CHAPTER – VII

CONCLUSIONS AND SUGGESTIONS

7.1 CONCLUSION

After making in-depth study, the researcher comes to the conclusion that in a welfare State the government undertakes to provide for various services to the benefit of the people, particularly in any democratic country where government call for the role of a welfare and service State. The compensation in accident cases of vehicles under the Motor Vehicles Act, 1988, Fatal Accidents Act, 1955 and other relevant related laws, belong to the branch of Social Welfare Legislation which is based more on consideration that the society under the Constitution wedded to Socialism or the social justice is bound to provide for the victims of the accidents and their dependants. It is primarily the duty of the State to take care of them. The fundamental right to life is the most precious human right and thus forms the arc of all other rights. The preservation of human life is, therefore, of paramount importance, because if one’s life is lost the status quo ante cannot be restored, as resurrection is beyond the capacity of man. Unfortunately the number of deaths and injuries on account of road accidents is as alarming as any other dreaded disease and need to be controlled by every possible effort on the part of those who owe a sacred duty towards the preservation of human lives. The Legislature should make a suitable provision so as to pay adequate Compensation by properly evaluating the precious life of a human being in its true perspective rather than declaring human lives on the basis of an artificial mathematical formula.

Remedy for the victims of motor vehicle accidents has been provided under the Motor Vehicles Act, 1988. Tribunals have been constituted to entertain petitions of compensation against the negligent drivers, the owners of the vehicles, and the Insurance Companies. 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 gets his claims in action he finds himself in a maze of procedures 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 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. In Cases of deaths or injuries in a motor vehicle accident compensation may also be claimed under Section166 of this Act. The main object of this Act is to provide a speedy remedy instead of a civil suit as is required under Fatal Accidents Act, 1855.

Fatal Accidents Act, 1855 is also narrower in this sense that it provides for compensation only to certain dependents of the deceased 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, and when death is caused application for compensation may be made by any representative of the deceased or his agent. But in one respect Motor Vehicles Act is narrower because it applies only in cases of accidents caused by motor vehicles. The question of liability of the parties, which was governed by Law of Torts, is unaffected by the Act. It only changes the forum taking away the jurisdiction of the Civil Court. 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 African 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. 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

---

3 Section 1-A, The Motor Vehicles Act, 1939.
commented upon for the purpose of appreciating the judicial invocation and application of the evidentiary principles 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.

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

---

9 1987 (4) SCC 284.
conduct of another person. This liability is known as Vicarious Liability. In *Rani Devi @ Usha Rani v. Devilal*\(^{10}\) 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*\(^{11}\). In India, this rule was formulated in the case of *M.C. Mehta v. Union of India*\(^{12}\), wherein the Supreme Court termed it as ‘Absolute Liability’. Further, section 92A of the Motor Vehicles Act, 1938 also recognizes 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*,\(^{13}\) 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. Provisions as to payment of compensation on structured formula basis. 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 motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent

\(^{10}\) 2009 ACJ 858 (Raj.)
\(^{11}\) (1868) LR 3 HL 330: LRI. Ex. 265.
\(^{12}\) 1987 SC 1086.
\(^{13}\) 2004 ACJ 53.
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.

Motor vehicle 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. Soon the Punjab Government will come up with a law wherein in anyone who helps any road accident or any destitute patient will be rewarded by the government. The law will also have a provision wherein the government can punish those who will ignore the dying patients on the roads without rendering any help to them.

The Ministry of Justice and stakeholder groups have, for the last two years, been debating about the need to reform the process for accident claims. However the government has not yet set out its response. This has led to frustration and uncertainty for insurers and lawyers alike. The National Accident Helpline, however, sees this as potentially a positive sign. The initial proposals in the consultation seemed to signal a fundamental shift in the current system towards a more insurance-based approach for small claims and it may be that the government is reconsidering this radical change. Ordinarily it is not the concern of the Legislature whether the owner of the vehicle insures his vehicle or not, if the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 146 of the Act of 1988. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the users of motor vehicles on the roads. The Law may provide for Compensation to victim of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident.

14 The Indian Express, May1, 2011.
However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the Courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have resources. To overcome this situation the Legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

The current system is prone to delays, most often this due to the lack of rigorous enforcement of time limits or behaviour protocols for both lawyers and insurers. Reform might focus on these areas, but change should not undermine the level playing field which has been at the heart of the accident claims system in England and Wales. To do so would restrict choice and risk the quality of justice available to claimants. Restricting claim investigation to the defendant insurer alone, as originally proposed, further undermines the existing balance between insurers and solicitors which is vital in any fair system. It increases the likelihood of the insurer under-settling or approaching the claimant with an offer to settle direct, despite that placing the insurer in an obvious conflict of interest. The same access to justice issues arise if inflexible time limits or generic claim forms are introduced.

**Equal Justice**

Equal Justice is one of the corner stones of our democratic system. Articles 14 and 28 of the Constitution clearly express the letter and spirit of equal justice. Equal Justice to all citizens, (irrespective of status, caste, colour and creed) was uppermost in the minds of the founding fathers, who had framed the Constitution.

Easy access to justice, has therefore, been recognized the top-most basic requirement in the modern times, which mandates to guarantee and not merely proclaim legal rights for all. The Supreme Court in *Manjushri Raha v. B.L.Gupta*\(^{15}\)'s case observed, “It is only just and fair that the legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather devaluing human lives on the basis of an artificial mathematical formula.”

\(^{15}\) (1977) 2 SCC 174; (1977) 2 SCR 944; AIR 1977 SC 1158.
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. In many Judgments the courts have held that there should be no disparity in the grant of compensation to the victims whether they travel by air, road or railways. Human life is the same whether one dies in harness while functioning as a workman in a factory or a canal or while travelling in an aeroplane or by train. It is unfortunate that the compensation to the victims of air, rail and road accidents is not uniform. Article 14, therefore, has lost its meaning in letter and spirit.

Road fatalities are due to a number of reasons, primary among them are bad condition of roads and traffic violations, poor implementation of various laws governing road traffic and safety issues, and last but not the least, the faulty engineering of road mechanics, may it be road design or traffic lighting etc. Furthermore, lack of awareness of road safety issues amongst the masses and apathy of the policy makers and implementers add to the increasing problem of road safety. More than 1.2 million people die in road accidents world over while 50 million are injured every year. But more alarming is the fact that the tally is on the rise as motorized transport becomes increasingly the choice of millions especially in the third world. The figures are projected to rise by as much as 65% by 2020. There has been 170, fold increase in the number of motor vehicles (from 300,000) on Indian roads in the past 50 years whereas the road network has expanded only nine folds. Though the latter situation heads for marked improvement with ambitious expressways and other road networks now making significant strides, measures taken to ensure road safety for commuters in India have been far from the minimum by any standard.

