CHAPTER – I

INTRODUCTION

Road accidents, which lead to serious injuries including death or maiming of innocent and ignorant human beings have become a matter of grave concern. Due to an alarming development of road transport alien which includes various types of motor vehicles, i.e., buses, trucks, three-wheelers, two-wheelers, a large number of accidents take place day in and day out.¹ In most of the cases, who are daily involved in the accidents caused by motor vehicles are mainly the pedestrians or the cyclists. Since the drivers and the owners of such erring vehicles are responsible for the accidents on the roads, the law requires them to give compensation to such victims of the motor vehicle accidents. The tragedy is that most of such victims are unaware of their rights to get compensation from the owners, drivers of the motor vehicles who, due to rash and negligent driving, are legally duty-bound to pay compensation for the injuries inflicted on the innocent victims, who, in most of the cases, belong to weaker sections of society.

The number of people who get killed or maimed in motor vehicle accidents is growing day by day. The main source of succor to such hapless people and their dependants is the compensation that they are entitled to receive under law. But right from 1956, motor accident compensation law has been in a state of flux. It was in that year that the legislature amended the Motor Vehicles Act, 1939 by inserting several new sections. Over the years, many more amendments followed and in 1988, a new Motor Vehicles Act replaced the old one. This Act studies various new rights created by the Motor Vehicles Act, 1988 for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of a motor vehicle.

The entire road traffic in India, the registration² of all types of vehicles plying on the roads, the regulation of the drivers, the rules of the road regulations³, road accidents, claims made by the victims of accidents and their wards etc are all depend upon a single piece of legislation known as the Motor Vehicles Act. Originally enacted in the year 1939, during the British rule in India, the Motor Vehicles Act has

undergone a sea of changes between 1939 and 1988. The act has been amended comprehensively in the year 1988 in tune with the welfare State ideals of India and in order to meet the growing demands of its people. Almost all the states in India have enacted Motor Vehicles Rules\(^4\), to regulate the registration of vehicles and the issue of permits to the owners of the vehicles and issue of license\(^5\) to the drivers.

The Motor Vehicles Act can be hailed as welfare legislation since it deals with comprehensively about the road accidents involving motor vehicles and also enabling the victims to claim compensation\(^6\). The Motor Vehicles Act, 1988, between sections 165 and 176 comprehensively provides for the establishment of claims tribunals by the state governments, the procedure for applying compensation by the victims, procedure and powers of the claim tribunals in making the awards, liability of the insurance companies, enabling the state government to make rules, awarding interest on the compensation amount, providing for appeals etc. The Motor Vehicles Act, 1988 has also done away with the provisions of limitation period of six months to file a claim application for a victim. Taking into account the difficulties of a victim or his legal heirs in procuring the documents pertaining to an accident, the limitation provision has been deleted, which is definitely a step forward in the right direction.

### 1.1 AIMS AND OBJECTIVES OF THIS STUDY

The main object of the present research work is to analyse the existing system of awarding compensations to the victims of motor accidents. Further, an enquiry is also made to know whether the compensation so awarded to the victims is just, fair and reasonable or not. An attempt is also made to find out the factors, which are taken into consideration by the courts to determine the quantum of compensation\(^7\). An attempt is also made to study the factors, which are dangerous to “claims” of compensation under Motor Vehicle Act, 1988. Further, an enquiry is made to find out the trends of Lok Adalats in awarding compensation to the victims of Motor Accidents and to study whether the awards delivered by these courts are just, fair and reasonable or not. Extracts from important judgements of various High

\(^7\) *Secretary of State v. Gokalchand*, AIR 1925 Lahore 636.
Courts and Supreme Court of India have been discussed at the appropriate place. The results of the study may provide the criteria to evaluate the legislation and judicial philosophy in the matter of awarding compensation in Motor Accidents.

It would also help in bridging the gap between judicial interpretation and social perception in respect of matters of grant of compensation to the victims of Motor Accidents. The practical utility of the work lies in the fact that the policy making institutions may formulate their strategies and approach in view of the social perception on different issues concerning grant of compensation to the victims of Motor Accidents.

The Preamble of the Act says, “Whereas no action or suit is now maintainable in any court against a person who, by his wrongful act, neglect or default, may have caused the death of another person and it is often times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused to him.”

Thus, object of this Act is to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong. In any such action or suit, the executor, administrator, or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default.

1.2 OBJECT OF AWARDING COMPENSATION UNDER MOTOR VEHICLES ACT, 1988

The Motor Vehicles Act 1939 was the first All India enactment for controlling the operations of vehicles. The main objective of this Act was to formalize the movement of vehicles in the public place in the country, for which registration\(^8\) of vehicles was made compulsory. It is necessary and expedient in the public interest to notify certain standards in respect of new system of high security registration plates for motor vehicles and the process used by a manufacturer or vendor for manufacturing or supplying such plates with reference to the amendments made in Central Motor Vehicles Rules, 1989.\(^9\) This order may be called as the Motor Vehicles (New High Security Registration Plates) order, 2001. The Motor Vehicles


Act of 1939 was promulgated in order to ensure the role of road transport on the basis of healthy competition and as such, provisions were laid down for the involvement of the private sector involvement in the passenger service sector. This Act laid down provision for the creation of Regional and State Transport Authorities to grant permits for the passenger carriages. Recognition of the identity of passengers makes this Act distinct from the former. It laid down conditions in respect of permits, bus routes, schedule timing, specification of vehicles, standard of maintenance, fare, insurance etc. With a view to increasing the involvement of the private sector as recommended by the planning commissions and on the recommendation of the working group appointed in 1984, The Motor Vehicles Act, 1939 was replaced by Motor Vehicles Act of 1988. The new Act gave thrust for simplification and liberalization of procedure for the entry of private operators into the road transport passenger service.

The Motor Vehicles Act, 1988 which has been enacted to give expeditious, cheap and adequate compensation to the hapless and helpless victims of motor vehicle 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, take into account also changes in the road transport technology, pattern of passenger and freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicles management. Various Committees 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. Some of the important modifications related to taking care of the fast increasing number of both commercial vehicles and personal vehicles in the country, the need for encouraging adoption of higher technology in automotive sector, 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, concern for road safety standards, and pollution control measures, standards for transportation of hazardous and explosive materials, simplification of procedure and policy liberalizations for private sector operations in the road transport field and need for effective ways of tracking down traffic offenders.
According to the National Crime Records Bureau report of 2010, Delhi records the highest pedestrian fatality. It also has the highest number of road fatalities. The Ministry of Road Transport and Highways puts the number of fatalities in 2010 at 160,000. Pedestrians and cyclists account for 60 to 90 per cent of all traffic fatalities. Poor road design, traffic speed and unruly driving habits make pedestrians and cyclists vulnerable. The chart given below shows the number of road accidents in day and night time, number of cases in which two wheelers and pedestrians are the victims.

**Figure 1.1: Number of Road Accidents in Day and Night Time**

<table>
<thead>
<tr>
<th>Total No. of Cases of road accidents</th>
<th>Year-2008</th>
<th>Year-2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case in Day</td>
<td>222</td>
<td>214</td>
</tr>
<tr>
<td>Case in Night</td>
<td>141</td>
<td>145</td>
</tr>
<tr>
<td>Cases of fatal accidents</td>
<td>81</td>
<td>69</td>
</tr>
<tr>
<td>Cases of non fatal accidents</td>
<td>93</td>
<td>69</td>
</tr>
<tr>
<td>No. of Deaths</td>
<td>129</td>
<td>145</td>
</tr>
<tr>
<td>No. of Injured Persons</td>
<td>113</td>
<td>71</td>
</tr>
<tr>
<td>Cases in Which Two Wheelers were involved</td>
<td>171</td>
<td>155</td>
</tr>
<tr>
<td>Cases in Which Pedestrians were involved</td>
<td>84</td>
<td>64</td>
</tr>
</tbody>
</table>

**Table 4.1: Number of Road Accidents Cases in 2008-2009**
Indian cities have the potential to set things right, yet walking and cycling are the endangered modes of transport. The biggest enemy is the disdain of the affluent. This is breeding hostile policies in cities. Obsession with high speed is discouraging walkers and cyclists. The chart given above shows the number of road accidents in day and night time, number of cases in which two wheelers and pedestrians are the victims.\textsuperscript{10}

