Review of Literature
CHAPTER II

REVIEW OF LITERATURE

The aim of the study is to identify, describe and analyse the factors that have an impact on 'Third Party Motor Claim Management" by public sector insurance companies. In line with this aim, the literature review is done to identify and highlight the important variables, underlying concepts in 'Motor Third Party Motor Claim Management' and to document the significant findings from earlier research that will serve as the foundation on which the theoretical framework for the current investigation can be based and hypothesis developed.

For proper and clear understanding the review of literature on 'Motor TP claim' is divided into two segments called 'General issues' and 'Legal cases'. The literature on 'Motor Third Party Claim', 'General' is again sub divided into 'literature on problems' and 'literature on solutions'. And also, the literature presented under suitable sub- headings for clear understanding of the issues.

Review of Literature on Motor TP Claims Management-Classification

Figure 2.1

2.1. REVIEW OF LITERATURE ON MOTOR TP CLAIM MANAGEMENT - GENERAL

2.1.1 PROBLEMS IN TP CLAIMS MANAGEMENT

Impact of Commercial Vehicles on Third Party Claims

Babu Paul (2006) in his article, points out that as a single category, commercial vehicles contribute to the largest number of claims. This means that as much as two-thirds of the outgo is on account of frauds and the frauds taking place both within the company and outside the insurance company.
Bhat (2006) examines in his article that the largest number of road accidents stems from commercial vehicles, especially goods carrying and public transport vehicles. He also adds that in such a scenario, the importance of motor insurance assumes enormous proportions. The motor insurance business accounts for over a third of the total general insurance business in the country. Yet, it is a loss making portfolio, owing to high outgo, the worst being the third party segment. He also states about other problems like unlimited liability with no accountability on the part of the wrong doer, favourable to the victims, no time limit for filing a claim, with liberty to file it anywhere, etc, causes hardship to the insurers.

**Third Party Claims Ratio**

Business Line (2006) states that motor portfolio accounts for around 45 percent of the Rs 21,000-crore general insurance premium. In spite of that, companies have seen a significant drop in their underwriting profit due to losses from this segment. The claims ratio in this segment is above 200 percent. Public sector insurance companies currently cover around 90 percent of the commercial vehicles. There is a fear that in the free-price regime, commercial vehicles may be refused insurance if the premium is not commensurate with the loss experience.

In Business Line (2007) it was stated that in the year 2005-06 the third party claims ratio for Oriental Insurance 180.11, National Insurance 285.64 and New India Assurance 190.69.

**Accident level and Response Time**

Venkatesan (2010) in his study states that a three judge bench of Supreme Court pointed out that India had 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 bench said that there was an urgent need for laying down and enforcing road safety measures and establishment of large number of trauma centers' and first aid centers'.
Attitude of the Court towards Third Party Claims

Bhat (2006) in his article "Escalating Claims, Tumbling Profits—TP makes a big dent in insurer's pockets", points out that for the sake of social obligation, the courts have insisted that the claims of victims be necessarily honoured by the insurers. Even in cases of no-liability, the insurer is asked to compensate the claimants and recover the sum from the owner. The chances of recovery are absolutely bleak for different reasons. Many a time, the insurer is saddled with the unwarranted liabilities as well. The authorities refuse to accept the fact that this portfolio needs to be left to insurers to manage in terms of inflow and outflow. The courts have turned a blind eye to the pleas of the insurers. The public in general, rightly or wrongly, has a feeling that the insurers, though cash-rich, are averse to paying the compensations. No one realises that the money is collected from the payment of large number of victims. To make matters worse, the courts now seem to be competing with each other in allowing liberal compensations.

Huge and Unmindful Compensation/Awards

Bhat (2006) also adds that the 'Motor Third Party' makes a big dent in insurer's pockets. While examining about how the courts go overboard in granting compensations by courts he gives examples like the case against United India, wherein the Supreme Court awarded over Rs. 12 crore for the death of an 'Non Resident Indian'. The award for over Rs. 14 crore against Oriental Insurance, by a tribunal in Delhi in April 2005, shows that the courts now seem to be competing with each other in allowing liberal compensations.

Suresh (2006) in his article 'Naming the figure' points out that with regard to the 'Third Party Claims' to insurers, the law and its interpretation have, over a period of time, been evolving strongly in favour of the claimants. The desire of the insurance industry to contest the cases for compensation and the prolific style of contest by insurers have been halted by the paradigm shift of the Indian courts. Some feel that these decisions ought to serve as the wake up call for the insurers but the repeated message of the Supreme Court is clear, that the insurers must act and serve as insurers and not as adversary parties.

Ananthakrishnan (2006), while attempting to examine the legal aspect in TP claims, points out that in Ravindra Kumar Mishra Vs. Dular Ram and Others, on appeal
to the High Court of Chattisgarh held that, the Tribunal should have a humane approach and not be technical or hyper-technical in performing its duties. And also he states in the referred case, Ajmeera Govind Vs. Principal, Arvindo Residential School, Bodhan and another (2005 ACJ 1436) The High Court of Andhra Pradesh held that, it is imperative to award compensation under different heads. While awarding the compensation, the judge observed and stated that most of the District Judges are not applying their mind to the principles evaluated by the series of decisions written by the superior courts, as well as the provisions of the Motor Vehicles Act while awarding compensation. The judge also states that the question of whether the Tribunal is a court subordinate to the High Court for purposes of Section 115 C.P.C and revision against its order is maintainable has been the subject matter of many cases before different High Courts.

Ramesh (2007) in his article "Shortcomings galore in Motor Vehicles Amendment Bill: Experts" discussed about Suo motu action by courts and points out that, under the existing law, the amount of compensation paid is determined by the formula provided in Section 163 A. The Amendment Bill introduces a new Section 163 B which says that the victim could get a higher compensation by proving negligence on the part of the vehicle owner or driver. Another Section says that the victim could choose relief under either 163 A or 163 B and if he fails to get relief under one, he cannot go to the other. But the 'Motor Claims Tribunal' has the powers to alter the application from one section to the other. In other words, while a party cannot retrace his steps, once having exercised the option, the tribunal is enabled to do so. He also states that the experts feel that what a party cannot do on his own, the courts cannot be allowed to do for him.

Increase in Premium and Loading

Sarbajeet Sen (2003) states that, in an in-house muddle of sorts, the 'Tariff Advisory Committee' (TAC) seems to have shown the way for general insurance companies to flout the 'Insurance Regulatory and Development Authority's' (IRDA) guidelines on increase of motor insurance premium. The insurance companies have started taking advantage of the recent 'Checklist for Loading' prepared by the 'Tariff Advisory Committee'(TAC) to jack up the premium on renewal, even when there has been no adverse claims' experience of the vehicle in the previous year.
Business Line (2007) points out that, to mitigate the burden of motor vehicle owners from the recent third party premium hike, the 'General Insurance Officers All India Association' (GIOAIA) has asked the Union Government to withdraw service tax on insurance premium. It also stated that the State Vice-President of the Association has urged the Centre and PSU general insurers to enlighten the public and policy holders regarding the circumstances that has led to the 'Third Party Premium' hike. He pointed out that, the premium hike become inevitable as the 'Third Party Claim Ratio' is 250 percent.

**Unlimited Liability and Pricing**

Bhat (2006) in his article "Escalating Claims, Tumbling Profits, 'Third Party' makes a big dent in insurer's pockets" examines the present low rates of premium and points out that the flaw lies with premium rates now being charged. The premium is abysmally low and does not keep pace with the increase in the liabilities due to high risk involvement. If the outflow is high in this class of business, the pricing is a complete mismatch. At the root of this is unlimited liability. The demand of the insurers is to increase the premium and impose a statutory cap on the upper limit of compensation in respect of third parties, which at present is unlimited.