17 New India Insurance Company v. Zor Kanwar Civil First Appeal No. 59 of 1968.
In 2006-07 the number of people affected were more than the number of accidents but since 2008 the number of affected people are lot lesser than the number of accidents itself. The reliability of this data could be questioned as suddenly in 2008 the number of accidents increases while the number of affected people reported is much lower. The number of men affected in the accidents is four times that of the women. This could also be co-related with the lower female work participation ratio in the city and probably women are more careful when they are on the road.

The working age group between 15-59 are the most affected in the accidents as they account for 84% of all accidents in the city in the past 5 years. It is also alarming that 1 in every 10 people affected in an accident is a senior citizen. A cumulative record of the past five years indicates that pedestrian and cyclist together form 33% of the total affected people due to road accidents in the city. Two wheelers constitute 30% of people who suffer from road accident.

Source: Data provided by Chennai Traffic Police : 14.03.2011

The graph below indicates reduction in the number of pedestrian and cyclists suffering from accidents, which cannot be because of any improvement of infrastructure for them. The probability of reduction in their numbers could be attributed to the people’s preference for safer modes of transport.

**Figure 7.3: People affected due to road accidents: Mode wise**

*Source: Data provided by Chennai Traffic Police: 14.03.2011*
The year 2008 saw a huge increase in the number of accidents and the graph above reflects that there was a 407% increase in the affected people travelling in car from 2007. While the list of accident affected parties travelling in the modes shown in the figure 3 had shown considerable increase in 2008, the graph dips for the others (autos, trucks etc) by one third. The tumultuous conditions of the traffic and accidents in the city are an indication of mismanaged transport network and inadequate enforcement. Last two years data shows a decline in the number of people suffering from road accidents by travelling in all modes except the people travelling in two wheelers probably because they don’t adhere to safety measures.

India is a country where millions of people are living below the poverty line, and there are people who belong to different beliefs and religions, having different castes and so on. Because of diversity in unity and unity in diversity we have not been able to give this country a Uniform Civil Code, though in the Directive Principles of the Constitution of India there is provision for the Uniform Civil Code. India is the largest democracy, and a welfare State, wedded to socialism and secularism and, therefore, believes in the principle of equity, fair play and social justice. But the poor and helpless victims of the motor vehicle accidents through the length and breadth of the country have no caste, they are most neglected souls of the free India who are in dire need of appropriate remedies for getting compensation as measure of social justice without wasting much time, money and energy, and this in fact, is the letter and spirit of the Constitution of India. The Constitution under Articles 14, 38 and 39A, adequately expresses the provision of equal justice and free legal aid.

Article 14(3) of the International Covenant on Civil and Political Rights reads as under:

“The right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance of his right, and to have legal assistance to him in any case where the interest of justice shall require, and without payment by him in any such cases if he does not have sufficient means to pay for it.”

On the basis of the study made in this work some Conclusions have been drawn. These are discussed, in brief as under:
HIGHEST NUMBER OF ROAD ACCIDENTS

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. The terrible figures of road accidents yield a cart-load of case law, which, of course, is not an elegy on the dead but real tribute on this threatening piece of legislation. Each case however, bears its own imprint which cannot be universalized. The paradoxes involved in each individual motor accident case had posed four confounding situations, namely:

1. A section of accident victims doubly unfortunate, first in getting involved in an accident yet not getting compensation.
2. Widespread practice of using goods vehicles for passenger traffic.
4. Duty of courts to award compensation and secure it to the advantage of those for whom it was meant.

ACCIDENT

Accident means some unexpected event, happening without design, even though there may be negligence and it is used, in a popular and ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not brought about any intension or design\(^2\). 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. For acceptance of an application for compensation in Motor Accident Claims Tribunal, it is necessary to prove that the injury or death has been occurred in an accident and also the fact that the said accident has arisen out of the use of the motor vehicle.

ACCIDENT ARISING OUT OF USE OF MOTOR VEHICLE

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. 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,\(^2\)

\(^2\) Ambalal Lallu Bhai Panchal v. LIC of India, 1999(3) TAC 269: 1999 ACJ 956(Guj).
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 use, the jurisdiction of the Claims Tribunal arises. Tribunal is given power to adjudicate claims for compensation arising out of use of motor vehicles. Words “use of motor vehicles”, \(^{21}\) cover all engagements of the motor vehicle, no restrictions as to the class of victims of the accident are imposed by the Legislature. \(^{22}\)

**GRATUITOUS PASSENGERS**

The position of the gratuitous passengers has been explained in the recent judgments of the Supreme Court in *National Insurance Co. Ltd. v. Bommithi Subbhayamma*. \(^{23}\) A gratuitous or fare paying passenger in a goods vehicle or fare paying passenger in private vehicle has been proved to be a good defence. Under the Motor Vehicles Act, 1988 all insurance policies covering third party risks are not required to exclude gratuitous passengers in the vehicle though vehicle is of any type or class. \(^{24}\) In *New India Assurance Company v. Kokila Bai* \(^{25}\), the accident had taken place on 27\(^{th}\) June, 1990, whereas, the new Act came into force w.e.f. 1\(^{st}\) July, 1989. Thus, the provisions of new Act would be applicable and so if the vehicle was insured even gratuitous passengers would be covered and liability would be fastened on Insurance Company.

**SOLATIUM SCHEME**

A Scheme under section 163 in the name of Solatium Scheme, 1989 \(^{26}\) has been framed and Rule 20 of that Scheme makes it clear, that an application for compensation there under has to be filed in Form I before the Claims Enquiry Officer of the Sub-Division in which the accident has taken place and not before the Motor Accidents Claims Tribunal. The applications for compensation under that Scheme have to be decided expeditiously. Where an application for compensation in

---

\(^{21}\) Section 110(1) of The Motor Vehicles Act, 1939.

\(^{22}\) *Motor and General Finance (India) Ltd. v. Mary Mony*, 1991(1) TAC 1: 1991 ACJ 101(Ker).

\(^{23}\) 2005 ACJ 721 (SC).


\(^{25}\) 2003(1) TAC 45 (MP).