Philosophy behind award of compensation as far as pain and suffering proceeds on the footing that even though no monetary loss is occasioned because of this situation, that it is because of the psychological aspect which the law takes cognizance of and which has been dealt in detail in the \textit{Jhulan Rani Saha’s} case\textsuperscript{11}, where both the English and Indian law have been analyzed in some detail. It was laid down by the court that it is obliged to compensate the party to whom such pain and suffering may have been caused, to the extent that is necessary.\textsuperscript{12}

 Normally in India the award under the head “Pain and Suffering” is only for the injured though in cases of death of a young child in accident, court may award compensation to the parents for shock and loss of life of their child, also as to the consequent “Pain and Suffering”. The Karnataka High Court has laid down that the bonds that exist between the claimant and the deceased, if they happen to be close relatives or a spouse, cannot be ignored while assessing the damages under the head “Pain and Suffering”. The immense mental trauma which a near relative undergoes when shocking, distressing news is received that the person has suddenly been killed and what follows thereafter even though during a short period of time, is pain and suffering of an immensely high gravity which certainly qualifies for award of Compensation.\textsuperscript{13}

Newspapers in every metro city in India give a daily report of people killed and injured in traffic accidents. As a response to this heightened awareness, NGOs have come up in many cities to deal with this increasing urban epidemic of death and destruction. Police departments also hold road safety weeks, painting competitions, zero tolerance drives and demand greater powers to fine and punish. This has gone

on for the last two decades. However, the killing and the maiming continue unabated.

The Motor Vehicle Act, 1988 was passed with a view to regulate the law relating to matters of motor vehicles, more specifically it consolidate and amends the law relating to motor vehicles. This Act has been amended by the Parliament from time to time in order to take into account the frequent improvements in the road transport technology, pattern of passengers and freight movement, development of road network in the country and particularly the improve techniques in the motor vehicles management.

Accident connotes a casualty caused by neglect of duty to others. The *causa causans* of an accident is not *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 *res ipsa loquitur*. The word approximately representing its formal cause finds its legal nomenclature in the term 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.\(^\text{14}\)

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”. Floods, quakes, hailstorms, lightning, thunder, hurricanes and other catastrophes, are occurrences having no human involvement, denoting the class of events covered by the expression act of God, but when an act or omission resulting in to loss, damage or injury to another is attributable to human agency, the doer is indicted not because he intended to bring about some disastrous result but because he was found failing in his duty to take care. Each doer is presumed to be conscious of the consequences of his act because they are inherent in the nature of the act and the mode in which it is handled, the duty is cast on the doer to the consequences likely to ensure from his doing the act in one or the other way. It is this lack of foresight which amounts to negligence, stemming from breach of the duty to take care.

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.

1.3 HISTORICAL BACKGROUND

*Actio personalis moritur cum persona*\(^{15}\) had been the fundamental principle leaving the poor dependants of those who met fatal accident in helpless condition was remedied by legislature in England introducing English Fatal Accident Act, 1846. It was followed in India by passing the Indian Fatal Accidents Act, 1855. Under the Indian Fatal Accidents Act, 1855, the claims arising out of use of motor vehicle otherwise fatal accidents were to be filed before Civil Court. The parliament of India in order to provide speedy and cheap remedy to the injured persons and to the legal representatives to those who met fatal accident by Act 56 of 1969 introduced Sections 110 to 110-F.\(^{16}\)

The maxim “*actio personalis moritur cum persona*” relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. The said maxim stands considerably abrogated or modified by the provisions of Section 306 of the Indian Succession Act, 1925.\(^{17}\) The right of injured person to claim damages is personal to him under the principle of action *personalis moritur cum persona*.\(^{18}\)

When the Fatal Accident Act, 1855, was enacted there were no motor vehicles on the roads in India, because of modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accident. ‘Hit and run’ cases where the driver of the motor vehicles who have caused the accident are not known are increasing in number. In order to meet to some extent the responsibility of society to the deaths and injuries caused in road accident there has been continuous agitation

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\(^{15}\) A personal right of action dies with the person.


\(^{17}\) Harihar Mohanty v. Union of India, 1996 (1) TAC 321 at p. 327 : 1996 ACJ 779 (Ori).

\(^{18}\) Ram Ashari v. H.R.T.C. 2006 (2) TAC 1011 (HP).
throughout the world to make the liability of damages arising out of motor accidents as a liability without fault.¹⁹

1.4 REVIEW OF THE EXISTING LITERATURE

One of the steps for starting the work on the problem is to review the existing literature on the subject. The review of existing literature not only provides clarity of concept and understanding of the different aspects of the subjects but also helps avoid repetition. It helps in identifying the problem zones. A number of books, monographs, reports, articles research papers and internet sites deals with the subject of motor accidents and granting/ awarding compensation to the victims of motor accidents.

Ratanlal & Dhirajlal²⁰ has thrown light upon, Motor Vehicles Accidental Claims in India. In this book, an attempt is made to present facts and incidents to enable readers to interpret the Law relating to Accidental Claims. The notable legislative activity in recent years is creation to a certain limit of no fault liability, in respect of death or bodily injury resulting in motor accident, providing for payment of compensation in certain cases of accidents without proof of fault or negligence on the part of the owner or the driver of the motor vehicle is being discussed by the author. The book furnishes a systematic examination and statement of the principles of the Indian case law. Much has been written on the Law of Torts. The author has also mentioned the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 which has attracted worldwide attention.

Dr. R.G. Chaturvedi in “Law of Motor Accident Claims and Compensation”²¹ focuses on different aspects of Motor Accidents and has discussed the concept of awarding compensation to victims of Motor Accidents. He states: If the Government opts for mandating the automobiles to carry a statutory inscription that riding kills or maims, because it is unimpeachable truth that India’s motorized mayhem has officially made it the most dangerous place to drive in the world. Suffice this to betray the Division Bench decision of the High Court of Madras in B. Govinda Rajalu Chetty v. M.L.A. Goondaraja Mudaliar²² that a motor vehicle

²² AIR 1966 Mad. 332.
without which modern life would become impossible, cannot or should not be held to be inherently a dangerous thing. The tremendous pace, at which modern life moves, has made it used to things inherently dangerous, like electricity, cooking gas, railways, aircraft, etc., but that cannot and should not mean that the things warranted most in a fast life are not inherently dangerous. 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.23

Dr. R.K. Bangia in “Law of Torts, Including Compensation under the Motor Vehicles Act” deals with accidents which occurred due to involvement of motor vehicles and law relating to compensation to victims of such accidents. It provides that insurance of motor vehicles compulsory and owner of every motor vehicle is bound to insure his vehicle against third party risk. It also provide for the extent of liability of the insurer as well as owner of the vehicle in case of accident by such vehicle. In his book Dr. Bangia has also explained the constitution of Claim Tribunals, working procedures to be followed by these tribunals, appeal against the decisions of the tribunals etc. In Kishori v. Chairman T.S. Coop. Society24, the M.P. High Court has held that the consignee of the transported goods is not a third party for the purpose of compensation by the insurer under the Motor Vehicles Act. In Threeti v. M.A.C.T25, the Kerala High Court has held that in a case of composite negligence, when one of the two vehicles involved in the accident can be identified, it is not a hit and run case, and in such a case compensation under the no-fault liability rule can be claimed.

Kunal Mehta’s “An Analyse of Law Relating to Accidents Claim in India”26, is a nice Article written by the author covering the aspects of Accidents arising out of use of Motor Vehicles, No fault Liability, claim applications, assessment of claim, Legal defence available to the Insurance Companies towards third party, Gratuitous Passenger, Dishonor of cheque of insurance premium, Right of recovery from owner to Insurance Company, Claim Tribunals and Appeal etc.

24 AIR, 1988 (MP) 38.
25 1996 ACJ 609 (Kerala).
In Bakshi P.M.’s Article on, “Accident Victims and the Criminal Law\(^{27}\), the author has discussed the criminal as well as civil liability of a person whose vehicle is involved in motor accident. Author states that the principles of liability governing civil actions and criminal prosecutions based on negligence differ. Criminal Law both in England and in India recognize 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 that relating to the legal consequences of accidents and the action to be taken after a victim is injured, particularly in an accident caused by motor vehicles.