Sarbajeet Sen (2003) in his study states that the Committee to detariff motor insurance, which is an IRDA's own creation commented on IRDA's decision to impose a cap on increase in motor insurance premium on renewal. The Committee has said that the imposition of the maximum limit on loading (increase in premium on renewal) does not reveal any rationale. The cap on loading had been specified by the authority after it had been hounded by representations from transporters alleging that insurance companies were charging arbitrarily and exorbitant renewal premium. However, the 'Detariffing Committee' has said that the cap on loading runs contrary to the accepted rules.

**TP claims in Total Claims**

Rao (2006) in his article "The Bottom Line, the impact of 'Motor Third Party' losses on financial performance" points out that 'Motor Third Party' earned premium is just 16% of total earned premium but the 'Third Party Claim' outstanding is 72%. Hence this is a high risk portfolio from the financial accounting angle. Total motor business, forms 48% of total (EP) 'Earned Premium'. Of this 32% from 'Motor Own Damage' (OD)
premium and 16% from 'Motor Third Party Claim' premium. Net incurred losses from motor is 64% of total incurred losses. 'Motor Third Party' alone contributes 43% of the total claims cost. Hence the total 'Third Party Claims' loss ratio is 243%, if other procurement cost of 35% were added, then it will increase to nearly 280%.

**Outside Court Settlement Scheme**

Babu Paul (2006) states that the 'General Insurance Companies' and its subsidiaries in 1992 launched a programme called "Jald Rahat Yojana", for the settlement of 'Third Party Cases', without the claimants having to approach the court. Although the intentions were good, it suffered on some practical aspects and was withdrawn within a year of launch.

**No Jurisdiction and Limitation**

Babu Paul (2006) also points out that the cases are reported after a considerable time lapse and hence a reality check on the correctness of the incidents itself is lost. There is also no time limit for claiming compensation in motor accident claim. The geographical jurisdiction is also removed from such cases, making it very difficult for the companies to investigate and take up proper defence. These provisions are more misused than used to give relief to a needy victim. There have been instances of the same person filing claims at different tribunals at different places for the same accident.

**Major Reasons that makes the Portfolio Unmanageable**

Bhat (2006) in an attempt to investigate the reasons that make the insurance portfolio unmanageable, points out in his article that the major reasons that make the portfolio unmanageable and eating into their resources, is because it is the only class of business, where the insurer needs to deal with a stranger to the insurer, not even a party to the contract for the wrong doing of a party who, though in existence, does not come forward to strengthen the insurer's hands. He also states that the intention is also apparent from Section 149(2) of the M.V. Act. However, the insured hardly ever cooperate with the insurers. This weakens the insurers' position before the tribunals and in the end, they are burdened even with avoidable and uncalled for liabilities.
Mandatory Requirements of TP Cover

Business Line (2006) in the article "Third-party motor cover can't be denied: IRDA, The regulator warns insurers of necessary Action if complaints are received from the public with evidence", the IRDA warned the general insurers that the motor third-party insurance cover is mandatory, required under Section 146 of the Motor Vehicles Act 1988, and cannot be denied by any insurer and such denial would attract necessary action.

Constituting CBI for Insurance Claim Fraud Cases

In the Tamil Nadu State Judicial Academy, (2009) Refresher Course for District Judges on 31.10.2009, Justice K.N.Basha, Judge, High Court, Madras stated that insurance claim fraud cases were also increasing and as a result, this court, in a decision in National Insurance Co. Ltd., Coimbatore Vs. K.Nandabalan reported in "Law Weekly" felt the necessity of constituting one central agency for dealing with the bogus insurance claim cases with a view to stop such a serious menace defeating the very object of the beneficial legislation.

The First Bench of the Court (2006) in National Insurance Company Limited Vs. Director General of Police and 28 others reported in 2006-2-L.W. 176, held that considering that crores of rupees of public money is involved and larger public interest is at stake in view of the false and bogus insurance claims thought it fit to entrust the investigation to the CBI. The investigation was taken over by the CBI, as a result, 800 'Motor Accident Claim Petitions' were withdrawn before the Tribunals and the claims of compensation to the tune of Rs.100/- crores were withdrawn.

Fraudulent Claims

Dinamalar (2002) points out that thirty eight persons including Police, lawyers, Doctors who involved in the seven cases filed by the United India Insurance company will be properly dealt with, informed Namakkal District Superintend of police. He also added that after preliminary enquiry the cases will be transferred to CB-CID for detailed enquiry.
Babu Paul (2006) while examining the fraudulent claims in his article states the position of insurers such that, the end result of these fraud claims is that it pushes up the cost of insurance. He also says that at present, both the pricing and the payouts of 'Third Party Insurance' is fixed by the government and the insurers are in an unenviable position of administering a portfolio over on which they have very little control. The free pricing of 'Third Party Insurance', which is likely within a year, will have a disastrous effect on the common man, as the rates will shoot up three to four times, especially for commercial vehicles. The only way is to control the claims, at least ensuring that the system is not misused by fraudulent means. The society has a larger responsibility than the insurers in ensuring this as insurance neither generates nor extinguish funds but merely manages it.

**Internal and External Frauds in Insurance Companies**

Babu Paul (2006) in his article "The big con game" have discussed that there are frauds taking place within the insurance company relating to 'Third Party Claims', such as pre-dating the cover to accommodate a vehicle that had an accident and misuse of cover notes and the computer system to provide coverage to vehicles already involved in an accident. He also states that the following are the main ways in which frauds are committed within the office or with the knowledge and connivance of some employees of the insurance companies. He also reiterates that the internal frauds are on the decline, as the main accessory to these frauds was the cover notes which are now used with much care. The introduction of more secure software and controls has helped in reducing such malpractices. The employees are also sensitized on this issue, which has also brought down such internal frauds to considerably lower levels.

He also discussed about the frauds committed outside the span of insurance companies like Converting non-road traffic accident cases into 'Road Traffic Accident' (RTA) cases, substitution of the vehicles -various combinations thereof, substitution of driver, addition of persons not involved in the accident, inflated medical bills and such other documents, hit and run cases etc.

Daily Thanthi (2009) in the article 'Insurance fraud cases to be enquired by CBCID, High Court' it was stated that out of 29 fraud cases taken for enquiry, the CBI submitted its report to court in 21 cases. On the petition by the director CBI in Madras
High Court stating the inadequacy of staffs in CBI. It was held that due to inadequate staffs to handle the cases in CBI hereafter the motor fraud claim cases are to be handled by state CBCID and the Additional Director General of Police has to form a separate cell and all the infrastructure for CBCID has to be provided by the insurance companies.

The New Indian Express (2002) gives details about the fraud stating that, a massive fraud in third party insurance claims has been busted in Namakkal district. In recent times a sum of Rs 5 crore is said to have been fraudulently claimed by the dubious network involving lawyers, police, private hospital doctors and RTO officials. Reacting to the growing number of complaints of fake claims made by the National insurance company, the Namakkal district police have commenced investigations into all reported accident cases between three to 45 days. Due to alarming raise of 'Third Party Accident Claims', the Rasipiraram branch of United India Insurance Co. has stopped renewing insurance policies of vehicles and has planned to down its shutters.

Dinamani (2002) issued a news column that a complaint was registered with the police stating that it was estimated that in Namakkal district alone more than 10 crores is said to have been received by way of fraudulent 'Third Party Claims' cheating the public sector insurance companies. A police officer who worked previously in Namakkal was also included in the case for allegedly getting Rs 25 lakhs in a fraudulent claim by using his son's name.

