. Developing countries bear a large share of the burden, accounting for 85 percent of annual deaths and 90 percent of the disability-adjusted life years (DALYs) lost because of road traffic injury.

156 One DALY is roughly equivalent to one healthy year of life lost. For more on the traffic-injury burden, World Health Organization (WHO) and World Bank, "World Report on Road Traffic Injury Prevention," accessed online at www.who.int, on Feb. 6, 2006.
According to the Institute of Road Traffic Education, New Delhi, out of the estimated 1.4 million serious road accidents/collisions occurring annually in India, hardly 0.4 million are recorded. Many road traffic deaths in rural areas are not recorded. Similarly, accidents which result in late deaths after the discharge from hospital due to the effects of morbidity also are not recorded\textsuperscript{157}. India accounts for about 10\% of road accident fatalities worldwide. Although India accounts for only 1\% of the registered motor vehicles, it accounts for nearly 9\% of RTA deaths.

According to the experts at the National Transportation Planning and Research Centre (NTPRC) the number of road accidents in India is 3 times higher than that prevailing in developed countries. The number of accidents for 1000 vehicles in India is as high as 35 while the figure ranges from 4 to 10 in developed countries. Of all the major cities in India, Delhi records the highest number of deaths, \textit{i.e.,} on an average 2,000 deaths per year\textsuperscript{158}.

Indian Orthopedic Association is very aware of the seriousness of this problem. Orthopedic Surgeons are all aware that although we treat patients with the best of available technology, often patients cannot be restored to normalcy. It is our practical experience that no major improvement can happen without strict enforcement from the government. We would like to engage the Government on this important issue and look for possibility of public interest litigation on behalf of all the citizens of India.

In developed countries, road traffic death rates have decreased since the 1960s because of successful interventions such as seat belt safety laws, enforcement of speed limits, warnings about the dangers of mixing alcohol consumption with driving, and safer design and use of roads and vehicles. For example, road traffic fatalities declined by 27 percent in the United States and by 63 percent in Canada from 1975 to 1988. But traffic fatalities increased in developing countries during the same period by 44 percent in Malaysia and 243 percent in China, for instance\textsuperscript{159}. More than one-half of all road traffic deaths

globally occur among people ages 15 to 44 their most productive earning years. Moreover, the disability burden for this age group accounts for 60 percent of all DALYs (disability-adjusted life years) lost because of road traffic accidents. The costs and consequences of these losses are significant. Three-quarters of all poor families who lost a member to road traffic death reported a decrease in their standard of living, and 61 percent reported they had to borrow money to cover expenses following their loss. The World Bank estimates that road traffic injuries cost 1 percent to 2 percent of the Gross National Product (GNP) of developing countries, or twice the total amount of development aid received worldwide by developing countries. As in developed countries, driver impairment is an important component of road traffic accidents in developing countries. Driving at excess speeds, while under the influence of alcohol or drugs, while sleepy or tired, when visibility is compromised, or without protective gear for all vehicle occupants are major factors in crashes, deaths, and serious injuries.

In general, pedestrians, cyclists, and moped and motorcycle riders are the most vulnerable road users as well as the heaviest users of roads in poor countries. Most people who use public transportation, bicycles, or mopeds and motorcycles or who habitually walk are poor, illuminating the higher risk borne by those from less privilege. In Asia, for instance, motorized two- and three-wheelers (such as motorized rickshaws) will make up the anticipated growth in numbers of motor vehicles.

The family loses the source of income in addition to their loved one. Searching for a new source of income is a challenging task and is fraught with

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163 One study in Kenya showed that 27 percent of commuters with no formal education traveled on foot, 55 percent used buses or minibuses, and only 8 percent used private cars. By contrast, 81 percent of people with secondary education traveled in private cars, 19 percent used buses, and none walked. Vinand M. Nantulya and Michael R. Reich, *The Neglected Epidemic: Road Traffic Injuries in Developing Countries*, *British Medical Journal* 324, no. 7346 (2002): 1139-41.
uncertainties and exploitations. The larger ramifications of this include children dropping out from the school for employment and elderly being forced to work. Physical disability resulting from RTAs also hugely impacts the society. For example, spinal cord injury permanently disables the patient resulting in him/her being confined to wheel chair or bed for the rest of their life. The plight of their family is similar to, if not worse, than those of the fatally injured. The costs of rehabilitating the spinally injured patient is enormous, with little help expected form the government. Most of these patients are employed at the time of injury and the injury changes their lives forever. Spinally injured patients, depending on their level of injury need assistance in feeding, personal hygiene and basic mobility. In addition they are highly susceptible to a variety of complications like bed sores, pneumonia, urinary infections, respiratory distress and sepsis. These complications require frequent hospital visits and involve huge costs. In addition to losing the financial productivity of the patient, another person needs to stay back with the patient to take care of him/her. Thus the family loses the financial productivity of two persons in addition to incurring the enormous medical expenses.  