P. K. Sarkar in his book “The Motor Vehicles Act, 1988\(^{28}\)” has explained the philosophy behind award of compensation as far as pain and suffering proceeds on the footing that even though no monetary loss is occasioned because of this situation, that it is because of the psychological aspect which the law takes cognizance of and which has been dealt with in some detail in the Jhulan Rani Saha’s case\(^{29}\) where both the English and Indian law have been analyzed in some detail. That the court is obliged to compensate the party to whom such pain and suffering may have been caused, to the extent that is necessary.

N. Kumar’ in his book, “The Concept of Criminality in the Tort of Negligence”\(^{30}\) has provided for the concept of criminal action in cases where accident involves Tort of Negligence. He mentioned that in English Law the only negligence amounting to crime is one (a) Characterized by “recklessness” (b) directly leading to the death of the victim and (c) preceded by some degree of some mens rea. Whether particular act of negligence amounts to crime or not falls within the purview of juries. The nearest approximation of this English Law is to be found in Section 304A of Indian Penal Code.

R. P. Kathuria on “Law of Crimes and Criminology”,\(^{31}\) has discussed that in case of road accidents the onus of the proof, it is generally on the prosecution to prove gross rash and gross negligence on the part of the accused. This onus never

\(^{27}\) P.M. Bakshi, Accident Victims and the Criminal Law, 3 JILI, (1988) 566.


shifts. Sometimes *res ipsa loquitur* can be corroborative evidence. The circumstances may lead to inference against the accused or vice versa. This doctrine is corroborative as far as criminal law is concerned. In a case of negligent driving there may be material evidence or witnesses namely a sketch drawn was adduced, it was seen that the accident took place only on the left side of the road. The vehicle was coming from East towards West. The sketch shows that there is sufficient space about 40 feet available on the right side. Therefore, the petitioner ought to have swerved to the right side and avoided the accident. So in addition to the deposition of witness, the material relating to the rule of *res ipsa loquitur* is available in this case. In *K.Perumal v. State*\(^22\)’s case it was held that the driver running over the deceased without attempting to save the deceased by swerving to other side when there was sufficient space, is liable to be punished under section 304A I.P.C.

Dr. D. K. Gaur’s “A text Book on the Indian Penal Code\(^33\)”, explains duties of Driver of motor vehicles and if driver of vehicle fails to observe his duties he will be liable not only in civil law but also under criminal law he will be guilty of negligence. He stated that a person driving a motor car is under a duty to control that car, he is prima facie guilty of negligence if the car leaves the road and dashes into a tree. It, for the person driving the car, to explain the circumstances under which, the car came to leave the road. Those circumstances may have been beyond his control and may exculpate him, but in the absence of such circumstances the fact that the car left the road is evidence of negligence on the part of the driver.

K. C. Dutt and Sunita Dadhich on “Motor Accident Claims”\(^34\) have focused on different aspects of Motor Accidents and have discussed the concept of awarding compensation to victims of Motor Accidents. This book deals with accidents which occurred due to involvement of motor vehicles and law relating to compensation to victims of such accidents. Authors have also explained the concept of liability of owners and insurers of vehicles involved in accident and broadly discussed the concept of negligence of driver of vehicles involved in accident and their liability under the Motor Vehicles Act, Law of Torts and also criminal liability in case of motor accidents.\(^35\)

\(^{22}\) 1998 4 Crimes 382.
\(^{35}\) Ibid.
M. Stanley Feranandez’s Article on “Road Accidents” explains the duty of care in case of accidents required from owner and driver of a motor vehicle. Author has mentioned that there are numerous and extensive categories of situations which are treated by the courts as imposing a duty of care. By way of illustration merely, makers or repairs of chattels owe a duty to those who use those chattels, a teacher owes a duty to his child-pupil, an occupier of land to visitors there, those engaged in skilled occupations to their customers, those carrying out activities on a highway to others highway users. One reason for the increase in road accidents is the poor conditions of our road and disproportionate number of vehicles. A defendant who owed a duty to another was held to owe a duty also to those who might attempt to rescue that other from acute peril in which the defendant’s negligence had placed him. It finally set at rest any possible doubts whether the tort of negligence was capable of further expansion or was to be rigidly tied down by existing precedents. It was a clear instance of the court’s taking account of the new conditions of mass production and complex marketing of goods wherein there are many intermediaries between manufacturer and consumer, and by a conscious work of judicial legislation, imposing on manufacturers certain minimum standards of care in favour of the consumer.

1.5 HYPOTHESIS

The hypothesis for the study taking perusal of the available literature on the subject comes to be that, the rapid growth in motor vehicle activity in Indian cities has brought in its wake a range of serious socio-economic, environmental, welfare and safety impacts. Road accidents are particularly devastating for the poor apart from the health and emotional impacts, the economic costs of accidents can ruin poor families who, because of lack of savings, are often forced to sell their assets and go into debt which can never be repaid. Minor hypothesis for the research is that:

(1) The law on accidental claims is according to Indian Scenario.
(2) Whether the law relating to accidental claims has been effectively implemented.

(3) Many families get destroyed financially in the process of obtaining treatment for road accident victims.
(4) There should be some amendments in this law.
(5) Procedure for claims should be made easy.
(6) There should be proper accidental insurance policies.
(7) Road accidents are particularly devastating for the poor as they cannot afford the medical expenses and other cost of accidents.
(8) The magnitude of road accidents in Punjab has gone up to an alarming proportion.
(9) No efforts at calculating the real cost of accidents in India have been attempted yet.

1.6 RESEARCH METHODOLOGY

The study is designed to find out the implication of Motor Vehicles Act, 1988 in India. The methodology applied in the study is mainly doctrinal, which includes in depth study of literature to make myself well-acquainted with the insurance liability under Motor Vehicles Act, 1988 and also to find out the relevant material for research. Legal material available on the topic, all the sources of information have been consulted, examined and analyzed viz. Acts, Books, Articles, Report of various Committees and Commission, Press Briefs, Newspaper Reporters, Magazines, Journals and Legal Journals, etc., so as to came out with authentic research. Legal system is more to be viewed as analytical positivists assumed. The present study is Doctrinal in nature. However, useful data has been supplied wherever required in order to authenticate the study so as to make it more useful and practicable. After studying Acts, Text Books, Legal Periodicals, Legal Journals, various Law Reports, Statutes etc. I have tried to explore the information as to the problems being faced by the Tribunals, Courts, Advocates, and the people in general; of course, possible solution to the problems in the form of Legislative measures and judicial decisions thereon remained main focus of my study.

The research study is made on rapidly growing motor vehicle activity, causing a wide range of adverse socio-economic, environmental health and welfare impacts; this includes intensive and extensive study of the material with an analytical approach. The research study includes case studies, based on actual cases filed and
decided in order to know how legal mechanism is working to claim accidental compensation. For conceptional structuring and development, it is planned to depend on use of historical Method of research and collection of secondary data, information, documents related to accidental claims and research material available. After overall study and research the conclusion has been drawn and suggestions being made regarding viable legal frame to deal with the problem of accidental claims. An attempt has been made to discuss, examine, analyze, and critically evaluate different provisions of The Motor Vehicles Act, 1988, The Workmen’s Compensation Act, 1923, Indian Penal Code, 1860, and other available reports.

The coverage includes the cases decided by various High Courts in India and also by the Supreme Court of India. The study includes cases decided by the English Courts on the subject and some of the books and articles and available literature relating to the accidents involving Motor Vehicles and award of compensation in such cases. The study includes cases award of compensation in motor accidents that were decided by the various courts by applying various principles.