Elangovan (2006) in his article, "Escalating Claims, Tumbling Profits—TP makes a big dent in insurers pockets" points out that the special investigation team of the 'Central Bureau of Investigation' carried out simultaneous raids in five towns of Tamil Nadu as part of its investigations into the multi-crore 'Motor Accidents Insurance Claims Scam'. This comes close on the arrest of an Orthopaedic surgeon in Dharapuram and a senior insurance officer in Coimbatore. A senior CBI officer coordinating the operation told The Hindu here that a few more arrests could be expected shortly. While 1,061 exorbitant and hence dubious 'Motor Accident Claims Original Petitions' (MCOP) involving Rs. 47 crore needed to be investigated, the CBI, facing manpower shortage, would take up only 11 cases for detailed investigation. The progress of the investigation, however, depends on the co-operation of the State CB-CID, which was, till recently, investigating the cases.
Indian Express (2002) The Namakkal district crime branch, which is doing a preliminary investigation into the multi crore fake insurance claim racket, has registered an FIR against 6 lawyers and 6 doctors. Based on the complaint lodged by united India insurance company, the police has registered a single FIR against a list of advocates and doctors. Reacting to this the Namakkal bar council (Crime) members boycotted the court today. The agitated lawyers claimed that their colleagues are innocent. However police sources said that following the preliminary investigation by the district crime branch the cases will be transferred to CB-CID as reported earlier. In the detailed enquiry by the CB-CID, no one will be spared sources said doctors, police as well as the advocates who are not in the FIR but found guilty will be brought to book, the police sources added.

Police Involvement

Bhat (2006) in his article "Escalating Claims, Tumbling Profits— TP makes a big dent in insurers pockets" points out about the police involvement in 'Third Party Claim' problems. He states that the police, by law, are required to inform the insurer and the nearest tribunal immediately after a vehicular accident is reported, which is not followed. If done, it will enable the insurer to take immediate cognizance of the case, investigate, determine the liabilities right at the beginning and finally approach the claimants with an offer of settlement. This will also thwart subsequent exaggeration of claim by unscrupulous persons. On the contrary, many fraudulent claims have come to light, where the involvement of the police is suspected.

Supreme Court (2007) Judgment: Dr. Arijit Pasayat, J.Prayer in this writ petition is for direction to the various State governments and the Union territories to ensure that the mandate of Section 158 (6) of the Motor Vehicles Act, 1988 is complied with without exception. It is stated that Section 158 (6) of the Act casts a statutory obligation on the concerned police officers forward to claims tribunal having jurisdiction about the death or bodily injury any person so recorded in the police station. Further mandate is contained in the provision about the sending copy thereof to the concerned insurer and the owner of the offending vehicle. The owner of the vehicle is obligated to forward the report to the claims tribunal and the insurer.
Corruption Rate in India

Transparency International (2007) Berlin-based organization, conducts annual survey on world corruption countries. The corruption perceptions index defines corruption as the abuse of public office for private gain and measures the degree to which corruption is perceived to exist among a country’s public officials and politicians. The scores range from ten (squeaky clean) to zero (highly corrupt). 'Transparency International' considers the borderline figure, distinguishing countries that do and do not have a serious corruption problem. India’s score is 3.5 and stands 72nd rank.

Gratuitous Passengers and Coverage

Giridharan (2006) in the article "The Insurer's Call, Amendments that insurance companies are looking for" examines that previously under 'Act Policy' the gratuitous passenger is not covered but it was held by the Supreme Court that in respect of all accidents occurring after July 1, 1989, be it any class or type of vehicle, gratuitous occupants were statutorily covered. It may therefore be necessary for insurers, to suitably modify the terms and conditions in all policies of insurance. Section 147 (1) has also been amended as on November 14, 1994, to include the phrase 'including owner of the goods or his authorized representative carried in the vehicle'.

Pay and Recover Clause

Giridharan (2006) in the article "The Insurer's Call, amendments that insurance companies are looking for" have discussed about the 'Pay and Recover Clause' and states that it was always a standard practice for courts to look for avenues to fasten liability on insurers in keeping with the concept of welfare legislation. The mandate of the Parliament to provide succor and relief to accident victims would be reflected, only if awards were passed against insurance companies. There have been judgments aplenty of certain High Courts to the effect that the insurance company shall be liable to pay compensation to the victims at the first instance and thereafter look for recovery of the same from the insured.

Adequacy of Solatium Fund

Giridharan (2006) in his article "The Insurer's Call, amendments that insurance companies are looking for" examines about the 'Solatium Fund' and points out that the
'Solatium Fund' at present provides for payment of compensation are notably much less and therefore result in payment of less compensation, the existing provision in respect of 'Solatium Fund' drives the victims to fall a prey to covert methods available to overcome the predicament. The size of the 'Solatium Fund' has to be enlarged and replenished every year to the extent of actual payments to facilitate payment of compensation even in hit-and-run accidents on merits to be decided by the tribunals.

**Burden of Proof Liability**

Ramesh (2007) in the article "Shortcomings galore in Motor Vehicles Amendment Bill: Experts" while examining the burden of proof position points out that, the law provides certain defences to the insurance company to avoid paying liability. The established principle in law that, while the burden of proof is usually on the person asserting a proposition, but where facts are 'Within the Special Knowledge' of an individual, the burden would be only on that person. Facts such as the driver was holding a valid license are 'Within the Special Knowledge' of the insured, and it is nearly impossible for the insurer to prove. However, the insurance company will have to prove that, the driver did not have a license or the vehicle did not have a permit. The amendment bill does nothing to remedy the situation.

**Legal Aspects regarding Driving License**

Motor Vehicle Act (1988), Section 3 states about the necessity for 'Driving License' as follows, No person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-Section (2) of Section 75 unless his driving license specifically entitles him so to do. The conditions subject to which sub-Section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

Giridharan (2006) in the article "The Insurer's Call, Amendments that insurance companies are looking for" examines about the legal aspects regarding driving licenses and states that, after July 1, 1989, the expression 'has held' has been replaced by the expression 'holds an effective driving license at the time of the accident' and even now, a
twin obligation is cast on the insurance company to prove the following two contingencies. That the driver did not hold a valid license at the time of accident, that he was not disqualified from holding or obtaining one. Since the conjunction 'and' is used to join the two phrases in the said clause, there is a legal duty to prove both aspects to avoid liability. Phrase on disqualification to be deleted from the 'Drivers Clause' in policy and also amend Form 51 framed under Rule 141 of 'Central Motor Vehicles Rules'.

Giridharan (2006) also points out in the article "The Insurer's Call, Amendments that insurance companies are looking for" about Section 149(2), Section 149(4) of the Motor Vehicle Act and its implications on insurance companies and points out that as on July 1, 1989, there was an innocuous change made in Section 149 (4), which brought about a serious change in the nature of liability cast on the insurance company. Earlier the insurance company could establish any one of the defences open to them like absence of valid driving license, use of vehicle contrary to purpose of permit etc. and avoid liability altogether, under the present dispensation, they cannot do so. It was perfectly open to a court to hold that though the insurance company had proved the defence available to them in Section 149 2(a), they would be liable to pay compensation to the victim at the first instance and would at best be entitled to seek reimbursement later from the owner of the vehicle. This was a very significant and dramatic change and, being a parliamentary mandate, was enforceable against the insurance company.

**Public Place Vs. Private Place**

Giridharan (2006) in the heading "The Insurer's Call, amendments that insurance companies are looking for" examines the terms Public place Vs. Private place in Section 146/Section 166 of the Motor Vehicle Act and states that according to Section 146 of the Motor Vehicle Act, there is a compulsion to avail insurance for use of vehicle in a public place. Under Section 166 of the Act, the claims tribunal can be approached for compensation irrespective of the place of occurrence of the accident, be it public or private. Hence Section 146 can be amended in line with Section 166 to include all accidents, irrespective of the place of occurrence.
Limitation for Lodging Claims

Giridharan (2006) in the article "The Insurer's Call, Amendments that insurance companies are looking for" examines the limitation for lodging claims under Section 166 of Motor Vehicle Act and states that "Section 166 of the Motor Vehicles Act has totally deleted the period of limitation. The Supreme Court has also since held that, the benefit of such deletion shall accrue to the benefit of all claims, except those which have already been brought to Court. The effect of this decision is that, even old claims can be brought to court now. Such claim petitions posed serious practical difficulties for verification of insurance policies, not to speak of any defences that may be available.