\(^{26}\) Vide S.O. 440(E), dated 12\(^{th}\) June, 1989, published in the Gazette of India, Extra, Pt II, Sec.3(ii), dated 12\(^{th}\) June, 1989.
a hit and run accident had been kept pending for more than four years, direction was issued, in writ jurisdiction, to decide the application within three months.

**PAYMENT OF COMPENSATION**

Section 163A of the Act\(^\text{27}\) provides for special provisions as to payment of compensation on structured formula basis. 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 motor vehicle or 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.

**MOTOR ACCIDENTS CLAIMS TRIBUNALS**

A new forum, i.e. Motor Accidents Claims Tribunals, which substitutes Civil Courts, has been created by the Motor Vehicles Act, for cheaper and speedier remedy to the victims of accident of motor vehicles. Prior to the Motor Vehicles Act, a suit for damages had to be filed with civil court, on payment of *ad valorem* court fee. Under these provisions an application claiming compensation can be made to the Claim Tribunal without payment of *ad valorem* fee. The Claims Tribunal, though not a Civil Court, in the strict sense of that expression, Section 3 of the Civil Procedure Code, relating to the subordination of courts, may not have application qua a Claims Tribunal. As a court of District Judge designated as a Claims Tribunal, will be subordinate to the High Court for the purpose only of the Civil Procedure Code, but not for the purpose of the Motor Vehicles Act, except Section 173 of the Motor Vehicle Act, where under the High Court sits as court of appeal against award passed by Claims Tribunal. The Tribunal can award more than the compensation claimed.\(^\text{28}\)

Technically and grammatically speaking, Tribunal may not be a civil court, but it has all the trapping of court since it passes an award which has all the ingredients of a judgement as known under civil jurisprudence. The Claims Tribunal is a deemed Civil Court for all purposes of Section 195 of Cr. P.C., 1973, read with the provisions of Chapter XXVI of that Code. To say that Claims Tribunal is a Court is entirely different from saying that a Claims tribunal is a Civil Court. It is a

\(^{27}\) The Motor Vehicles (Amendment) Act, 1994 (54 of 1994).

\(^{28}\) *Divisional Manager, New India Assurance Co. Ltd v. Bijay Kumar Nayak*, 1995(1) TAC 55 (Ori).
civil court for all intents and purposes of adjudication of claims for compensation in motor accident cases. From the scheme of the Motor vehicles Act and the Rules framed there under, it is clear that a Claims tribunal is constituted for a specific area, which is specified in the notification for adjudication of such claim.

**AWARD BY CLAIMS TRIBUNAL**

The institution of the proceedings is by an application for compensation. The tribunal disposes such application by giving the parties an opportunity of being heard and holding an inquiry in to the claim and it has to make an award determining the amount of compensation to be paid and the amount which is to be paid by the insurer. An application for compensation arising out of an accident of the nature specified in Section 165(1) of the Motor Vehicles Act, may be made by the person who has sustained the injury or by the owner of the property or where death has resulted from the accident, by all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Claim application should contain all the necessary information like name, age, address and occupation of victim and also applicant if different from victim along with name and addresses of defendants. Further, the claim application should be accompanied with all the necessary documents like FIR, Panchnam, Medical Report or Post Mortem Report, Identity proof of the claimants, original expenses bill etc., and it should be complete in all respect. In the cases, where a person comes up with a prayer that he may be permitted to file Claim Application or Appeal as an indigent person, by permitting him to file such application as indigent person, payment of court fee is only being deferred to advance the cause of justice to poor persons. Tribunal has no jurisdiction to accept an application for compensation where death occurred due to Heart Attack. Claim application for compensation can be made on behalf of Minor Person by his guardian or parents.

**JURISDICTION OF THE CLAIMS TRIBUNAL**

The pecuniary jurisdiction of the Claims Tribunal has a double implication i.e. compensation in case of death or bodily injury and in respect of damage caused to any property. Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claim Tribunal for that area.
Claims for compensation arising out of the use of motor vehicles cannot be adjudicated by any of the Consumer Disputes Redressal Forums contemplated and created under the Consumer Protection Act, 1986. Consumer Disputes Redressal Forums has no jurisdiction whatsoever to entertain claim application and award compensation. Thus, the Claims Tribunal has the jurisdiction to entertain claims relating to an accident which occurred in the course of use of the bus for the carriage of the passengers, irrespective of the fact whether vehicle was mobile or stationary.\(^{29}\) The claimant can file an application within the jurisdiction of claims tribunal (1) where the accident occurred, or (2) before the tribunal within local limits of whose jurisdiction, claimant resides or carries on his business, or (3) within local limits of whose jurisdiction, the defendant resides or carries on his business.

**APPLICATION FOR COMPENSATION**

On receipt of an application for compensation made under Section 166 of the Motor Vehicles Act, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. 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 injured himself or legal representatives of the deceased should be given exorbitant claim, but the law restricts them for "just and fair compensation" so as to save the injured or legal representatives of deceased from possible pecuniary and non-pecuniary losses guided by the judgments. Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid. The Claims Tribunals may also award special compensatory costs in certain cases, where it is found that there has been mis-representation of case or vexatious to claims or defence. An aggrieved party may file an appeal to High Court against

\(^{29}\) *Ram Chandra v. Rajasthan State Road Trans. Corp.*, 1996 ACJ 736; 1996(2) TAC 643(Raj).
the orders of Claim Tribunal and where the person aggrieved is the person who has
to pay the compensation such person shall deposit 50 percent of the amount awarded
or Rs. 25,000.00 whichever is less, as directed by the High Court. Such appeal
should be filed within 90 days from the date of the award.

Executing court is not empowered to reconsider any aspect of award afresh but
is required to execute it as passed by trial court. The executing court while enforcing
the award cannot travel beyond the main award. Execution of award if taken out
after twelve years is not permissible. The award if not executed within twelve years
becomes inoperative and unenforceable. The tribunal possesses inherent jurisdiction
to enforce its own award in accordance with the provisions of the Code of Civil
Procedure, 1908, as applicable to execution of orders and decrees passed by a civil
court. Where any amount is due from any person under an award, the Claim
Tribunal may, on an application made to it by the person entitled to the amount,
issue a certificate for the amount to the Collector and the Collector shall proceed to
recover the same in the same manner as an arrear of land revenue.