Global status report on road safety (2009) published by WHO compiled data from 178 countries. The report shows that developed nations have been able to significantly reduce the number of RTA deaths in the past decade. This has been mainly achieved by proactive measures from the Government and strict enforcement of laws. In any country, where the Government is a simple bystander to the problem, no improvement has been possible.

*For example* - wearing a seat-belt reduces the risk of death among front-seat passengers by 40-65% and can reduce deaths among rear-seat car occupants by 25-75%. The use of child restraints (infant seats, child seats and booster seats) can reduce deaths of children by between 54% and 80% in the event of a crash. Although basic laws for road safety exist in India, their enforcement is extremely weak. Enforcement of wearing of seat belts for passengers of cars scored 2 out of a scale of 10.

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In India, the number of RTA\textsuperscript{166} fatalities has been growing at nearly 8\% per year and shows no signs of fall. The results suggest that, in India, road safety laws need to be made more comprehensive while enforcement should be strengthened. India occupies 86th rank in healthcare spending among the nations with the government spending just 6.1\% of GDP on healthcare. Hence it is imperative on the part of the government to take measures to increase safety on Indian roads.

- At present an innocent person who is injured on the road for no fault of his has no support from the Government. The entire burden of treatment and support to the family falls on him. The Government has absolved itself of its duties and responsibilities. This is morally not correct. It is the fundamental duty of the Government to enforce laws and make road safe for its citizens.

- It is obvious that road traffic accidents are evolving into a biggest threat for human survival in India. At present the death on the roads account for twice more than the death in India by the combination of all serious diseases like HIV, Malaria, Cholera etc all put together. For example, the deaths due to Malaria every year in India is only around 15,000. It is time we wake up to this fact.

- A developing country like India can scarcely afford the financial and social burden of road traffic accidents of this proportion.

- A person who does not follow road rules often kills or disables another innocent person on the road. Many law-abiding citizens are killed for no fault of theirs. It is the Government’s responsibility to safeguard its citizens and make our roads safer for them.

- If a drunken person kills another person, it is considered murder but if a drunken driver kills a whole family on the road due to negligent driving, he can get away with a minimal fine. This is a serious lapse of law in our country. We all know how easy it is to get a driving license in India. We also know how easy it is to escape after a road offence in India.

\textsuperscript{166} RTA (Regional Transport Authority).
Drivers’ fault is the single most important factor responsible for accidents.\footnote{Ministry of Road Transport & Highways (20-October-2011: Press Information Bureau, Govt. of India).} A case was decided Krishan Gopal and another v. Sandhya Devi and others,\footnote{Civil Appeal No.1104 of 2009.} a scooter was being driven by the deceased himself and the accident had taken place due to rash and negligent driving of the driver of the bus. Revealed by an analysis of road accident data by Ministry of Road Transport & Highways, this highlights the fact that Government must enforce stricter road rules in India and also provide adequate infrastructure to safeguard its citizens.

3.43 CAUSES OF VEHICULAR ACCIDENTS

For the recent years, our court system has been receiving considerable number of personal injury lawsuits resulting from motor vehicle accidents. This is very much evident on the daily news reports about the accounts of tragic vehicle collisions. In fact, the National Highway Traffic Safety Administration (NHTSA) affirmed that a car accident occur every ten seconds. In California and in most states in the U.S. wherein "no fault" legislation has not yet been adopted, these occurrences are under the law of negligence. Meaning, any person, who has been proven to operate his vehicle without due care, is required to pay his injured victim for any harm or damages that resulted from his action or inaction. Because of this, motor vehicle owners and drivers should be considerate enough to exercise "reasonable care" especially when traveling along the busy streets and thoroughfares. That is, if they do not want to face the various penalties and legal obligations that may emerge.