Jurisdiction to File Claim

Giridharan (2006) in his study "The Insurer's Call, Amendments that insurance companies are looking for" analysis about the 'Jurisdiction to File Claim' under Section 166 of Motor Vehicle Act and points out that after the amendment of Section 166, it is now open to file a claim petition at any place, be it the place of occurrence of accident, place of residence of victim or place of residence of respondents. Consequent to the above, several claims arising from an accident have been filed at different centers and it has not been possible for insurers to have them heard together, as transfer applications are not entertained. Serious problems have arisen due to duplicity of claims and due to separate claims by rival claimants.

Pending Cases and Inadequate Claim Settlement

Radhika Menon (2006) while explaining the magnitude of third party claims, in her article states that on an average, each of the four companies has around two-and-a-half lakh pending cases with respect to third party accident claims. These are cases where accident victims sue insurance companies for inadequate claim settlement.

Claim Options Under Section166/163A of M.V. Act

Giridharan (2006) in the article "The Insurer's Call, Amendments that insurance companies are looking for" examines the claim options under Section 166 or 163A of Motor Vehicle Act and expresses that Section 163A. (Schedule of listing Compensation) one provision that requires to be incorporated is that in the case of death of unmarried
persons, the 'Multiplier' has to be fixed on the basis of the ages of the parents if they are the claimants. It also has to be incorporated in the Act by specific mention that, payment of compensation under Section 163A would imply that, the claimants do not have recourse to claiming again under Section 166.

Right of Insurer to Dispute on Merits Section 170 of M.V. Act

Giridharan (2006) in the article "The Insurer's Call, Amendments that insurance companies are looking for" while examining the right of insurer to dispute on merits Section 170 on Motor Vehicle Act states that under Section 170, there is a duty cast on the insurance company to obtain permission to contest on merits. More often, the owners of vehicles do not contest the claims and remain ex-parte. This imposes an additional burden on the insurer in defending the claim. It would only be fair for the insurer to seek an amendment under Section 170, to take over the defences of the owner of the vehicle as a matter of course, instead of being compelled to seek permission.

Ramesh (2007) in the article "Shortcomings galore in Motor Vehicles Amendment Bill: Experts" examines the position of the insurers in Section 170 of the Motor Vehicle Act after the amendment bill and states that in an accident compensation case, the victim sues the motor vehicle owner. The owner will have to defend himself and if he loses the case, the insurer pays the victim on behalf of the owner. He also states that obviously, the insurer stands to lose if there is a collusion between the insurer and the victim. In such cases, under Section 170, the insurance company is indeed allowed but after taking the permission of the Tribunal first. This, experts say, is unacceptable. They call for deletion of Section 170, which the Bill retains.

Writ against IRDA on Fixation of Tariff

Kerala High Court (2007) the petitioners have challenged the decision of the IRDA relating to fixation of tariff in respect of motor vehicles for 'Third Party Insurance'. The honorable High Court after having noted that, the tariff has since been slashed during the pendency of the writ petition observed that, there is no lack of jurisdiction or lack of authority for IRDA in the matter of fixation of tariff and refused to entertain the said writ petition. The court noted that IRDA has demonstrated that it has considered all relevant material and also afforded an opportunity of hearing to the petitioner, before fixation of
the rates. The court also observed that Section 146 of the Motor Vehicles Act, 1988 that seeks compulsory insurance to third party, does not give the petitioner any added advantage to stand against any decision of the authority, on the question of tariff.

**Filing a Claim before Consumer Court and M.V. Act 1988**

Pankaj Anup Toppo (2004) while examining Motor Vehicles Act, 1988 Vs. Consumer Protection Act states that if a person dies in a motor vehicle accident, his next of kin cannot file a claim before the 'Consumer Courts'. Such claims can be filed only with the motor accident claims tribunal, set up under the Motor Vehicles Act, 1988. The Uttarakhand State Commission, quoting a Supreme Court ruling, directed one such claimant to approach the tribunal. The Supreme Court had ruled that Chapter xii of the 'Motor Vehicles Act' creates a forum to hear cases relating to claims arising out of motor vehicle accidents. Being a special law, that would prevail over a general law such as the 'Consumer Protection Act', it ruled.

**Motor Vehicles Amendment Bill- 2007**

Ramesh (2007) wants to figure out the implications on the amendment of Motor Vehicle Act and states in the article "Shortcomings galore in Motor Vehicles Amendment Bill: Experts" that the industry blames the lacunae in the 'Central Motor Vehicles Act' and the pro-victim stance of the judiciary for these losses. The Motor Vehicles Amendment Bill, 2007 has not tackled important issues like frauds in 'Third Party Claims', insurance companies are made to pay even if they could establish negligence on the part of the 'Third Party', and often the burden of proof is on them, even when they have no means of proving.

**Contributory Negligence**

Ramesh (2007) in his article "Shortcomings galore in Motor Vehicles Amendment Bill: Experts", examines the 'Motor Vehicle Amendment Bill 2007' and states that the amendment bill does nothing to recognise 'Contributory Negligence' as a defence available to the insurer. For example: If a person who is drunk suddenly strayed into the middle of the road and got hit, the insurance company will still have to pay, even if the fact that he was drunk and came in the path of the vehicle is established.
Enormous Variance in Injury Case Awards

Suresh (2006) in the article "Naming the figure" makes a comparative study on the enormous variance in injury case awards, the reported judgments of the 'Supreme Court' contrasted with the judgments of the 'Madras High Court' and given examples of such cases to prove his statement.

Principle of No Fault Liability

Motor Vehicle Act, 1988, Section140 liability to pay compensation in certain cases on the 'Principle of No Fault' is given as follows, Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

Difficulty in Estimating Outstanding Claims

Shivkumar (2006) in the article "Insurers drop demand to cap motor cover liabilities" points out that the major problem the insurers had with the 'Third Party Liabilities' was that the claims were fixed by the motor accident tribunals, as a result of which the 'Probable Maximum Loss' (PML) were unknown. He also states that the major problem lies not in the value of claims but the number of claims, which are on the high side comparing to global trends. Even if caps were introduced, it would not solve the problem of 'High Claim Ratio'.

Rao (2006) in the article "The Bottom Line, The impact of Motor third party losses on financial performance" points out that, when analyzing the assumptions in estimating 'Third Party Claims', he states that the insurer depends upon its operating offices to make the estimated provisions on a case-to-case basis. But no way has been found to ensure that there is reasonable financial and administrative discipline within the system to work out, the outstanding estimates in this sector that hardly contributes 16 percent to the total corporate EP. Omission or other reasons such as insufficient information hampers estimation of PML.
Third Party Claims Ratio

Business line Daily (2006), states that the 'Third party Claims' ratio raising at an alarming level and it becomes unmanageable for the public sector insurance companies to manage the 'Automobile Third Party Claims'. Motor portfolio accounts nearly 45 % of general insurance premium. For example In the year 2005-06 the third party claims ratio for Oriental insurance is 180.11, National insurance 285.64 and New India assurance 190.69.