1.7 RIGHT TO CLAIM DAMAGES

The rights to claim damages and pecuniary loss to the estate of the deceased are founded in the Law of Torts. The 1938 Act singles out fatal accidents involving motor vehicles and gives the legal representatives of the deceased a right to bring an action for compensation under Section 110-A(i)(h), Section 110-B of the Act, confers on the Tribunal a right to determine just compensation and specify the person or persons to whom compensation shall be paid. In Civil Law, the rules as to the measure of damages pertain to the substantive law, no less that those declaring what damage are actionable. To define procedure as concerned not with rights, but with remedies, is to confound the remedy with the process by which it is made available. There is no indication in the Motor Vehicles Act, 1988 that compensation can be awarded by the Claims Tribunal only when negligence on the part of the driver of the vehicle concerned is established. The provisions, there under, do not lay down any criteria for awarding compensation. For fixing the liability in the absence of any specific provision in the Motor Vehicles Act, courts

38 Motor Vehicles Act, 1939.
40 Karnataka State Road Transport Corporation v. Peerappa Parasappa, AIR 1979 Kant 154.
have to fall back on the Law of Torts, according to which negligence in causing the accident is essential to make the negligent person liable.\textsuperscript{41}

In England, the Third Parties (Rights against Insurers) Act, 1930 was enacted to confer on the third parties rights against insurer of third party risks in the event of the assured becoming insolvent and certain other events. But this Act could not come to the aid of a person injured by an insolvent whose vehicle was not insured. To meet that situation, the Road Traffic Act, 1934, was passed. It prohibits the use of motor vehicle on the road, unless the owner or other person using to it, takes a policy of insurance or gives security against liability to third parties. Hence, the Road Traffic Act, 1934 was passed to prevent the insurer from escaping the liability under the insurance policy, by compelling him to satisfy the judgment obtained against the assured and also by rendering ineffective certain clauses in the policy which may be aimed at avoiding the liability arising under it. In India, prior to 1.7.1964\textsuperscript{42}, the legal position was same as obtained in England. In \textit{B.I.G. Insurance Co. v. Janardhan},\textsuperscript{43} despite a self-contained Code of Procedure for adjudication of claims being provided, the Sections do not deal with the substantive law regarding determination of liability. They only furnish a new mode of enforcing liability. For determination of liability one has still to look to the substantive Law of Torts and Fatal Accidents Act or to the principles thereof.\textsuperscript{44}

The Motor Vehicles Act, 1914 was the first enactment relating to the motor vehicles in India. It was replaced by the Motor Vehicles Act, 1939. Approximately after fifty years the Act of 1939 was replaced by Motor Vehicles Act, 1988. The Motor Vehicles Bill having been passed by both the Houses of Parliament received the assent of the President on 14\textsuperscript{th} October, 1988. It came into force on 1\textsuperscript{st} day of July, 1989, as The Motor Vehicles Act, 1988(59 of 1988).\textsuperscript{45} In the year 1994 substantial amendments have been made by Motor Vehicles (Amendment) Act, 1994 with effect from fourteenth of November 1994.

The expression “accident” generally means some unexpected event, happening without design, even though there may be negligence and it is used, in a

\textsuperscript{41} \textit{State of Punjab v. V.K.Kalia}, AIR 1963 Punj 172.
\textsuperscript{42} Date on which Chapter VIII of Motor Vehicles Act, 1939, came into force.
\textsuperscript{43} AIR 1938 Bom 217.
\textsuperscript{44} \textit{Oriental Fire and General Ins. Co. v. K.K. Das}, 1972 ACJ 92.
\textsuperscript{45} Act 59 of Motor Vehicles Act, 1988.
popular and ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not brought about by any intention or design.46

“Accident” means some unexpected and unforeseen event or overlooked mischief.47 Where the accident had taken place on 27th June, 1990, whereas, the new Act came into force w.e.f. 1st July, 1989, held, the provisions of new Act would be applicable to the case.48

The term compensation is used to indicate what constitutes or is regarded as equivalent or recompense for loss or deprivation. Ordinarily, the word ‘compensation’ connotes equivalency, which adequately remunerates for a loss or deprivation.49 The term ‘compensation’ signifies that which is given recompense, equivalent rendered damages, on the other hand, constitutes the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term “Compensation” etymologically suggests the image of balancing one thing against another. Its primary signification is equivalent and the secondary and more common meaning is something given or obtained as an equivalent. In Kulsum Bai v. Kallu,50 M.P. High Court held that compensation includes a claim for damages.

‘Damages’ may be defined as pecuniary compensation which the law awards to a person for the injury he has sustained by reason of the act or default of another. In other words ‘damages’ are the recompense given by process of law to a person for the wrong that another has done to him.51 It was also held that ‘damages’ is simply a sum of money given as compensation for loss or harm of any kind.52

The award of compensation for damages cannot be considered either punitive or in the nature of a reward.53 The finding of negligence is not a condition precedent for the award of compensation in motor accident cases.54 At one point of time, a distinction was being drawn between the scope and ambit of the words ‘damages’ and ‘compensation’. The word ‘compensation’ was interpreted to be wider in its

46 Ambalal Lallu Bhai Panchal v. LIC Of India, 1999 (3) TAC 269 : 1999 ACJ 956(Guj).
50 2000 (2) TAC 748.
52 A.S. Sharma v. Union of India, 1995 ACJ 493 (Guj).
context than the word ‘damages’.\textsuperscript{55} The theory of damages is that they are a compensation and satisfaction for the injury sustained. The sum to be awarded for reparation of the damages suffered should, as far as possible, be such as will put the injured party in the same position as he would have been, if he had not sustained the wrong for which he is getting damages. With the rise in inflation and cost of living, the Tribunal ought to have taken into consideration the future prospects in the life and career of the deceased. With the passage of time, the income which he was getting would have increased because of rise in inflation and cost of living.\textsuperscript{56} The amount of compensation is an ‘award’ not a ‘reward’.\textsuperscript{57} It is not necessary to establish always that the deceased was actually earning money or money’s worth or contributing to the support of his parents at the time of accident.\textsuperscript{58} 

The object of providing compensation is to mitigate the hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident which has been succinctly stated by Lord Diplock in his speech in\textit{Mallet v. Mc Monagle}.\textsuperscript{59} Thus the claim is for the monetary injury inflicted and the loss of dependency caused to the legal representatives or dependants of the deceased. The compensation to be awarded should not be wholly inadequate. It should also neither be unreasonable excessive burden or liability on the respondent nor unreasonably deficient. It should be commensurate to the loss of dependency suffered by the legal representatives. Therefore, it should be just and reasonable, proportionate to the injury resulting from the death of the deceased.

Where there is positive scope of future advancement in the career of a person, particularly, when he is young and is employed in a Government job and the pay scales are often revised on the basis of Pay Commission Reports as well as additional allowance are payable, these facts should be taken into consideration while arriving at a just compensation.\textsuperscript{60} It is an accepted principle of the Permanent Court of International Justice that a wrong done to a person should normally be remedied by restitution in kind. Only when this is impossible or when the aggrieved party elects to be awarded damages, there can be a judicial order for the payment of

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\textsuperscript{56} \textit{Satyawati v. Raju}, 2004(1) TAC 418 (Del).
\textsuperscript{57} \textit{Asmath Narayan v. Union of India}, 1995(1) TAC 346 (Guj).
\textsuperscript{58} \textit{Vijayalakshmi v. Rajshakharan Nair}, 1995(1) TAC 99 : 1995 ACJ 405(Ker).
\textsuperscript{59} 1969 AC 312 (H. L. England).
\textsuperscript{60} \textit{Subhadara Kumari v. Lallu Ram}, 1996 (1) TAC 643 at p. 647 (Del).
compensation. The questions, therefore, arises as to how the quantum of damages should be calculated. It is a settled principle that the quantum of damages should be calculated so as to put the claimant in an identical position. In other words, the quantum of damages should be calculated in such a way that the death of the victim of a motor vehicle accident should not have made any difference to the living dependants.61 The principles laid down under the Fatal Accidents Act lend assurance to this conclusion when it declares that it intended to provide compensation to the families for loss occasioned by the death of a person caused by actionable wrong.62

The object of awarding damages is to give the claimants the compensation for damage, loss or injury suffered. The elements of damage recognized by law are divisible into two main groups; pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Under non-pecuniary damages, compensation is payable for pain and suffering, shock, loss of amenities of life, loss of expectation of life, discomfort, and inconvenience, etc. Under pecuniary damages, compensation is payable for loss of earning capacity, other specific damages relating to property or business and reasonable expenses like medical expenses and cost of special diet, expenses for employing attendants and other related expenses. Non-pecuniary loss is compensated in terms of money and it is the best that a court can do.63 The main object of payment of compensation under the Motor Vehicles Act is to compensate the dependents of the deceased for the loss of dependency due to the death of the earning member. The Court has to assess the quantum of compensation payable to the dependents which is just, proper and reasonable. The amount of compensation is to be fixed in such a manner so that it does not amount to undue enrichment of the dependents since the court is to determine the amount of compensation “which it appears to it to be just”. Some amount of guess work is always allowable in fixing the monthly income as well as the loss of dependency and consequently the quantum of compensation.64 Provisions of Motor Accidents Act should be interpreted and appreciated in such manner, so as to give benefit to persons for whose benefit Act has been enacted.65