APPLICATION OF THE PRINCIPLES

The case law relating to Motor Vehicle Accident Cases, which have been
judicially determined in High Courts and the Supreme Court in India, are having
application of the principles of tortious liability such as, No Fault Liability,
Contributory Negligence, res ipsa loquitur in negligence cases, Act of God,
Absolute and Vicarious Liability etc., in other cases.

(a) No Fault Liability

Where the death or permanent disablement of any person had resulted due to
an accident, the owner of the vehicle shall be liable to pay compensation in respect
of such death or disablement to pay a fixed amount for such liability on the basis of
no fault liability. The claimant is not required to plead or establish that the death or
permanent disablement in respect of which the claim had been filed was the result of
the wrongful act, neglect or fault of the owner of the vehicle. Amount of
compensation is a fixed amount of Rs. 50,000/- in case of death and Rs. 25,000/- in
case of permanent disablement. Compensation awarded under no fault liability does
not bar the victim to claim compensation under any other law for the time 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.
(b) Act of God

In Hindu Religion, it is considered that whatever happens in the world is Act of God, yet in legal parlance, the expression Act of God is a mere short way of expressing the proposition that a common carrier is not liable for any accident as to which he can show that it is due to natural causes, directly and exclusively, without human intervention and that it could not have been prevented by any amount of foresight and pains and care reasonably to be expected of him. 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 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 particular region being within competence of authorities to take precautionary steps.

(c) Vicarious Liability

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. For example, liability of the Principal for the act of his Agent, liability of the Partners for the tort committed by a partner of a firm, and liability of the Master for the act of his Servant.

(d) Strict and Absolute Liability

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* and hence it is also commonly termed as the Rule in *Rylands v. Fletcher*\(^3\). In India, this rule was formulated in the case of *M.C. Mehta v. Union of India*\(^3\), wherein the Supreme Court termed it as ‘Absolute Liability’. Where an enterprise is engaged in a hazardous or inherently dangerous activity, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident, and such liability is not subject to any of the

---

\(^3\) (1868) LR 3 HL 330; (1861-73) All ER 1.

\(^3\) AIR, 1987 SC 1086.
exceptions which operate *vis a vis* the tortious principle of strict liability under the rule in *Rylands v. Fletcher*.

**(e) Negligence and Contributory Negligence**

What constitutes negligence varies under different conditions and in determining whether negligence exist in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. To determine whether an act would be or would not be negligent, it is relevant to determine, if any reasonable man would foresee that the act would cause damage or not. Contributory negligence has been defined as “a plaintiff’s own negligence that played a part in causing the plaintiff’s injury and that is significant enough to bar the plaintiff from recovering damages. Where contributory negligence on the part of plaintiff is proved then the Tribunal may award lesser amount as compensation, and the compensation amount may be reduced to the extent of contributory negligence of the plaintiff himself.

**(f) Res Ispa Loquitur**

*Res Ispa Loquitur* is a rule of evidence coming into play when circumstances suggest negligence of driver of the vehicle, but in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him, but is solely within the knowledge of the defendant who caused it. The plaintiff can prove the accident but cannot prove how it happened to establish negligence. This hardship is to be avoided by applying the principle of *res ispa loquitur*. The general import of the words *res ispa loquitur* is that the accident speaks for itself. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. The maxim applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused.

While making its award for compensation, the Claims Tribunal also determine the part of the compensation amount each claimant will receive and how the amount of compensation awarded to minor, uneducated, ignorant, or not worldly-wise. Compensation amount awarded invariably be invested in long term fixed deposits and in case of minor till the date of the minor attaining majority. However, amount of compensation may be allowed to be withdrawn for the expenses incurred for filing of
claim, to meet expenses of treatment of Personal Injury and in case of Emergency. Bank should not grant loan or advance against the fixed deposit of amount of compensation and also to affix note on fixed deposit receipt that no loan or advance should be granted.

Any cash, bank balance, shares, fixed deposits, etc. are all pecuniary advantage receivable by the heirs on account of one's death. But all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. This amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. In Helen C. Rebello v. Maharashtra State Road Transport Corp.,\textsuperscript{32} it has been held by the Supreme Court, that the deduction is not permissible out of the aforesaid amount at the time of awarding compensation by the Tribunal.

**DRIVING LICENSE**

The insured bonafidely believing in the validity of a forged driving license employing the holder of a fake driving license 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. 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 to be recovered from the insured if as per the policy conditions, the insurer had no liability to pay such sum to the insured. The insurance company cannot refuse to meet its liability \textit{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 \textit{qua} third party.

\textsuperscript{32} 5 (1999) 1 SCC 90.
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. The Lok Adalat has no jurisdiction to decide matters without the consent of parties to the matters. Lok Adalats have jurisdiction to decide matter relating to accident claims in which insurer disputed the claim. In a claim petition on behalf of Unsound Person and Minor, no settlement or compromise could be arrived at without the permission of the court as required under Rules 6 and 7 of Order 32 of Civil Procedure Code, 1908. 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. 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. 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. Every award of Lok Adalat is deemed to be decree of civil court as per Section 21 of Legal Services Authorities Act,1987. Hence, every award made by Lok Adalat is final and binding on all the parties to the dispute.

The principles of liability governing civil actions and criminal prosecutions based on negligence differ. Criminal Law both in England and in India recognizes degree of negligence. The negligence which would justify conviction must be culpable or of gross degree and not negligence founded on a mere error of judgment or defect of intelligence. One of the grey areas of the law is relating to the legal consequences of accidents and the action to be taken after a victim injured, particularly in an accident caused by motor vehicles. The Indian Criminal System is characterized by an accelerated rate of acquittals. Besides the issues of the improper collection of evidence and a lack of witnesses for the trial, the legal system is severely crippled by the issue of burden of proof.
In criminal cases there must be *mens rea* or guilty mind i.e. rashness or guilty mind of a degree which can be described as criminal negligence. The principle of avoidance of liability, when in contributory negligence by the injured person is no defense in criminal law. When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgement, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. Sections 279 and 280 to 289, Sections 304A, 336, 337 and 338 of Indian Penal code deal with the accused’s rash and negligent conduct endangering the safety of others. All these sections cover the possibility or likelihood of injury as a result of the accused’s conduct. Under all these sections, there is a rash and negligent act involved as one of the ingredients of the offence and that rash or negligent driving or riding on a public road is therefore, be covered by all these sections. But, sections 304A, 337 and 338 are specific provisions relating to cases in which rash and negligent driving or riding result in the death of another person or in hurt or grievous hurt caused to another person.