Table 2.1 Incurred Claims Ratio-Motor (Public Sector)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Net earned premium (Rs. Lakh)</th>
<th>Claims incurred (net) (Rs. Lakh)</th>
<th>Incurred claims ratio (Percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New India</td>
<td>194078</td>
<td>198559</td>
<td>209996</td>
</tr>
<tr>
<td>Oriental</td>
<td>137012</td>
<td>132846</td>
<td>136423</td>
</tr>
<tr>
<td>National</td>
<td>167841</td>
<td>153428</td>
<td>170449</td>
</tr>
<tr>
<td>United India</td>
<td>106080</td>
<td>94441</td>
<td>116943</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>605011</td>
<td>579274</td>
<td>633811</td>
</tr>
</tbody>
</table>

Source: IRDA Annual Report 2007-08

Role of Commercial Vehicles

Business Line (2006), Babu Paul (2006), states that the commercial vehicle segment contributes to more 'Third Party Claims' comparing with other vehicles. Particularly, the public sector insurance companies cover around 90 percent of the commercial vehicles where the chance for TP claim risk is more comparing to other segment of vehicles. The single category commercial vehicles contribute to the largest number of claims.

Table 2.2 shows that the commercial vehicles contribute to more number of claims.
Table 2.2 Accidents Classified According to Type of Vehicles /Casualities – 2007

<table>
<thead>
<tr>
<th>Type of Vehicles</th>
<th>Number of Accidents</th>
<th>Number of Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(F)</td>
<td>(GI)</td>
</tr>
<tr>
<td>Motor cycle / Scooter</td>
<td>2079</td>
<td>511</td>
</tr>
<tr>
<td>Moped</td>
<td>292</td>
<td>95</td>
</tr>
<tr>
<td>Autorickshaw</td>
<td>489</td>
<td>211</td>
</tr>
<tr>
<td>Motor car</td>
<td>2028</td>
<td>564</td>
</tr>
<tr>
<td>Jeep</td>
<td>247</td>
<td>103</td>
</tr>
<tr>
<td>Taxi</td>
<td>310</td>
<td>26</td>
</tr>
<tr>
<td>Bus</td>
<td>2226</td>
<td>456</td>
</tr>
<tr>
<td>Truck</td>
<td>816</td>
<td>337</td>
</tr>
<tr>
<td>Tempo</td>
<td>495</td>
<td>152</td>
</tr>
<tr>
<td>Articulated Vehicle</td>
<td>216</td>
<td>54</td>
</tr>
<tr>
<td>Tractor</td>
<td>318</td>
<td>61</td>
</tr>
<tr>
<td>Other M. Vehicles</td>
<td>1098</td>
<td>1072</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>10624</td>
<td>3642</td>
</tr>
</tbody>
</table>

(F-Fatal, GI-Grievously Injured, MI-Minor injury, NI-Non Injury, TOT-Total, KIL-Killed TPI-Total persons involved)

Sources: www.Tnpolice.in/stat

Table 2.2 Comparing the type of vehicles motorcycle, motor car, bus and truck contributes to more number of accidents and more number of casualties
Accident Level

Table 2.3. Number of Accidents/ Persons/Vehicles involved –T. Nadu (2004 to 2007)

<table>
<thead>
<tr>
<th>Type of injuries</th>
<th>During 2004</th>
<th>During 2005</th>
<th>During 2006</th>
<th>During 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Accidents</td>
<td>Persons involved</td>
<td>Accidents</td>
<td>Persons involved</td>
</tr>
<tr>
<td>Fatal</td>
<td>8733</td>
<td>9507</td>
<td>8358</td>
<td>9216</td>
</tr>
<tr>
<td>Grewiously injured</td>
<td>4875</td>
<td>7642</td>
<td>4992</td>
<td>7410</td>
</tr>
<tr>
<td>Minor injuries</td>
<td>33222</td>
<td>49641</td>
<td>32841</td>
<td>51295</td>
</tr>
<tr>
<td>Non-injured</td>
<td>5678</td>
<td>....</td>
<td>4961</td>
<td>....</td>
</tr>
<tr>
<td>Total</td>
<td>52508</td>
<td>66790</td>
<td>51152</td>
<td>67921</td>
</tr>
</tbody>
</table>

Source: Government of Tamilnadu State Transport Authority

Number of Accidents/ Persons/Vehicles involved –T. Nadu (2004 to 2007)

Figure 2.2

Table 2.3. Comparing 2005 to 2007 the 'Number of Accidents' and the 'Number of Persons involved' are in increasing trend.
Accident levels (India): The accident levels are among the highest in the world; it happens due to following reasons like bad and insufficient roads, enormous growth of vehicular population, poor licensing norms, poor maintenance of vehicles, insufficient emergency care for accident trauma victims, overloading and lack of will to implement 'Motor Vehicle Rules'. The magnitude of the problem, both in terms of regulating the use of motor vehicles, as also the legal consequences that flow from their misuse, has called for a constant review of the laws that govern that field. The World Bank says road deaths will overtake those from deadly diseases by the end of the next decade. India has the dubious distinction of being the deadliest place in the world to drive. The country has 10% of the estimated 1.2 million road deaths worldwide, according to the 'International Road Federation' in Geneva. Mortality rates on Indian roads are 14 per 10,000 vehicles, compared with less than two per 10,000 in developed countries, the World Bank has said. And by the end of the next decade, the organization predicted that road deaths will overtake those from deadly diseases and most of the fatalities will be pedestrians. India has beaten China to top the road accidents on 2006 as per the figures released by the Ministry of shipping, Road Transport and Highways. India has 10% of the estimated 1.2 million road deaths worldwide according to the international road federation Geneva.

Table 2.4. Auto Accident Statistics (India) from the year 1994 to 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>Road Accidents (in thousands)</th>
<th>Persons Killed (in thousands)</th>
<th>Persons Injured (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004 (Provisional)</td>
<td>429.8</td>
<td>92.5</td>
<td>464.6</td>
</tr>
<tr>
<td>2003</td>
<td>406.7</td>
<td>86.0</td>
<td>435.1</td>
</tr>
<tr>
<td>2002</td>
<td>407.5</td>
<td>84.7</td>
<td>408.7</td>
</tr>
<tr>
<td>2001</td>
<td>405.6</td>
<td>80.9</td>
<td>405.2</td>
</tr>
<tr>
<td>2000</td>
<td>391.4</td>
<td>78.9</td>
<td>399.3</td>
</tr>
<tr>
<td>1999</td>
<td>386.4</td>
<td>82.0</td>
<td>375.0</td>
</tr>
<tr>
<td>1998</td>
<td>385.0</td>
<td>79.9</td>
<td>390.7</td>
</tr>
<tr>
<td>1997</td>
<td>373.7</td>
<td>77.0</td>
<td>378.4</td>
</tr>
<tr>
<td>1996</td>
<td>371.2</td>
<td>74.6</td>
<td>369.5</td>
</tr>
<tr>
<td>1995</td>
<td>348.9</td>
<td>70.6</td>
<td>323.2</td>
</tr>
<tr>
<td>1994</td>
<td>320.4</td>
<td>64.0</td>
<td>311.5</td>
</tr>
</tbody>
</table>

Source: Department of Road Transport and Highways, Ministry of Shipping, Road Transport and Highways, Government of India.
From the table 2.4 we can find, comparing to 94-2004 the 'Number of Accidents', 'Persons injured' and 'Persons killed' are in increasing trend.

**Accident-Driver's role**

The Driver's fault is the major contributor to accidents.