61 O’ Connell’s International Law, Vol. 2, 1115.
63 Managing Director, Tamil Nadu State Transport Corporation Limited, Salem v. Tmt. R. Shanthi, 2005 (3) TAC 95 (Mad).
64 Alima Begum v. Lilima Patar Kalita, 2006(1) TAC 616(Gau).
65 Prem Kanwar (Smt) v. Aadam, 2006(2) TAC 847 (Raj).
The characteristic feature of the Act is that it accepts and fixes the cases of road accident victims as tortuous liability upon the culprits who cause the road accidents. The Accidents Claims Tribunals are very liberal and following only summary procedures in disposing of the claims applications, but they are very strict in imposing a burden upon the insurance company, provided that the accident and claim is proved and the insurance policy of the vehicle involved in the accident was actually in force at the time of the accident and the driver of the vehicle who caused the accident had a valid license at the time of the accident. Compensation amount to the victims, though they may not be directly causing any accident. While awarding compensation to an accident victim, the tribunal takes into account the nature of the injury he suffered, whether it is simple or grievous and if grievous, the duration of the treatment he has taken for treatment, the medical expenses involved, the percentage of permanent disability the victim has sustained, his loss of income etc. In order to assess the permanent disability of the victim, the Tribunal invariably relies upon the medical opinion of a medical expert. In the case of fatal victims, the Tribunal awards compensation to the victims legal heirs. In the fatal cases the Tribunal is guided by the principles of equity and good conscience. The Tribunal while awarding compensation in the fatal cases takes into account the age of the diseased person, his educational qualification, employment status, the income that he earned at the time of death, whether he was an income-tax payer or not. It also takes into account the average life span of an individual, the legal heirs economic status, particularly the chances of employability of the widow of the diseased, her chances of getting remarried etc. In the case of diseased persons whose income cannot be specifically ascertained, the Tribunals fix a notional income say rupees two thousand or three thousand per month and after deducting a portion of it, calculate the award amount. In fatal cases, thereto Tribunals have been taken into account only the net income of the diseased person in awarding compensation. The Tribunals while awarding compensation to the victims direct the insurance companies or the owners of the vehicle, to deposit the award amount along with 7.5 % interest from the date of filing the application in the Tribunal till the amount is deposited into the court. The Tribunal normally stipulates a period of two months for depositing the compensation amount into the Tribunal. Again to help the victims of motor accidents

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66 Ponnumany alias Krishnan and Anr. v. V.A. Mohanan and Ors., 2008 (2) TAC 390 (SC).
or other claimants who are languishing at the failure of the insurance companies to
deposit the compensation amount, the Tribunals also order for the attachment of
either movable or immovable properties of the respondents, in order to compel them
to make payment of award amount to the victims. No doubt, the Motor Vehicles Act
as amended from time to time in India is fine piece of legislation befitting India’s
Welfare State ideal\textsuperscript{67}. With the enormous increase in the number of motor vehicle
accidents on the Indian roads, the precious life of a foot passenger (pedestrian), a
cyclist, a scooters and an occupant of motor car/passenger bus, has been put to a
great risk and danger. Remedy for the victims of motor vehicle accidents has been
provided under the Motor Vehicles Act.

Motor vehicle activity has been growing rapidly in India over the last three or
so decades, but particularly since the 1980s. 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{68}. 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.

The conglomeration of vehicles on the road has led to an increase in the
number of accidents. Speeding vehicles and unsafe roads lead to road accidents.
Road traffic accident claims\textsuperscript{69} generally cover any accidents in which a motor
vehicle was involved. Victims of road accidents can get compensated for the losses
suffered. Road traffic accident claims can also offer respite to such victims. By
approaching a road accident claims solicitor, one can get compensation quickly.
Making a claim for road traffic accident is not that difficult. With appropriate
guidance, one can get compensation quickly. Road accidents can happen
unexpectedly. The person may be driving at his speed and suddenly some vehicle
coming from the other end rams into his car. Unfortunately, not most of the victims
of road accidents consider making a claim. They are not even aware of the fact that

\textsuperscript{67} Article 38 of The Constitution of India.
\textsuperscript{68} The Motor Vehicles Act, 1939.
\textsuperscript{69} RTAs, Road Traffic Accidents.
they can make a claim. Road accidents can also occur due to the collision or rash driving either due the fault of the driver or the other driver. If you are driving a car and suffer an injury while driving, you can opt for car accident claim. Road accident claim solicitor can also help a victim of an accident get suitable compensation. The claims cover all the injuries suffered due to the negligent driving on part of the driver or the other driver. These solicitors have vast experience in dealing with all types of road accident claims. They act on the behalf of drivers, passengers, pedestrians, cyclists and motorcyclists who have been involved in an accident because of another person’s negligence. They have helped many victims of road accidents get compensation quickly. By contacting them right after the accident, one can get seek fasten up the process of making a claim. As long as the injury has been caused due to the fault of someone, one can get suitable compensation for it. The solicitors can help the driver get compensation even if the other driver was not insured.

It is a known fact that two wheeler riders are susceptible to various kinds of accidents. As they have little protection compared to four wheelers, they are more likely to meet with accidents. Due to poor safety measures and dangers lurking on the road, motorcyclists end up meeting with accidents often. Two wheeler accident injury claims are not difficult to get. They are prone to injuries more than anyone else due to defective road surface such as road damage, mud, oil, or other spillages on the road. For any kind of injury suffered, there is an option of seeking compensation. As long as the injury has resulted due to the negligence of someone, one can always make a claim. Two wheeler accident claims are not difficult to make. The victims who are ladies, students and belonging to scheduled castes/tribes and / or economically weaker sections, are entitled to get free legal aid and advice. They are not required to engage lawyers by paying them huge fees. In every State/Districts, there are Legal Aid and Advice Boards/Committees to help the victims belonging to weaker sections of society.

In spite of all these, there is lack of awareness among the majority of the people who unfortunately fall prey to such accidents and are unable to approach the right forum to get relief which the law provides them. Taking into consideration all

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70 Article 39A, the Constitution of India.
these difficulties and hardships undergone by such unfortunate victims, every effort has been made to provide the necessary information, in connection with the law of compensation for the victims of Motor Vehicle Accident.

1.8 SOCIAL WELFARE LEGISLATION

The Motor Vehicles Act can be hailed as welfare legislation since it deals with comprehensively about the road accidents involving motor vehicles and also enabling the victims to claim compensation.\(^{72}\) The Motor Vehicles Act, 1988, between sections 165 and 176 comprehensively provides for the establishment of claims tribunals by the state governments for the purpose of adjudicating upon claims for compensation in respect of accidents,\(^{73}\) the procedure for applying compensation by the victims, procedure\(^{74}\) and powers\(^{75}\) of the claim tribunals in making the awards, liability of the insurance companies, enabling the state government to make rules, awarding interest on the compensation amount, providing for appeals etc. The Motor Vehicles Act, 1988 has also done away with the provisions of limitation period of six months to file a claim application for a victim. Taking into account the difficulties of a victim or his legal heirs in procuring the documents pertaining to an accident, the limitation provision has been deleted, which is definitely a step forward in the right direction. The Preamble to our Constitution\(^{76}\) speaks very loudly that the objectives and socio-economic goals must be achieved for which the Constitution of India has come into being. Legal Aid means, giving to persons of limited means, as that of victims of motor vehicle accidents and other aggrieved people of the country in dire need of legal assistance, grants or for nominal fees, legal advice, in courts in civil and criminal matters. Justice Krishna Iyer rightly observed, “Legal Aid is a delivery system of Social justice.”