Where the same wrong is both a crime and tort e.g. assault, its two aspects are not identical, its definition as a crime and a tort may differ, what is a defence to the tort may not be so in crime and the object and result of a prosecution and of an action in tort are different. The wrongdoer may be ordered in a civil action to make compensation to the injured party and be also punished criminally by imprisonment or fine. There was a common law rule that when a tort was also a felony, the offender could not be sued in tort until he had been prosecuted for the felony or a reasonable excuse had been shown for his non-prosecution. For instance, manslaughter is the supreme crime, punishable under section 302 of the Indian Penal Code, if murder, or under section 304 of that code, if amounting only to culpable homicide, but from the mere fact of its culpability it does not follow that the parents, or widow or the children of the deceased may not sue the wrongdoer for compensation reasonably equivalent to the contribution the deceased made for and towards their maintenance.
7.2 SUGGESTIONS

Every motor vehicle which rolls on the road is a potential danger for the road users. Number of motor vehicles is increasing at an alarming rate. A study shows that on an average every driver makes mistake every two miles. Motor vehicle 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 network 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. Every person, a car driver, a truck driver, a bus driver, a scooterist, a cyclist and a pedestrian owe a duty towards himself, the State and their own family members to drive safely and reach home. This is the cardinal principle of the rule of the road and must be given a practical meaning, “It is better to reach late, than not to reach forever.” If everyone keeps the wordings in one’s mind, number of accidents may reduce, and many valuable human lives may be saved. A little care and alertness on the road can certainly save many untoward and unnatural accidents. Hence, the need for frequent revisions of the codified law. Some of the important suggestions are as follows:

1. 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 African 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.

2. The procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals results in consequential hardship to the victims and their families. In cases where the accident victim dies, the family, usually the widow and children loses its sole bread winner and are virtually driven to the streets. Many a time, the widow and children are forced to take up unaccustomed
manual labour for their survival, the children foregoing their education. Payment of compensation without delay will help them to sustain themselves and pick up the threads to live with dignity.

3. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If, such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of.

4. It is necessary that the full compensation amount should not reach and benefit the victims and their families, particularly those who are minor, uneducated, ignorant, or not worldly-wise. Unless, there are built-in safeguards they may be deprived of the benefit of compensation which may be the sole source of their future sustenance. There should be some measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation. Hence, the amount of compensation must be disbursed to these claimants with care and as under:

(i) Minors

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) Illiterates

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) Semi-Literates

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) Literates

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) Widows

In the case of widows the Claims Tribunal should invariably follow the procedure set out in case of Minor Claimant above.

5. In personal injury cases, if, further treatment is necessary, the Claims Tribunal on being satisfied about the same, which should permit withdrawal of such amount as is necessary for incurring the expenses for such treatment.

6. In all cases, the 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.

7. In all cases, in which amount of compensation is invested in long term fixed deposits, 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.

8. When the amount of compensation 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. This will ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements.

9. In many cases, the Claims Tribunal allows the parties to settle their claims out of court or through Lok Adalats. In such cases tribunals should ensure that just and fair compensation is provided to the victims.

10. Award of compensation must be determined by applying the principle of structural compensation formula in motor accident cases like railways (where a fixed compensation of Rs. 4.00 Lakhs is paid for loss of life) irrespective of social status and earning capacity of the victim.

11. In hit and run cases, the victim has no one from whom he can claim or get compensation. It is estimated that around 20% of the victims of motor accidents fall under the unfortunate categories who do not get any compensation, except some who may get a token amount under Section 161 or 163, of the Motor Vehicles Act, 1988. A victim of hit and run accident, feels frustrated, cheated and discriminated, when he does not get any compensation, but sees another person hit by an insured and traceable vehicle getting compensation. The victim does not choose the vehicle which hits him, nor any role in causing the accident. But, a victim is denied compensation, if the vehicle which hits him disappears without trace, or if the vehicle is without insurance, while a similar victim hit by an insured vehicle gets compensation. In such cases, the State should by law provide for compulsory third party insurance to protect such motor accident victims who do not get compensation and provide with some effective remedy for them.

12. In cases of death, where the liability of the insurer is not disputed, the insurance companies should, without waiting for the decision of the Motor Accidents Claims Tribunal or a settlement before the Lok Adalat, Endeavour to pay to the family (Legal representatives) of the deceased, compensation as per the standard formula determined by the decisions of the Courts.

13. In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer treatment at its cost to the injured, without waiting for an
award of the Tribunal. If, insurance companies can meet the bills for treatment of those who have taken a medical insurance policy, there should be no reason that the insurer cannot extend a similar treatment to the accident victims of vehicles insured with them. Whenever, insurance companies found that the driver of the insured vehicle possessed fake/forged driving license, they should lodge a complaint with the concerned police for prosecution. This will reduce the incidence of fake licences and increase the road travel safety.

14. Presently because of increasing scale of compensations almost 10 to 15% or even more cases presented to the Claim Tribunals are bogus or the other accidents have been converted into road accidents with connivance of the police authorities. It is necessary that while increasing the burden of the Insurance Companies they must get a right of proper contest to mitigate fake cases and also the quantum. A Scheme should be formulated with the State Police Authorities and the Insurance Companies by which the Insurance Company must be informed immediately by the police, regarding the happening of accident, so that necessary investigation can be made by the companies to find out the genuineness or otherwise of the accident.

15. In the Lok Adalats, it is found that the motor accident claims are disposed of by the Lok Adalats without any recourse to the procedure and methods as laid down by the Motor Vehicle Act, 1988 but a consented decree is passed. It is also evident from the settlements arrived at by the parties under the auspicious of Lok Adalats, that the parties are paid much less compensation than their actual claims, generally on the basis of need and bargaining powers of the parties. The insurance companies here tries to exploit the poor victims because of their week financial position and their low bargaining power. There is need to bring some mechanism to check that the compensation awarded by Lok Adalats must be just and fair.

16. Police Authorities on receipt of information regarding accident must submit the Accident Information Report in the prescribed format\(^{33}\), to the concerned Claims Tribunal, within 30 days of the registration of the FIR along with the information regarding the age of the victims at the time of accident, the income of the victim and the names and ages of the dependent family members. Police

---

\(^{33}\) Form No. 54 of the Central Motor Vehicle Rules, 1989.
report should be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal. The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim (in case of death) and the driver, owner and insurer. If, so directed by the Tribunal, the police may secure their presence on the first date of hearing. Police authorities should also furnish the copy of the above report along with annexure to the concerned insurance company to enable the Insurer to process the claim.