**Table 2.5 Accidents Classified According to Causes- Tamil Nadu (2007)**

<table>
<thead>
<tr>
<th>Cases of Accidents</th>
<th>Number of Accidents</th>
<th></th>
<th>Number of Persons</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(F)</td>
<td>(GI)</td>
<td>(MI)</td>
<td>(NI)</td>
</tr>
<tr>
<td>Fault of driver (MV)</td>
<td>10315</td>
<td>4247</td>
<td>37015</td>
<td>3901</td>
</tr>
<tr>
<td>Fault of Cyclist</td>
<td>22</td>
<td>8</td>
<td>52</td>
<td>6</td>
</tr>
<tr>
<td>Fault of drivers of other vehicles</td>
<td>167</td>
<td>49</td>
<td>723</td>
<td>73</td>
</tr>
<tr>
<td>Fault of pedestrian</td>
<td>169</td>
<td>45</td>
<td>481</td>
<td>17</td>
</tr>
<tr>
<td>Fault of Passenger</td>
<td>125</td>
<td>77</td>
<td>560</td>
<td>50</td>
</tr>
<tr>
<td>Defect in mechanical condition</td>
<td>85</td>
<td>20</td>
<td>235</td>
<td>36</td>
</tr>
<tr>
<td>Poor light</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Defect in road condition</td>
<td>50</td>
<td>6</td>
<td>188</td>
<td>16</td>
</tr>
<tr>
<td>Result of weather condition</td>
<td>1</td>
<td>1</td>
<td>12</td>
<td>0</td>
</tr>
</tbody>
</table>

(F-Fatal, GI-Grievously Injured, MI-Minor injury, NI-Non Injury, TOT-Total, KIL-Killed, TPI-Total persons involved)

**Sources:** Tamil Nadu police statistics

Comparing, Table 2.5 Fault of the driver of motor vehicle contributes to more number of accidents and more causalities. Hence 'Drivers' contribute more to TP claim problems.
2.1.2 SOLUTIONS FOR EFFECTIVE TP CLAIM MANAGEMENT

Research Institutes of IRDA

Sukumar (2003) in the article "IRDA research centres soon on motor insurance" discussed about the 'Research Institutes' of IRDA and states that, a move expected to serve the non-life insurance players in deciding their motor tariffs and also help save the lives of motorists during road accidents, the 'Insurance Regulatory and Development Authority' (IRDA) has decided to set up two research institutes. While the 'Road Safety Research Institute' (RSRI) would do research work in the area of road and vehicle safety testing and rating, the 'Institute of Motor Data and Insurance Research' (IMDIR) would take up research work in the area of motor insurance data. The decision to set up these research institutes was taken after going through the findings of a study financed by the 'Financial Institutions Reform and Expansion' (FIRE) programme to examine the weaknesses in the existing motor insurance arena.

Coordination of Agencies

Bhat (2006) in the article "Escalating Claims, Tumbling Profits, 'Third Party' makes a big dent in insurers pockets", discussed about the coordination of agencies and insist that the 'Third Party' portfolio continues to cause problems for insurers, due to causes beyond their control. He reiterated that the reasons are many and unless all concerned like the government, IRDA, judiciary, police, lawyers, etc. strengthen the hands of the insurers, no tangible improvement can be anticipated. He also states that the malaise has reached such a monstrous stage that, only a sincere and concerted effort by all together can now contain it.

India Motor Insurance Pool

Business Line (2006) it was stated that all 'Third Party Risks' are to be transferred to the India 'Motor Insurance Pool' in line with the insurance regulator's directive, virtually leveling the field between public and private sector players. 'The Insurance Regulatory and Development Authority's (IRDA) notification said that, all the insurance companies shall collectively participate in a pooling arrangement, to share in all motor third party insurance business underwritten by any of the registered general insurers.
The pool, referred to as the 'India Motor Insurance Pool', is to be administered by the 'General Insurance Corporation of India'. According to the arrangement, all private sector insurers would have to contribute to the pool consistent with their market shares. It adds that, the National Insurance Company, Chairman and Managing Director reiterated that creation of the pool will help the public sector insurers, to contain third party liabilities.

Manish Basu (2009) points out that the pool, being set up as an arrangement for sharing commercial vehicles' Third Party Liability' (a compulsory cover for damage to third party in a motor accident) amongst insurance companies, is believed to have significantly increased participation from private insurance companies in the segment, a highly unprofitable segment in general insurance earlier.

Shivkumar (2006) states that, motor and commercial vehicle owners can set at rest apprehensions of big premium increases by general insurers after migration to the free-pricing regime next year. The 'Insurance Regulatory and Development Authority' (IRDA) has taken the lead and formed a risk pool, where all declined risks could be administered. The risk pool will be called the 'Indian Motor Insurance Pool' (IMIP) with all the non-life insurers, both the public and private sector, becoming members. The IRDA Chairman, Mr C.S. Rao, said that the pool will ensure stability of commercial and motor vehicle insurance premiums after deregulation. The operational mechanism is such that the IMIP would Act as an avenue of last resort in the event of vehicle owners' failure to obtain insurance cover from any of the insurance companies. All the insurers have signed an agreement on the formation and administration of the pool.

Shivkumar (2010) stated that the 'Third Party Claim' losses on their respective balance sheets had reduced after the 'Third Party Pool' began operation in 2007. This was because the losses were now being shared between all the general insurance including the private sector. It was also stated that, the losses for the public sector units remains high, since they have the largest market share in 'Commercial Vehicle Third Party segment'.

Bridgret Leena (2008) states that, according to Mr. T.V.S. Prasad, Chief Operating Officer, 'Indian Motor Third Party Pool', the pool has not settled a single claim so far but just
reimbursed the insurers their claims. The table 2.6 shown below indicates that the private insurers incur low profitability due to high burden on account of motor pool.

Table 2.6. Net Profits Before and After Pool (Rs in crores)

<table>
<thead>
<tr>
<th>Insurers</th>
<th>2007-08</th>
<th>2006-07</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bajaj Allianz general</td>
<td>105.6 (129.6)</td>
<td>75</td>
</tr>
<tr>
<td>Cholamandalam MS general</td>
<td>8 (18.6)</td>
<td>13</td>
</tr>
<tr>
<td>ICICI Lombard general</td>
<td>103 (155)</td>
<td>68</td>
</tr>
<tr>
<td>IFFCO Tokio General</td>
<td>7 (17)</td>
<td>27</td>
</tr>
</tbody>
</table>

Note: Reliance, TATA AIG, Royal Sundaram General Insurance Co.'s data not available. Data within bracket shows without impact of pooling. Data outside the bracket shows with the impact of pooling.

Source: Business Line, Chennai

Demanding White Paper on Issues

Bijoy Ghosh (2009) points out that, Dr. R. Kannan, Member of 'Insurance Regulatory and Development Authority' (IRDA), said the authority was aware of the losses incurred by private insurers due to the motor pool. In this regard, a 'White Paper' was being considered to look into all the issues faced by the various stake holders.

Plan for Amendments to the Motor Vehicles Act, 1988

Ex-Minister of Shipping, Road Transport and Highways, Balu (2007) stated that the plan for amendments to the Motor vehicles Act, 1988 form part of a national effort to control accidents, due to be introduced in the coming session of parliament. They include suspending the license of a drunk driver on the spot for up to three months the penalties for various traffic offences are proposed to be enhanced substantially to make it more deterrent. There were around 460,000 road accidents in the country in 2006, killing
105,749 people and injuring nearly 500,000. At 2000 prices, the losses due to road accidents were Rs.550 billion (nearly $14 billion) a year, which amounted to 3% of India's 'Gross Domestic Product' (GDP).

Credit Rating to Insurance Companies

Shivkumar (2007) in the article "PSU insurers want credit rating of all players, Info in public domain will impose financial discipline on insurers" examines about the Ratings and Insurance Companies and states that, The Chairman of the 'General Insurers Public Sector Association' (GIPSA) and Chairman and Managing Director said that the 'Credit Rating' will impose financial discipline on insurers. The financial discipline referred to is cutting down underwriting losses on a portfolio basis and ensuring compliance with the mandated management ratio of 19.5 percent. The high ratings and retentions had resulted in high international confidence levels of PSU insurers. As a result, all the four PSU insurers are underwriting reinsurance business for Asian, European, African, and West Asian clients, though mostly in participation with other global insurers.

Merger is the Answer

Venkatachari Jagannathan (1999) In the head "Merger is the answer for general insurance" points out that, faced with the liberalisation of the sector this obvious threat, GIC in its submission to the government's 'Standing Committee on Finance' suggested consolidation of its current operations in one of the following ways to strengthen the government-owned insurance companies. Merger of all four companies into one all four companies to be made independent continue with existing structure with cross holdings allow one company to take care of the insurance requirements of corporate sector and others to carry on personal lines of business, and each company to operate on a regional basis.