Motor Vehicles Act is a Social Welfare Legislation under which the compensation is provided by way of award to the people who sustain bodily injuries or get killed in vehicular accident. The entire road traffic in India, the registration of


\(^{76}\) Articles 14, 38 and 39A of The Constitution, expresses the provision of equal justice and free legal aid.
all types of vehicles plying on the roads, the regulation of the drivers, road accidents, claims made by the victims of accidents and their wards etc are all depend upon a single piece of legislation known as the Motor Vehicles Act. Originally enacted in the year 1939, during the British rule in India, the Motor Vehicles Act has undergone a sea of changes between 1939 and 1988. The act has been amended comprehensively in the year 1988 in tune with the welfare State ideals of India and in order to meet the growing demands of its people. Almost all the states in India have enacted Motor Vehicles Rules,\textsuperscript{77} to regulate the registration of vehicles and the issue of permits to the owners of the vehicles and issue of license to the drivers. The characteristic feature of the act is that it accepts and fixes the cases of road accident victims as tortuous liability upon the culprits who cause the road accidents. The insurance companies are burdened with vicarious liability in paying compensation amount to the victims, though they may not be directly causing any accident.

The Accidents Claims Tribunals are very liberal and following only summary procedures in disposing of the claims applications, but they are very strict in imposing a burden upon the insurance company, provided that the accident and claim is proved and the insurance policy of the vehicle involved in the accident was actually in force at the time of the accident and the driver of the vehicle who caused the accident had a valid license at the time of the accident. While awarding compensation to an accident victim, the tribunal takes into account the nature of the injury he suffered, whether it is simple or grievous and if grievous, the duration of the treatment he has taken for treatment, the medical expenses involved, the percentage of permanent disability the victim has sustained, his loss of income etc. In order to assess the permanent disability of the victim, the Tribunal invariably relies upon the medical opinion of a medical expert. In the case of fatal victims, the Tribunal awards compensation to the victims legal heirs. In the fatal cases the Tribunal is guided by the principles of equity and good conscience. The Tribunal while awarding compensation in the fatal cases takes into account the age of the diseased person, his educational qualification, employment status, the income that he

\textsuperscript{77} The Central Motor Vehicles Rules, 1989, Notification No. GSR 590(E), dated 2\textsuperscript{nd} June, 1989. Published in Gazette of India, Ext. Ord., No. 287, Dt. 2-6-89, Pt. II.
earned at the time of death, whether he was an income-tax payer or not. The tribunal also takes into account the average life span of an individual, the legal heirs economic status, particularly the chances of employability of the widow of the diseased, her chances of getting remarried etc.

A large number of claims for compensation for injury caused by road accidents are pending in various Motor Accidents Claims Tribunal. The liability of the owner of the vehicle to compensate the victim in a motor vehicle accident due to the negligent driving of his servant is based on Law of Tort. Law of Torts is founded on the principle that every injury must have a remedy. Initially, the theory of payment of compensation was primarily linked with tort compensation, only if the injury or damage was caused by someone’s fault. Apart the legislature is presumed to be aware of the existence of the provisions of the Fatal Accidents Act, 1885 when the Motor Vehicles Act, 1939 was enacted and used the word “compensation” instead of “damages” as commonly known under the Fatal Accidents Act.

Majority of victims of accidents on the roads belong to the weaker sections of society. More than one lakh people die in road accident a year, meaning thereby that one person die every ten minutes. A large number of cases are hit and run where the particulars of the offending vehicles are not traceable. A large number of vehicles are uninsured and the victims do not get any compensation in those cases. Even in the case of insured vehicles, the insurance companies do not have any attitude to process and settle the claim and they wait for the award of the Tribunal. Most of the victims of the road accident are sole bread winners from the poorest strata of the society and their family starves after the death of the victim.

The road users have a fundamental right to life and liberty which shall include the duty of the State to ensure safety on roads and to ensure due process of law for expeditious payment of compensation in the event of injury or death of the road user arising out of permitting the use of motor vehicles on the roads. The State which is called as “Welfare State”, has not taken any step to propagate the remedies available to such unfortunate victims. Thus, there is need of bringing social awareness among the people, particularly the lower strata of society. Indian laws on

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79 Article 14 of The Constitution of India.
accident claims are quite stringent. The laws were formulated by prioritizing the best interests of the victims and those who are liable to disburse the compensation, such as insurance companies. Indian laws on motor vehicle accident claims are strict but beneficial for victims in claiming their legal rights in a court of law. The Fatal Accidents Act, 1885 was enacted in India to protect the legal rights of the accident victims and their legal heirs. This Act entitles the legal heirs of a deceased accident victim to claim compensation from the person who committed negligence.\(^8\)

When, in course of time, the progress of arts and sciences, brought about an industrial revolution the world over, the manual tools and implements of artisans were replaced by machines and the hackney carriages by speedy automobiles, deaths and bodily injuries doubled their toll, at work and on roads, and other legislations became essential to cope with such situations. There is gradual improvement in the automotive technologies also. It is also noticed that there is greater flow of passengers and freight with the least impediments. Due to increase, in the number of vehicles and the frequency of their movement, the road accidents have also gone up. Thereby, increasing the number of victims of road accidents. Sometimes, it is found that whole of the family has died in the road accident leaving behind the kids only. On the other hand it is also reported that due to road accidents people have become permanently disable, causing a permanent loss to their earnings, sometimes he is not in position to do any work.

### 1.9 TOP 5 STATES OF INDIA FOR ROAD ACCIDENT DEATHS

India has among the highest number of road accident casualties in the world. A government statistic says that a death occurs every four minutes on Indian roads. Causes for road accidents are many; the congested city roads, bad road surfaces, flooding of roads, reckless driving, inadequate traffic management and so on and so forth. In the years 2001 to 2011, more than a million people died in road accidents across India. Here are the top five states that has recorded the highest number of deaths due to road accidents.

The five Indian States that lead the charts in terms of number of deaths occurring on the roads are as follows:

\(^8\) Hazari v. Neki, AIR 1965 SC 1205.
1. Uttar Pradesh:

The number of deaths occurring due to road accidents in Uttar Pradesh is the highest in the country. In 2003 road accidents accounted for 7,854 deaths, since then the death toll has been steadily on the rise. In 2011 the death toll grew stratospherically witnessing an increase of 6,337 deaths over the previous year.

2. Tamil Nadu

The number of deaths occurring on the roads of Tamil Nadu in the year 2003 was 9,275. From the period of 2003 to 2005 the death toll remained almost the same.
Since 2006 however the death toll has been steadily on the rise topping off to 15,000 deaths in the years 2010 and 2011.

3. Andhra Pradesh

![Figure 4.4: Andhra Pradesh: Road Accident Death Toll 2003-2011](image)

The death toll caused due to road accidents in the state of Andhra Pradesh as at par with Tamil Nadu. In 2003 the state witnessed 9,679 deaths on its roads and the death toll has steadily risen since then. In the year 2011 however the number of deaths fell by a few hundred when compared to the number in 2010.

4. Maharashtra:

![Figure 1.5: Maharashtra: Road Accident Death Toll 2003-2011](image)
The number of deaths caused by road accidents in Maharashtra in 2003 was the highest in the country at the time. Since then the death toll has increased but fluctuations are seen over the years. In 2011 the death toll stood at 13,057, lower than Uttar Pradesh, Tamil Nadu and Andhra Pradesh.

5. Karnataka

![Figure 1.6: Karnataka: Road Accident Death Toll 2003-2011](source)

The number of deaths due to road accidents in the state of Karnataka stood at 6,195 in the year 2003. Since then there has been a rise in the death toll, topping off at 9590 in the year 2010. In the year 2011, the number of deaths fell by over 500 when compared to 2010.

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*\(^{81}\) plays a role in deciding the cases by the civil courts?
4. What are the exiting trends in grant of compensation in respect of bodily injury, death and damages to the vehicles and property?

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\(^{81}\) *Res ipsa loquitur*, means, “the thing speaks for itself”.

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5. 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?

1.10 CHAPTER SCHEME

This study is divided into seven chapters which are as under:

Chapter I: Introduction.
Chapter IV: Analysis of Workmen’s Compensation Act, 1923.
Chapter VI: Formation of Claims Tribunal and Award of Compensation.
Chapter VII: Conclusion and Suggestions.

For the purpose of systematic study, the present research work is divided in to seven chapters.