17. For ensuring effective functioning of the Claims Tribunal, followings are the suggestions:

(a) To Treat Reports of Accident as Application for Compensation

All Claims Tribunals must register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased.

(b) Determination of Compensation where no Dispute by Insurer

Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, for early disposal of claims petition and determination of compensation accordingly.

(c) To Dispose of the Claim Application within a Time Frame

Claims Tribunal should make endeavour to dispose of the application for compensation in a time frame which should not exceed six months from the date of registration of the claim petition.

(d) Not to treat Motor Accident Cases as Regular Civil Matters

Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Section 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The
Tribunal must play an active role in deciding and expeditious disposal of the applications for compensation and determine the just compensation.

18. No Proper laws have been devised, so far and those devised are not meant and dealt properly in motor accidents. Just drive as you like and if you happen to kill someone, just grease a few palms and walk into the sunset. Such is the height of corruption in India. Therefore, in place of the provisions relating to Accident tribunals and award of compensation in the Motor Vehicles Act, 1988, and other statutes dealing with accidents and compensation, enacting a comprehensive and unified statute dealing with accidents may be enacted, like several other countries already having comprehensive enactments exclusively dealing with accidents.

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 in two cases namely U.P. State Road Transport Corporation v. Trilok Chandra\(^{34}\) and Sarla Verma v. Delhi Transport Corporation\(^{35}\) 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 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. Hence, 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.

19. Alternative schemes must be devised for 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 manner similar 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

\(^{34}\) 1996 (4) SCC 362.  
\(^{35}\) 2009 (6) SCC 121.
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 premia. The general insurance companies may, however, continue with optional insurance to provide cover against damage to the vehicle and injury to the owner.

20. The injured or the legal representatives of deceased can file claim application in a prescribed format making driver, owner and insurer as party. However, 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. It should not be made indefinite, as it would cause serious problems to the defendant.

21. A drunken driver is a potential murderer as he cannot perform his tasks without risks and endangering road safety. Drunken driving is an illegal act and therefore, should be governed by stern laws which entail not only levying hefty fines or revocation of license, but also prosecution, same as a criminal offense. Usually, driver escapes from the scene as the public gets involved in getting the injured hospitalized. But, contrary to the practice, if we make a commitment to report the incidence to the officials concerned and take a stand against drunk driving, then we may get success in curbing the menace which has been since centuries a major contributor to the traffic deaths. In any case, the co-relation between alcohol and road safety still remains a matter of more research.

Most of the cases of accidents on roads are caused by the negligence of drivers. It is, therefore, very essential that the driver of the motor vehicle has got to be in a perfect fitness before he begins to drive on steering. Every driver must ensure the following:

(a) That he is in perfect health;
(b) That he has perfect eyesight to drive the vehicle;
(c) That he does not drive the vehicle at a very fast speed;
(d) He obeys the traffic signals religiously;
(e) That he is not under the influence of liquor while driving the vehicle;
(f) That he does not drive the vehicle more than six in sequence hours at a stretch;
(g) That he examines the vehicle thoroughly before he takes the vehicle on the road;
(h) That he does not blow horn near schools and hospitals;
(i) That he does not overtake any vehicle ahead from the left side;
(j) That he takes extra ordinary care when he finds an animal, child or any pedestrian on the road.

21. For prevention and control of motor accidents, followings suggestions are made:

(a) **Regular Check up and Inspection of Vehicles**

   There should be a compulsory inspection of all the vehicles both public and private for their road worthiness, upkeep and maintenance of the vehicle at least twice a year.

(b) **Strict Procedure for Allotment of Driving Licence**

   Strict Procedure should be envisaged in granting of driving licences and periodical review should be made, taking the physical condition of the driver into account.

(c) **Prohibition of Entry of Animals on Public Road**

   Laws should be enacted to prohibit entry of animals on to the public roads and the owners of the animals should be penalized for such violation.

(d) **Supervision and Control of Speed of Vehicle**

   There is a need for strong mechanism to supervise and control the speed of the vehicle plying on the public roads.

(e) **Ban on Plying of Old Vehicles**

   Strict provisions must be made and enforced, regarding life of a vehicle for plying on public road. Plying of vehicles after their nominated life must be declared as illegal and authorities must impound such vehicles, if, found plying on public roads.

(f) **Road Safety Bureau**

   One of the reasons for the increase of road accidents is the poor condition of our roads in general. People are also not well informed with the markings and signals. Line markings are not printed on all roads. Traffic signals are used for
spitting and littering. Road barriers and other equipments are seen dwindling here and there on the roads. Therefore improvement of the condition of roads in our country should be given top priority to avoid accidents. There is therefore an urgent need for laying down and enforcing Road safety measures. 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, ensure maintenance of Public Roads in general.

(g) Literacy Programs Regarding Rules of Road

 Civilians, the main victims, who make a huge hue and cry about the road safety issues, are responsible for lagging behind in the safety measures as these people do not follow the already devised rules. One can easily spot people jumping traffic lights, driving while drunk, driving recklessly at supersonic speeds. Wearing seat belts is assumed as, if, they have been tied with the car seats. There is a need to understand that with such a vast population, it is the civil society on the first hand that has to play a crucial role in achieving success in this area. Central Government as well as State Government should run literacy programs to educate people about the Rules of Roads and Traffic Signals etc. Government should give wide publicity through newspapers, television, radio etc. of road safety measures. Government should regularly start celebrating Road Safety Weeks etc. and arrange educative lectures in school and colleges to make the students aware regarding traffic rules and road safety.

(h) Reduction of Number of Vehicles on Road

 The Government should devise some mechanism to reduce the number of vehicles from the roads. For this, following measures may be adopted:

(i) To encourage Public Transport system

 Government should endeavors to encourage use of public transport. For this government has to increase the number of public buses, trains etc. and also ensure cleanliness and proper maintenance of these vehicles.

(j) To encourage pooling

 Government as well as private sector employers should encourage their employees, who are coming from same place to same office or offices in the same
area to use one vehicle instead of individual vehicle, it will not only reduce the number of vehicles on road but would also save fuel and money.

*(k) Permits to Taxis or Autos should be allotted to ply the same on Alternate Days*

Government, to reduce number of vehicles from the road should allot permits to autos and taxis to ply on alternate days. It may be based on the formula that Registration Number of the vehicle ending with even number will ply on road on even dates of the month and Registration Number of the vehicle ending with odd number will play on road on odd dates of the month.