Compromise Settlements to Control Losses

Suresh (2006) stated that it has been now proved beyond doubt that the companies that have resorted to compromise settlements have been able to control their losses. This
would be the only way of having better administrative control on the huge number of cases, that each company would be receiving.

Appointment of Consulting Firm

Radhika Menon (2007) in her article "PSU non-life insurers seek consulting help" examines the possibility of appointment of a 'Consulting Firm' and points out that, concerned over the rapid decline in market share, the four public sector non-life insurance companies are seeking external help. It was said that the 'Finance Ministry' has asked the four public sector non-life insurance companies - New India, Oriental, National and United India to appoint a consulting firm, so that they can reposition themselves in the light of increasing competition from private insurers. The idea is to create world-class organizations. The consultant will help the company develop a vision up to the year 2025, explore new areas for business diversification and evolve strategies on domestic and global expansion. It will also redesign processes with respect to policy issuance, claims settlement and grievance redressal.

Alternate for Insurance

Bhat (2006) in the article "Escalating Claims, Tumbling Profits, TP makes a big dent in insurers pockets" examines the proposal 'Additional cess on fuel by government as alternate for insurance' and states that, one proposal is to levy an additional cess on petrol, diesel, gas and other vehicle fuels. This cess, pooled into a corpus, should be managed by the government itself or by some other independent agency to meet these liabilities. This scheme has many advantages. Firstly, the cess, even though nominal, will add up to an enormous fund to meet all these liabilities comfortably. Secondly, this will ensure automatic insurance of all vehicles on road. Vehicle owners will not have to run after the insurance companies for insuring their vehicles and shell out a hefty amount in one go. No documentation is involved. Thirdly, the contribution of each vehicle owner will be commensurate with the use of his vehicle and the risk involved. More the vehicle runs on the road, more the fuel it will consume and correspondingly more it will contribute to the fund.

Venkatesan (2010) examines in the heading "Court suggests cess on fuel to create fund for accident victims" that, with a view to ensuring that all road accident victims get compensation on time, the supreme court 3 judges bench has asked the center to create a
'Road Accident Fund' (RAF) through levy of cess/surcharge on petrol and diesel and credit it to such fund. The three judge bench said it was necessary for the center to formulate a more comprehensive scheme for payment of compensation to victims of road accidents in the place of present system of third party insurance. The bench passed this order while dealing with the problems of victims not getting compensation, wide spread practice of using goods vehicle for passenger traffic, procedural delay in settlement of claims and hardship to the victims and their families and full compensation awarded by the courts not reaching the families.

Avenues for the Insurers to make their Motor Portfolio Less Crippling

Giridharan (2006) states that, apart from all amendments to the 'Motor Vehicles Act' there are only two avenues for the insurers to make their motor portfolio less crippling. The first is to make out a strong case for increase in 'Third Party Premium' by presenting complete and accurate premium and claims statistics. The second is to aggressively push for compromised settlement of 'Motor Accident Claims Tribunal' (MACT) cases. Prompt, timely and reasonable offer of settlement in the early stages of filing a claim petition is always bound to be difficult for any claimant to spurn. The culture of such settlement is bound to help the companies considerably reduce their outgo.

Yearly Vs. Long Term Premium

Giridharan (2006) in the article "The Insurer's Call, Amendments that insurance companies are looking for" discusses about the yearly Vs. long term premium collections and clarifies that there is a pressing need for statutory and mandatory provision for long term Act only insurance for private cars and two wheelers. The introduction of such a provision would pave the way for moving closer to achievement of total insurance coverage benefiting vehicle owners, insurers and, above all, the public. The incorporation of policy details in the 'Registration Certificate' (RC) of the vehicle would facilitate their easy availability in the event of an accident, he added.

Jurisdiction to be fixed

Giridharan (2006) also states that, to avoid jurisdiction problem, the Insurers have to propose an amendment that all claims shall be first filed before the court in whose
jurisdiction the accident occurred and thereafter obtain the benefit of transfer to any centre according to their convenience. Even if insurers do not receive the benefit of joint trial, if may at least help them to keep track of the claims filed.

Fixed Life Time Premium Plus Cess

Venkatesan (2010) in the heading "Court suggests cess on fuel to create fund for accident victims" points out that hybrid model which involves collection of fixed life time premium in regard to each vehicle plus imposition of road accident cess may provide a more satisfactory solution in a vast country like India. This will also address the major grievance of insurance companies, that their outgoings by way of compensation in motor accident claims is, four times the amount received as motor insurance premium.

Steps to Avoid Lapses in the Claims Mechanism

Radhika Menon (2006) in her article points out that the claims against commercial vehicle accidents may soon see quick settlement. Also, commercial vehicle operators will not be able to skip taking 'Third Party Insurance'. Insurance companies, headed by General Insurance Corporation, 'Regional Transport Offices' (RTOs) and 'Police Stations' across the country may come together on an online, real-time computerised network to avoid lapses in the claims mechanism. GIC, the manager of the soon-to-be formed third party motor insurance pool for commercial vehicles, will have online connectivity and data will be accessed through internet with 'Regional Transport Offices' and 'Police Stations' across the country. 'Third Party Motor Insurance' for commercial vehicles has been a loss-making proposition for insurers with claims ratios soaring to 250 percent. GIC, which is the manager of the pool, is initiating steps to control claims.

Attempt on Speedy Disposal of Cases

Radhika Menon (2006) while attempting to examine the 'Third Party Insurance' cases in her article "Third party motor claims: Chief Justice shares concern with insurers" states that, in an unprecedented move, the Chief Justice of Maharashtra convened a meeting of Chairmen and Managing Directors of all four PSU general insurance companies to discuss speedy settlement of cases relating to 'Third Party Motor Claims'. One of the key issues discussed was the possibility of out-of-court settlement of cases of
which nearly 10 lakhs are pending in various courts. On an average, each of the four companies has around two-and-a-half lakh pending cases with respect to 'Third Party Accident Claims'. These are cases where accident victims sue insurance companies for inadequate claim settlement.

**Alarming Rate of Motor TP Cases and Solutions**

Radhika Menon (2006) in her article "Third party motor claims: Chief Justice shares concern with insurers" states that according to industry analysts, while settlement in all other lines of business is around 95 percent, in the case of third party motor claims, it is about 26 percent. The prolonged judicial process has meant that cases have dragged on for decades. The existence of a 'Motor Accident Claims Tribunal' (MAC) has also not expedited the process. While solutions such as 'Lok Adalat' have been suggested, no alternative has materialized till date, say insurance analysts. The 'Third Party Portfolio' has also been bleeding the insurance companies. The claims ratio in this segment is believed to be in excess of 200 percent, since it also includes commercial vehicles. Many of the private insurers have, in fact, stayed away from offering 'Third Party Covers', especially to commercial vehicles.

**Committee to Review and Modify Third Party Claim Formula**

Bhat (2006) states in the article "Escalating Claims, Tumbling Profits, TP makes a big dent in insurers pockets" that, the 'Motor Third Party' malaise is not of recent origin. In the past, too, PSU insurers have requested the government to bring compensation for vehicular accident victims on par with those of Air/Train accidents. Consequently, the 'Surface Transport Ministry' and the 'Finance Ministry' set up a Committee in 1999 with a view to review and modify the present structured formula and ensure speedy disposal of claims through revised formula Limit the maximum compensation. It was said that the report given was hotly debated in the Ministries and some issues were decided upon and nothing happened thereafter. He also states that the authorities should reconsider this report, make suitable modifications necessitated by the time lag and try to bring about legislative changes in the Motor Vehicle Act, 1988.
Skilled Underwriting

James (2006) in the study under the heading "Skilled Underwriting" states that there are certain special features in the area of 'Motor Vehicles Liability' and it include that the liability is potentially unlimited, time and territorial limitations have been removed, There is considerable delay in judicial process. The possibility of fraud exists, defence for the insurers are few, and are said to be rarely permitted. Insurers, therefore, need to bring back serious underwriting skills in the area of business.