The first chapter as usual is Introductory. This chapter covers statement of problems, Aim and Objective of the present study, review of existing literature in the field of grant of compensation and research methodology. In order to give effective rights to the person injured or expired in an accident, Fatal Accidents Act, 1885 was enacted in India. This Act provided only a procedure and a right of named legal heirs to claim compensation from the person committing negligence. This enactment has worked in India for a comfortable long period. Before the Motor Vehicle Act, 1988 came in to existence, the Motor Vehicles Act, 1939 was applicable. This Act was amended several times to keep it up to date. Various Committees and the Law
Commission have gone into different aspects of road transport. They have recommended for updating, simplification and rationalization of this law. The Motor Vehicle Act, 1988, has been enacted with following objectives, i.e. Rationalization of certain definitions with additions of certain new definitions of new types of vehicles, Stricter procedures relating to grant of driving licenses and the period of validity thereof, Laying down of standards for the components and parts of motor vehicles,. Standards for anti-pollution control devices, Provision for issuing fitness certificates of vehicles also by the authorized testing stations, Enabling provision for updating the system of registration marks, etc.

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. Compensation awarded under this section 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 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. The Insurance Company cannot avoid the liability except on the grounds, which have been provided in Section 149(2) and not any other ground. In recent times, 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 absolved from liability to make payment to the third party but can receive such amount from the owner insured. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defence is available.

Motor Vehicles Act is a Statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of permit is entirely within the discretion of the transport authorities and naturally depends on

84 D. G. Bhagwan v. R.T.O., AIR 1967 Mys 139.
several circumstances which have to be taken into account. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had.\footnote{Veerappa Pillai v. Raman & Raman Ltd., AIR 1952 SC 192.}

The second chapter deals with Relevant Provisions Regarding Compensation in Torts and Crime. It deals with Criminal Liability in Motor Accidents. In this chapter an attempt has been made to study the nature and scope of penal liability of owners, agents and drivers of vehicles involved in accidents. This chapter also explains the various provisions of Indian Penal Code, which have direct bearing with the cases involving motor driven vehicles. Judicial Trends in Awarding Compensation to the Victims of Motor Accident have been discussed. This chapter also throws light on the application of various principles like, No Fault Liability, Act of God, Absolute and Vicarious Liability, Negligence, Contributory Negligence and application of doctrine of \textit{res ipsa loquitur} etc. in grant of compensation. 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} 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.”

Negligence and Tortious Liability: Inter Relation of Indian Penal Code

Under Section 279, Indian Penal Code, Death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another’s negligence. This view has been approved by the SC. There must be direct nexus between the death of the person and rash and negligent act, case was decided Suleman v. State of Maharashtra. Remote nexus is not enough. Section 279 covers only those cases which relate to driving on public way endangering human life while offence under Section 304-A extends to any rash and negligent act falling short of culpable homicide. So where prosecution made no efforts to prove that there was any rash or negligent act on the part of the driver, the accused was acquitted although he had run over the deceased.

According to Sec 279, IPC requires two essentials, viz., Driving of a vehicle and Such driving must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person, case was decided Padmacharan Naik v. State of Orrissa. Sec 304-A Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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 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

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87 Kurban Hussein, (1965) 2 SCR 622.
90 Badri Pd. Tewari v. State of Orissa, 1994 Cr Lj 389 (Ori)
91 1982 Cr LJ NOC 192(Ori).
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.

Third chapter is about Compensation under The Motor Vehicles Act, 1988 with a brief discussion of History, Object, Scope and Salient Features of the Motor Vehicles Act, 1988. In this chapter history of the Motor Vehicles Act, 1988 and various definitions of terms used in the Act have been discussed. This chapter also deals with role of the Lok Adalats in awarding compensation in motor accident cases, relevant provisions of Legal Services Authority Act, 1987 and Civil Procedure Code, 1908, The Railways Act, 1989, etc. are also examined. This chapter also throws light on powers, jurisdiction and finality of awards of Lok Adalats.

“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. Thus, there is a need of bringing social awareness among the people. 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.

**Fourth** Chapter deals with the **Analysis of Workmen’s Compensation Act, 1923** and it is all about Workers compensation in India which may seem to be a headache for businesses in India, but it is a boon for both employees and employers. It gives employees several benefits, which helps in keeping up motivation and loyalty towards the company. This, in turn, leads to better performance as well as reduced employee attrition rates. Workers compensation is the insurance coverage given by an employer to its employees. The benefits offered by a workers protection policy would depend on the type of policy chosen by the employer. The most common kind of benefit offered by workers compensation in India is medical benefits. Medical benefits are given for treating any medical problems that are associated with the job. These benefits extend for treating work-related accidents and illnesses, and insurance may be given by either the insurance company or the employer itself. Medical costs covered would include physical reinstatement, hospitalization, oral care, lab services, etc. Other benefits that may be added include temporary and permanent disability benefits and death benefits. A proper workers compensation policy is a huge benefit, even if you have only a small business.

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**Fifth** chapter is about **Appraisal of Public Liability Insurance Act, 1991** and it tells about award of compensation on no fault liability basis, requirement of

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insurance against third party risk,\textsuperscript{95} liability of insurer and defence available to insurer, rights of third party against insurers on insolvency of insured, duty to give information as to insurance, duty to furnish particulars of vehicle involved in accident, special provisions as to compensation in case of hit and run motor accident, special provisions as to payment of compensation on structured formula basis and power of central government to make rules etc., have been discussed in this chapter.

Public liability insurance\textsuperscript{96} protects you and your business against the financial risk of being found liable to a third party for death or injury, loss or damage of property or ‘pure economic’ loss resulting from your negligence. The legal cost and expenses incurred in defending the case with prior consent of the insurance company are also payable subject to certain terms and conditions. This type of insurance will only cover third party claims (i.e. not your own employees). The policy offers a benefit of Retroactive period on continuous renewal of policy whereby claims reported in subsequent renewal but pertaining to earlier period after first inception of the policy, also become payable. This is a mandatory policy to be taken by owners, users or transporters of hazardous substance as defined under Environment (Protection) Act 1986 in excess of the minimum quantity specified under the Public Liability Insurance Act 1991.

Motor insurance, an important branch of insurance, had its beginnings in the United Kingdom in the early part of the last century. The first motor car was introduced into England in 1894. The first motor policy was introduced in 1895 to cover third party liabilities. By 1899, accidental damage to the car was added to the policy, thus introducing, the comprehensive policy along the lines of the policy issued today. In 1903, the Car and General Insurance Corporation Ltd. was established mainly to transact motor insurance, followed by other companies. After World War-I, there was considerable increase in the number of vehicles on the road as also in the number of road accidents. Many injured persons in road accidents were unable to recover damages because not all motorists were insured. This led to the introduction of compulsory third party insurance\textsuperscript{97} through the passing of the Road

\textsuperscript{95} Section 146, The Motor Vehicles Act, 1988.
\textsuperscript{96} Public Liability Insurance Act, 1991, Ins. by Act No. 54 of 1994, Section 45, w.e.f. 14th November, 1994).
\textsuperscript{97} Section 146, The Motor Vehicles Act, 1988.
Traffic Acts 1930 and 1934. The compulsory insurance provisions of these Acts have been consolidated by the Road Traffic Act, 1960.

**Sixth** chapter deals about **Formation of Claims Tribunal and Award of Compensation.** Claims Tribunal, Its Establishment, Composition, Jurisdiction and Procedure have been discussed. In this chapter an attempt has been made to discuss the application for compensation, options regarding claims for compensation in certain cases under other Acts, procedure and power of claim tribunals, award of claim tribunal, appeal against decisions of claim tribunal, recovery of money from insurer as arrears of land revenue, bar on jurisdiction of civil courts and consumer forums, etc. Further, this chapter covers who can file claim, who can report to claim tribunal in case of accident, essential documents required to file claim, court fees to be deposited at the time of filling claim. 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.*\(^98\) The Supreme Court in *Shekhupura Transport Co. v. N.I.T. Insurance Co.,*\(^99\) held that for fixing compensation under Section110-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.

The last chapter i.e. **chapter seven** is of **Conclusion and Suggestions.** Some conclusions based on the study are drawn. At the end of this chapter, some useful and realistic suggestions are also made. 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 wronglings 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

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\(^98\) A.I.R. 1969 M.P. 79.