*(l) To Discover Alternate of Road Transport*

Government should discover alternate mode of travelling to reduce number of vehicles from road, like Metro Rail in Delhi.

*(m) To Establish Trauma Centres and First Aid Centres for Accident Victims*

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 establishment of large number of Trauma Centres and first aid centres. It is also necessary to consider the establishment of and running of First Aid Centres in Petrol Stations for immediate help to motor accident victims.

*(n) Tracking Down Traffic Offenders*

There is need for effective way of tracking down traffic offenders especially drivers who never take care of the injured person involved in the accident nor come to the witness box to adduce evidence in the Court of Law.

*(o) Deterrent Punishment*

There must be more deterrent punishments i.e. not less than 5 years imprisonment or with fine or both to the offenders culpable of rash and negligent driving causing number of deaths or severe injuries to the people.

*(p) Inference of Negligence by applying principle of Res Ispa Loquitur*

In criminal cases relating to Section 304 A of the Indian Penal Code, the general principle in criminal law that the case must be proved beyond reasonable doubt by the prosecution should be waived to facilitate the courts to draw inference of negligence by applying the principle of *res ipsa loquitur* in rash and negligent cases specially by taking into consideration the circumstances of the scene of
offence that speaks for itself. This will help to punish the drivers who are rash and negligent as the existing procedure gives scope to the drivers to escape punishment.

**(q) Strict Application of Section 196 of Motor Vehicles Act, 1988**

Section 196 of the Act provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable with imprisonment which may be extended to three months, or with fine which may extend to Rs. 1000/-, or with both. Though the statute requires prosecution of the driver and owner of uninsured vehicles, this is seldom done, thereby, a valuable deterrent is ignored. The Director Generals of Police must therefore, ensure the prosecution of the drivers and owners of uninsured vehicles under Section 196 of the Act. The Constitution of India declares India as a social welfare state and it is the duty of the State under Article 41 of the Constitution of India, to make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. The Motor Vehicle Act is a Social Welfare Legislation under which the Compensation is granted to the people who sustain bodily injuries or get killed in the vehicular accidents. Those people who sustain bodily injuries or whose kith and kins are killed, are necessarily to be provided with such relief in a short span of time and the procedural technicalities cannot be allowed to defeat the just purpose of the Act.

Keeping in view, the magnitude and dimensions of the problems of the Motor Accidents and grant of compensation thereof, the present study is an enquiry to find out the possible answers of the following questions:

1. What are the exiting provisions relating to Motor Accident Claims in India?
2. What is the proper procedure and working pattern of Claims Tribunals for awarding compensation in motor accident claims?
3. Whether in the matters of negligent cases relating to motor accidents the maxim *res ipsa loquitur* plays a role in deciding the cases by the civil courts?
4. Whether in the matters of negligent cases relating to motor accidents the maxim of *res ipsa loquitur* can be applied in determining criminal liability?
5. What are the exiting trends in grant of compensation in respect of bodily injury, death and damages to the vehicles and property?
6. What are the methods, which are used by the courts in calculating the amount of compensation in respect of bodily injury, death and damages to the vehicles and property?

7. What is the procedure applied by the Lok Adalats in Disposing of the Motor Accident Claims and whether such awards made by the Lok Adalats are just, fair and reasonable or not?

8. What are the conditions, which are considered mandatory by the courts and tribunals for accepting claims of compensation under Motor Vehicle Act?

9. What are the factors, which are considered by the courts and tribunals as dangerous for a claim of compensation under Motor Vehicle Act?

10. What is the extent of liability of the owner and Insurer of the Vehicle involved in accident?

Every possible effort has to be made that there is no accident on road and no one suffers any injury or any mishap on the road. But the fact is that the accidents do occur and they occur at an alarming rate, and if the medical care and attention is provided to the victims in time, not only congestion on the roads can be reduced but it may help removing traffic hazards, we can also save the pain, suffering and the agony of the seriously injured victims and bring some solace and comfort for the family members of the victims of road accidents. The Supreme Court has directed, all Government hospitals, medical institutions should be asked to provide immediate medical aid to all the cases irrespective of the fact whether they are medico legal cases or otherwise. Besides this there are some statutory duties\(^{36}\), traffic rules and other precautions which every road user should and has to take, especially the drivers of the buses, trucks or other heavy vehicles have to take extra care for safe driving on the roads. It is well settled that in case of motor accident claims, an endeavor is made to put the claimants in the pre-accidental position. The damages to be awarded are to be adequate in terms of money so that the injured are put in the same position had they not suffered the loss on account of wrong of the respondent, though, no amount of compensation can restore the loss of limb or experience of pain or loss of life.

\(^{36}\) Relevant Statutory duties under Chapter VII (Control of Traffic) of the Motor Vehicles Act, 1988.
How to survive a car crash?

Statistically speaking, one in eighty four chance of dying in a car accident (average lifetime risk). But there are a number of proactive things you can do to minimize that risk when you drive. Not just ways to prevent car accidents in the first place, but also minimizing the damage to yourself and your passengers if (and when) the unthinkable happens. Everything from driving tips to mitigate the potential damage of a crash to what you should do immediately after an accident. Proven steps that will reduce injuries, and more importantly, fatalities for when an automobile accident does occur.

Fig. 7.4: How to survive a crash

Accident prevention & mitigation

The measures you take to prevent accidents are almost always going to the best things you can do to minimize their potential damage. So these tips will not only help prevent accidents, but they can also save your life for those you simply can’t avoid:

- **Maintain a safe speed** – speed is the killer in car accidents. While it can be partially (or even fully) to blame for many, that’s not what makes it so

---

dangerous. What makes high speeds so dangerous is that the faster the car(s) are moving during an accident, the more likely it is to be fatal.

- **Keep safe distances** – Just like speeding, driving too close to other cars can be both the cause of an accident and the reason the accident was worse than it would have been otherwise. The shorter the distance you keep between you and other cars, the less time you’ll have to react to what they do, and those precious moments can be the difference between a fender bender and a really bad accident.

- **Drive defensively** – If you want to avoid accidents, defensive driving is one of the best ways. But what makes it so important is that it tends to help avoid accidents of the worst kind. Either collisions are not quite as bad, or potentially fatal accidents avoided altogether. If you drive defensively and you still are involved in an accident, chances are it won’t be quite as bad as if you were driving more aggressively.