The major causes of vehicular accidents:

• Speeding beyond the allowable and posted limit set based on the traffic condition

• Inappropriate or too much lane changing

• Driving under the influence of alcohol or any illegal substance

• Tailgating

• Rubbernecking

• Unnecessary operation of stereo systems

• Too much conversation with other passengers
Improper use of cell phones

Failure to abide by the road signs and warnings

In some cases, traffic accidents have been caused by other reasons that are not related to the drivers’ actions. These are:

- **Motor vehicle defects** – in this particular case, the injured victims may sue the automobile manufacturer or supplier under the product liability law.

- **Poorly maintained roads and traffic control malfunction** – this instance may entitle the injured victims to file charges against certain government entities. However, these cases are under special rules and definitely necessitate the assistance of motor vehicle accident lawyers for proper legal advice.

**Legal Procedures**

When a person sues for compensation in respect of the injuries sustained by him under Section 110-A (1) (a) of the Act\(^{169}\), the compensation may be claimed in respect of not only the physical injury but also the mental suffering including any expenses he might have incurred for treatment\(^{170}\), etc. He may also claim damages towards loss to the property consequent upon the accident. If the compensation awardable in respect of some of the items can be said to have resulted in loss to the property of the injured person, there is nothing in law or Section 110-A (1) of the Motor Vehicles Act which prohibits a claim for compensation being made in that behalf. Under the law the legal representatives can claim compensation for loss to the estate of the deceased. In *Joti Ram v. Chaman Lal*,\(^{171}\) the Division Bench of Punjab and Haryana High Court held that the right to sue survives the claim on account of loss to the estate but abated with respect to the personal injuries suffered by the claimant. A case was decided by Madras High Court in *C.P. Kandaswamy v. Mariappa Stores*.\(^{172}\) The compensation has been claimed on account of personal injuries sustained by the claimant and the Division Bench of Madras High Court held that after death of the injured, the right to sue did not survive.

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\(^{169}\) The Motor Vehicles Act, 1939.

\(^{170}\) *Kongara Narayanamma v. Uppala China Simhachalam*, 1975 ACJ 448 (AP).

\(^{171}\) 1984 ACJ 645.

\(^{172}\) 1974 ACJ 362 (Madras).
The Apex Court said that the right to sue where maxim *actio personalis moritur cum persona* applies, does not survive to the legal representatives; therefore, they were not entitled to prosecute the claim. However, the position is different where a suit for defamation has resulted in a decree in favour of the plaintiff and cause of action having merged in the decree and the decretal debt forms part of his estate, therefore, the appeal against the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff, which his legal representative is entitled to uphold and defend and as such, is entitled to be substituted in place of deceased plaintiff. In any court arguments, the plaintiffs always carry the "burden of proof." This means they must substantiate their allegations before they may obtain suitable compensation. In a road collision, the plaintiff has to establish these elements of his case:

- The defendant has been neglectful in operating his vehicle
- Such carelessness has been the proximate cause of the accident
- He has incurred injuries or damages from the accident
- He has not violated any traffic rules when the accident transpired

If he was able to convince the court that these elements are factual, the defendant may then be obliged by the judge to pay him compensatory damages for his:

- Physical pain and suffering
- Emotional distress
- Hospital and other treatment expenses
- Loss of wages
- Damage to property
- Lawyer’s fees

The legal procedure in filing personal injury lawsuits can be very complicated since the injured victims may have limited knowledge about the associated law provisions. Thus, it is just proper for them to hire experienced motor vehicle accident lawyers in order to have better chances of winning their legal battle. With a lawyer’s adequate understanding and skills in managing vehicle accident litigations, the injured victims do not have to worry much on

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173 *actio personalis moritur cum persona* (A personal action dies with the person.).
175 *Sabir Hussain v Maya Bai* 1997 ACJ 1258(M P).
their claims. Rather, they will have more time to spend with their families while waiting for their injuries to completely heal.