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 Section 166 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.

Fatal Accidents Act 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.

1.11 TRAFFIC MANAGEMENT

In most of the metropolitan cities in India, the road use patterns are very different from those of developed countries. In Indian cities, roads are shared by non-motorized vehicles in large numbers. The rapid urbanization in India after independence has resulted in the faster development of 23 metropolitan cities as per

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101 Section 1-A of The Motor Vehicles Act, 1939.
the 2001 census. While the alarming increase in road accidents has become a major concern in the country, which takes away more than 90,000 lives every year, a significant share of it is from the major cities.

Traffic management is presently a challenge for the traffic authority. In developing countries, city traffic is growing at a very fast rate. Rapid urbanization, industrialization, insurance and loan facilities etc. are some of the important factors, which accelerate the growth of traffic in urban areas. It leads to congestion on the roads, road accidents, deterioration of the environment, noise pollution, etc. The city of Delhi, like other cities of developing countries is facing an acute transport management problem. This primary transport management problem leads to many more secondary problems such as traffic congestion, high energy consumption, loss of productivity, and increase in accidental death rates and above all the vehicular parking problem.

With the development of civilization, act of negligence have become actionable wrong. In the English Law any person or the legal representative of deceased person who expired on account of negligent act of other can besides instituting criminal proceeding, recover damages under the Law of Torts. Accountable negligence consist in the neglect of use of ordinary care or skill towards a person to whom the defendant owes due of observing ordinary care and skill by which neglect the plaintiff have suffered injury to his person or property. Thus, negligence accompanied with losses to the other party give rise to an action.

In order to give effective rights to the person injured or expired in an accident, Fatal Accidents Act, 1885 was enacted in India. This Act provided only a procedure and a right of named legal heirs to claim compensation from the person committing negligence. This enactment has worked in India for a comfortable long period. Because of increase in automation and consequential losses of life and property in accident, it was considered that to give relief to the victims of accident claims an effective law should be brought in. To facilitate this, provisions have been inserted for compulsory third party insurance and to provide a machinery of adjudication of claim in Motor Vehicle Act by which Section 93 to 109 with reference to third party insurance and Section 110(A) to 110(F) with reference to

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107 by Amending Act No.110 of 1956.
creation of Motor Accident Claims Tribunal and procedure for adjudication of claim has been provided. Initially the liability was restricted to a particular sum but after 1982 the liability of the Insurance Company has been made unlimited and even the defences of the Insurance Companies have been restricted so as to ensure payment of compensation to third parties.

In the year 1982 a new concept of providing interim compensation on ‘No Fault’ basis have been introduced by addition of Section 92(A) to 92(E). By the same amendment, relief has also been given those persons who expire by hit and run accidents, where the offending vehicles are not identified.

According to sec 2(28), “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 35 cubic centimeters.\(^{108}\)

### 1.12 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.

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According to the reported incidents, these dealings have been 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**

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

**Seeking the Aid of a Competent Lawyer**

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 their claims. Rather, they will have more time to spend with their families while waiting for their injuries to completely heal.

Vehicular accidents are a global issue. Almost every part of the world deal with this problem every year. Millions of people are either injured, or lose their lives to this worldwide crisis. One of the vehicular accidents most concerning about are truck accidents. In California alone, truck accidents average about 400 fatal and 10,000 non-fatal accidents annually. Large vehicles, particularly heavy trucks, pose a great danger to other vehicles, especially their drivers and passengers. This grave threat often results to accidents. These accidents frequently occur because of a driver’s recklessness or negligence, due to dangerous conditions, or hazardous circumstances. Trucks are massive vehicles that weigh tens of thousands of pounds. Since trucks are bigger and heavier than other vehicles on the road, they are likely to result in more severe injuries than other accidents.

Many truck accidents are caused by the fault of the truck driver. Some of the driving errors they commit include:
- Driving without enough training and driving skills
- Driving over the allowed speed limit
- Driving under the influence
- Driving fatigue
- Improper securing of heavy loads
- Overloading
Inaccurate inspection before and during the trip

On the other hand, majority of these truck accidents are due to the fault of the smaller vehicular drivers. Their common mistakes are:

- Driving in the blind spots of the truck
- Overtaking or cutting lanes in front of the truck
- Getting too close behind the truck
- Driving under the influence
- Reckless driving
- Speeding
- Driver boredom and mobile phone use

Other than the factors mentioned above, reasons of truck accidents include machine failure, mechanical difficulties, bad weather conditions, dangerous road conditions, defective equipment, hazardous materials such as flammable substances, heavy cargo and so on. As any other phenomenon or calamity in this world that starts with a cause, truck accidents also come with effects. With horrible disasters like truck accidents, we can expect people to get hurt. They often sustain severe injuries to their brain, spinal cord, legs, and other susceptible parts of the body. Worse, truck accidents often claim lives, millions of them. People lose valuable amounts of money for medical expenses, therapies, and medication. They also lose potential income as full recovery from the injuries may take time. There are even instances when people fail to recuperate due to the immense damage done to them by the accident. People do not only obtain physical injuries from truck accidents. Victims also suffer from psychological effects, like trauma and post-traumatic stress. They also endure emotional pain and suffering, especially for the people who lost their loved ones to the accident.

Vehicle accidents can be a terrible thing and bring about equally terrible consequences from severe injuries to tragic death. If you become involved in a vehicle accident, it may be that the situation was too unexpected for you to prevent it from happening, but there are steps you can take to avoid, as much as possible, terrible consequences.

- **Seek medical attention** – after an accident, the adrenaline rush, excitement, and stress that you initially felt may cause you to have an inaccurate assessment of your physical condition. As such, right after everything, from
you, your vehicle's involvement, and other necessary details have been accounted for by authorities, take care to have yourself undergo emergency medical checkup, drop an urgent visit to a care facility or family doctor. Doing this will help you to determine properly the effect of the accident on your well-being. Moreover, having a check up with your doctor or any care facility will allow you to secure a proper documentation of the particular injuries you have sustained and their severity. More significantly, it will allow you to get the necessary treatment or prescription that you need as soon as possible in order to prevent any injuries from aggravating and cause life harming outcome.

- **Conduct Information Gathering** – after an accident, getting information from the other persons involved in the accident is necessary and critically important. Getting names, addresses, insurance policy numbers, license plates, type and make of vehicles involved and other important information are very helpful data in determining who were at fault and those who can be held liable for the accident. If you were brought in for an emergency check up, note the hospital's name, address, and the names of physicians who did a check up on you. Also make sure to get the police report number from the police officers who showed up on the accident scene for this will be needed for you to obtain a copy of the police report, later on.

- **Staying Organized** - organize all of the facts and documents you have gathered by writing them up chronologically and filing them properly. Your efforts will come in handy once your lawyer will need these important aspects in your case.

- Most of all, consult with a well-experienced attorney who has specialized knowledge about vehicle accident laws.

### 1.13 COMPENSATORY JUSTICE UNDER THE CONSTITUTION

A tort is a breach of a duty fixed by law or in other words a violation of legal right of any person. Many legislative enactments creating legal rights also provide for remedies for their violations. But for specific provisions in these enactments for many violations of rights, the victim might have to seek remedies under law of torts.

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109 Article 41 of the Constitution of India.
Our constitution also creates certain rights. Some of them have been mentioned as fundamental rights. It also makes provision for remedies in case of their violations.

Clause (i) of Article 32 of the constitution provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights conferred by Part III of the constitution is guaranteed and clause (ii) of Article 32 provides that the Supreme Court shall have power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari whichever may be appropriate for the enforcement of fundamental rights. Article 226 also empowers the High Courts to issue within their jurisdiction directions, orders or writs. Thus, High Courts can provide remedy for enforcement of not only fundamental rights but also in cases of violation of other legal rights.

Right to life includes right against negligent death. The Supreme Court held that every injured person brought for medical treatment should instantaneously be given medical help to preserve life and thereafter the procedural criminal law be allowed to operate in order to avoid negligent death, a case was decided known as *Permanand Katara v. UOI*. The State Shall Secure that the operation of legal system promotes justice, on a basis of equal opportunity and shall in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities.

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110 Article 39A of the Constitution of India.