- **Minimize distractions** – what makes it so problematic is that the longer your eyes are off the road, the less time you have to react to whatever it is that you’re about to hit. So, as a result, the faster you will be going when you collide. Put the phone down and keep your eyes on the road.

- **Care for your car** – Keeping your car in good working condition, especially your brakes and tires, is a good way to minimize and prevent accidents. Failing breaks or flat tires isn’t the real danger. Its brakes that work, but are less effective; tires that are starting to go bald and are losing grip both of which can lengthen your stopping distance. Precious space that could be the difference between avoiding and causing an accident. More importantly, the difference between life and death.

**Safety**

Maintaining proper safety protocols while the car is in motion is vital to the health of all passengers when a crash occurs. Cars are specifically designed with passengers in mind. If you want to have any chance in surviving an accident, you need to take proper advantage of the safety features. But when those features are ignored or abused, the lives of everyone involved are at risk.

- **Wear safety belts** – This is by far the single most important thing you can do to protect yourself in the case of an accident. Proper safety harnesses for all
passengers (including booster seats for children) save tens of thousands of people every year. Wear them. Make your fellow passengers wear them. Not just for them, but for yourself too

- **Keep your car clean** – In an accident, anything that’s not secure is suddenly going to become potentially dangerous debris (including other passengers). In an equal and opposite reaction to the impact, unsecured cargo will be moving at the speed and momentum of your car’s previous motion. Things can fly from one side to the other, from front to back, and cause a lot of damage on the inside of the car. Beyond that, a filthy car can be an accident liability: trash can get wedged under your breaks or otherwise cause you to take your eyes off the road. A clean car is a safe car. Keep your cargo secured.

- **Proper seating positioning** – Cars are made with passengers in mind. So when passengers aren’t using the space that’s designed for them in the proper way, the design breaks down. And so does passenger safety. Not having enough room for your legs or head, placing too many passengers in a seat, or sitting improperly (with your feet up on the dashboard, for example) are just a few examples of things that can cause a minor collision to turn quickly into a life or death situation. If you want the best chance to survive a crash, sit in a seat with your legs in front of you, make sure you have enough room for your knees and head, and always wear your seat belt.

**Reaction**

For most car accidents, there’s a moment for the driver where there is an awareness of the imminent collision. It sometimes only lasts a fraction of a second, but it’s there. This moment, for some, can last long enough to react consciously to the situation. And for these lucky few, there’s a lot you can do. You just don’t have much time:

- **Remain calm/don’t panic** – If you’re going to have any chance to make one last attempt to minimize or perhaps avoid an accident, keeping your cool right to the very end is an absolute must. Some of the worst things you can do (especially in a high speeds) is suddenly slam on the breaks and turn the steering wheel hard at the same time. Panicked reactions like this can cause a car to lose control earlier and make a bad situation worse. And even cringing, flinching, or
blinking can be enough to lose you the chance at a last ditch effort. And while “remain calm” may sound easier said than done, whatever you do: just don’t panic.

- **Maintain as much control as possible** – When you’re moving at high speeds, you can lose control of your car very quickly if you are struck or suddenly change directions and/or speed. Keeping that control for as long as possible is vital if you’re to have any effect on minimizing an accident. Only with control of the car can you do anything to avoid potentially fatal collisions like head on cars, trees, buildings, and other solid structures. Pump breaks, steer into the skid, even accelerate if all else fails. Just get control.

**After the accident**

The first five to ten minutes after an accident are crucial, especially if someone was seriously injured. If you are able, there’s still plenty you can do to make sure everyone (yourself included) is going to be okay. Use these moments wisely and you might just save a life or two.

- **Don’t move the seriously injured** – If someone is very seriously injured in a car accident, don’t attempt to move them without professional help (paramedics, etc.). The most serious and potentially fatal injuries are usually those that include the head, spine and/or neck. Moving a person with such injuries can make matters much worse. Do what you can to support and comfort these people while help arrives, just don’t try to move them unless it’s absolutely necessary. (car is on fire, etc.)

- **Get to safety** – First help yourself, then help others get to a safe distance from the accident and the road. The next most dangerous part of a car crash (after the initial impact), is the aftermath. Twisted metal, leaking gas, cars and passengers both on and off the road. All on a road that probably has more cars on the way. Don’t linger long around a crash scene, especially the first few moments just after the crash. If necessary, do what you can to help direct traffic so the accident doesn’t suddenly get worse.

- **Apply first aid** – Care for the injured with whatever resources you can. You’d be surprised how much you can do to help keep a person comfortable and safe
while paramedics are on their way. Just remember, don’t attempt to move anyone with more serious injuries.

Road safety has increasingly become an important concern in India. Roads are essential for the efficient movement of goods and people. But because of a lack of infrastructure and inefficient enforcement of traffic regulations, roads are dangerous places, especially for the most vulnerable users: pedestrians, cyclists, children, and the elderly. By organizing a public meeting which will involve presentations from traffic experts, representatives from the relevant government agencies, and groups working on the issue of road safety, Transparent India aims to understand how concerned citizens can understand the conditions of road safety in our country and take action to make our roads safer. We hope to develop more arrangements around the issue of road safety and pedestrian infrastructure, an especially important and urgent task considering the scale of new transport infrastructure projects in India.

We all know how easy it is to get a driving license in India. Also punishment for errant drivers is light. A bribe is all that needs to be given and the rash drivers are free to go. Indians are known for their high degree of patience, but do we have to be patient where rash driving is concerned? No. Some drastic action needs to be taken. Here are some suggestions:

1) Be more stringent in issuing licenses.
2) Think of ways to reduce the number of vehicles on the roads.
3) Be strict about usage of helmets.
4) Make separate lanes for heavy vehicles.
5) The administration must insure that the Commercial vehicles plying on the roads should not be overloaded beyond their permitted capacity.
6) Road safety signboards must be installed on roads.
7) Condition of roads must be improved and maintained.
8) Compliance of Stringent measures must be adopted by Regional Transport Offices while issuing fitness certificates for vehicles and specially commercial vehicles.
9) Study how these issues are tackled in advanced countries.
10) Increase awareness about road safety among road users, planners and engineers from time to time.
11) Building of separate non-motorized traffic and motorcycle lanes to ensure the smooth flow of traffic.

Well, there are always solutions and in some ways we are moving towards that. Better and wider roads for example. States are making wearing of helmets compulsory. But road accidents are not reducing.