3.44 CONCLUSION

Road accidents are a human tragedy. It involves high human suffering and socio-economic costs in terms of premature deaths, injuries, loss of productivity etc. It is heartening to note that there has been a marginal decline in road accidents during 2011. However, the problem of road safety remains acute in India. During the year 2011, there were around 4.98 lakh road accidents, which killed 1.42 lakh people and injured more than 5 lakh persons, many of whom are disabled for rest of their lives. These numbers translate into one road accident every minute, and one road accident death in less than four minutes. Sadly, many of these victims are young people, those who are economically active. Road traffic accidents are amenable to remedial action. Many a countries have witnessed drop in road accidents and fatalities by adopting multipronged approach to road safety that encompasses broad range of measures, such as traffic management, design and quality of road infrastructure, safer vehicles, law enforcement, provision of accident care, etc. The challenge for us is to adapt and evaluate these approaches to suit our needs.

The elite and rich drivers often use their mobile phones while being on the move in their cars. This results in accidents and crashes. These phones have added further to the already worsening situation of road deaths and accidents. Driving and using the mobile phone simultaneously may cause loss of control of the vehicle or concentration needed in safe and sane driving. To prevent these accidents, it is imperative that effective long and short term measures are immediately taken. Road safety should be a compulsory school subject. Roads should be properly maintained any looked after. There should be multi-lane roads wherever necessary. There should be separate tracks for slow moving vehicles from those of fast and very fast moving vehicles.

There should be an effective check on speed of the vehicles. Radar guns can be used to check the speed. Violation of traffic rules should be strictly dealt with. Grant of driving licenses and permits to vehicles should be properly
streamlined. Those driving under the influence of drugs and alcohol should be given exemplary punishment and their licenses cancelled.

The transport research wing of the road ministry shows that roads in Punjab are proving to be fatal for commuters. The severity of accident, deaths per 100 mishaps, in the state has been increasing in the past four years. While it was 65.9% in 2009, this increased to 76% in 2012.\textsuperscript{176}

Table 3.3: Total fatalities across the country

<table>
<thead>
<tr>
<th>City</th>
<th>Accidents</th>
<th>Killed</th>
<th>Injured</th>
<th>Severity*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>152</td>
<td>95</td>
<td>71</td>
<td>62.5</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>430</td>
<td>262</td>
<td>250</td>
<td>60.9</td>
</tr>
<tr>
<td>Jodhpur</td>
<td>533</td>
<td>313</td>
<td>436</td>
<td>58.7</td>
</tr>
<tr>
<td>Varanasi</td>
<td>379</td>
<td>216</td>
<td>160</td>
<td>57</td>
</tr>
<tr>
<td>Delhi</td>
<td>6,937</td>
<td>1,866</td>
<td>6,633</td>
<td>26.9</td>
</tr>
<tr>
<td>Chennai</td>
<td>9,663</td>
<td>1,401</td>
<td>8,628</td>
<td>14.5</td>
</tr>
<tr>
<td>Mumbai</td>
<td>24,592</td>
<td>488</td>
<td>4,543</td>
<td>2</td>
</tr>
</tbody>
</table>

*Deaths per 100 accidents

Motor vehicle accidents and railway accidents affect the people of all walks of life. The Motor Vehicle Act has been amended several times to keep it up to date. The need was felt that the Act should now inter alia take into consideration also the changes in the road transport technology, pattern of passengers and freight movement, development of the road net work in the country particularly the improved technology of the motor vehicle management. Every year the legislature comes up with amendments and judiciary with enlightened judgments. Most of the railway fatalities were accidental in nature and in the bread earning age group particularly among the males. The increasing number of population, overcrowding in the trains, reckless and careless behavior of the passengers, pedestrians and the train drivers towards safety norms are the constant causes of railway fatalities. The high levels of the railway fatalities make

\textsuperscript{176} articles.timesofindia.indiatimes.com, visited on 16\textsuperscript{th} Aug, 2013, 06:30 pm.
a strong case for the necessary accident control interventions. Road as well as the railway authorities must take some measures to bring down these fatalities. People must follow some easy set of laws like do not travel on footboard, do not enter or get down from running trains, do not try to cross the level crossing gate when it is closed, be alert and reduce your speed while approaching railway unmanned level crossing, never guess the speed of the train and adhere to the set norms of railway safety to curb this menace.

“Yogakshema - the well being, prosperity and security of people”

— Rigveda