2.2. REVIEW OF COURT CASES ON MOTOR TP CLAIM - LEGAL

Drivers Action and Liability of the Insurance Company

Madras High Court (2005) in a case the insurance company contended that the deceased was a cleaner holding learner's license, was not the authorized driver and the owner has violated the policy condition and that therefore, the insurance company is not liable. Question raised was whether the deceased holding a learner's license was duly licensed and insurance company is liable. Held: yes, the owner has not violated the terms of the policy.

Supreme Court (2006) in a case the insurance company indemnifies owner or driver of vehicle against loss and is necessary party to claim for compensation by victim of accident. Insurance company can raise such defences as prescribed in Section 149(2) and can, with leave of the Court, contest case on merits if owner either colludes with claimant or remains ex-parte. Driver of vehicle possessed license to drive 'Light Motor Vehicle' only but had driven commercial vehicle which he was not entitled to. Driving of a 'Commercial Vehicle' by person not duly licensed to drive constituted breach of condition of contract of insurance. Insurance company could raise such defence and insurance company could not be compelled to pay compensation in such case. Order of High Court holding insurance company liable to pay compensation was wrong. Supreme Court in the interest of justice instead of setting aside the award permitted the insurance company to recover it from the owner.

Madras High Court (2006) in a case the 'Maxi Cab' hit a motor cycle and motorcyclist sustained fatal injuries. The driver of 'Maxi Cab' had no valid license and
there was no fitness certificate of the vehicle. The question raised was, whether the insurance company is liable to pay compensation awarded to the claimants who are third parties and recover the same from the insured. Held: Yes, the insurance company may file an execution petition before the tribunal after making payment.

Madras High Court (2006) in a case the regular driver engaged by the owner entrusted the vehicle to mechanic who after carrying out repairs took the vehicle for test drive and caused the accident. Insurance company disputed its liability on the ground that mechanic had no valid license. The question raised was, whether insurance company is liable to pay compensation to third parties and then recover the amount from the owner. Held : Yes.

Madya Pradesh High Court (2006) in a case the driver had license to drive a two wheeler but he was driving a jeep on 12.12.1988 which dashed against a person who sustained fatal injuries. RTO by order dated 5.3.1990 endorsed the license to the effect that the driver has been licensed to drive light motor vehicle with effect from 11.4.1988. Whether driving license can be issued with retrospective effect and insurance company is liable. Held : No. It was stated that no licensing authority is empowered to issue driving license with retrospective effect.

**Fake/Forged Licenses and Liability of Insurer**

Supreme Court (2008) in accident claim, the driver of offending vehicle possessing forged license and subsequent renewal of forged license, held, it would not fasten any liability on insurer to indemnify owner. Section 149.

Supreme Court (2008) it was held, in this case that, the driver having fake license was not by itself sufficient to absolve insurer of liability. It has to further prove that owner was aware or noticed that license was fake and still permitted the driver to drive. Section 149.

Supreme Court (2008) it was held that the driver brother of owner of motor cycle was holding fake license at the time of accident. Then the insurer not liable to pay compensation. Section 149.
Supreme Court (2008) in a case the liability of insurer to reimburse owner was not absolved on the ground of 'Driving License' found to be fake. Section 149.

**Fraud Claims and Liability**

Supreme Court (2002) in a case, it was held that so far as obtaining compensation by fraud by the claimant is concerned, it is no longer 'res integra' that fraud vitiates the entire proceeding and in such cases, it is open to an insurer to apply to the tribunal for rectification of award.

Madras High Court (2004) in a case, the contention that vehicle was not insured with insurance company and act of fraud committed by agent, cannot create any liability on the insurance company. The question arises, whether insurance company is liable. Held: Yes, if at all insurance company has any grievance, it can only be against its agent.

Madras High Court (2005) it was held that the 'State Government of Tamil Nadu' has to establish a "Central agency" under the head of 'District Inspector General of CBCID' and to investigate all the fraudulent insurance 'Motor Accident Claims' and submit the report within 60 days from the receipt of the complaint with the concerned 'Magistrate Court' and inform to the complainant.

Andra Pradesh High Court (2006) in a case the deceased was engaged in the midway by the driver for unloading the goods and he was travelling as a coolie, but the contention is belied by the FIR, lodged by the claimant, who is father of the deceased and was accompanying in the vehicle along with his wife and two other sons. The deceased was neither employee of the Insured nor owner of the goods.

Karnataka High Court (2006) in a case the claimant who is a police constable has played a fraud on the court, misusing his official position in connivance with investigating officer, in concocting a false case to fix unlawful liability on the insurance company. The claim against the insurance company was set aside, and directed police authorities to investigate the matter and take necessary action against the culprits.

Karnataka High Court (2006) in a case the material in criminal trial discloses that, the owner of tractor trailer was driving the vehicle without license and caused the accident. The owner took the plea before the tribunal that, he was not driving the vehicle
but it was being driven by another person, who was duly licensed. The tribunal was justified in rejecting the plea of the owner, on the basis of material in the criminal case and exempting the insurance company from its liability.

Madras High Court (2006) it was held that CBI has to undertake all the complaints given by the insurers to CBCID, and future compliance related to fraudulent 'Motor Accident Cases'.

**Comprehensive / Package Policy and the Liability**

Bombay High Court (2008) in a case the death of owner of motorcycle due to negligent driving of motor cycle by him, for the cover under comprehensive policy, which covers the risk of paid driver and pillion rider and risk of owner not covered then, the Insurance company not liable to compensate. Section 168.

Karnataka High Court (2008) in a case the Injury sustained by pillion rider and the insurance policy was a 'Package policy' and not an 'Act Policy'. Under 'Package Policy' of two wheelers insurer collected premium to cover risks of not only own damage, but also third party, coverage also included death or bodily injury to any person including for hire or reward-coverage can be said to cover claims of injured pillion rider of motor cycle without payment of additional premium. Held, the insurer is liable to pay compensation.

**Policy Terms and Liability**

Madya Pradesh High Court (2008) in a case regarding the liability of the insurer, the expression 'Third Party' covers any person other than insurer and insured who are parties to insurance policy. Mere fact that passenger is a 'Third Party', will not fasten the liability on the insurer. The insurer will be liable in respect of 'Third Party', only if terms and conditions of policy fix the liability of insurer.

Supreme Court (2008) in a case in a 3 wheeler goods carriage, the injured sharing seat of driver at the time of accident, such travel is in violation of conditions of policy and the insurer cannot be held liable.

Madya Pradesh High Court (2008) in a case regarding 'Third Party Risk', the deceased sitting in courtyard met with accident by rash and negligent driving of tractor.
The vehicle was duly insured with insurer but incorrect mentioning of chassis and engine number of vehicle in the policy will not exonerate insurance company of its liability. The owners of vehicle along with insurer, will be jointly liable to pay compensation. Section 147.

Uttarakhand High Court (2008) in a reported case, it was held that, the 'Third Party Risk' regarding the liability of insurer for cancellation of policy due to non payment of premium, the insurance company still covers the risk of 'Third Party Damages'. However, insurance company would have right to recover the amount of compensation from insured. Section 149.

Madras High Court (2001) in a reported case, the policy obtained at 10.30 a.m. on the date of accident, i.e., 20.5.1991 and accident occurred at 2 p.m. Insurance company contended that it is not liable as the date of commencement mentioned on the policy is from midnight of 21.05.1991. Premium was paid and accepted by insurance company on 20.5.1991. The question raised, whether the date of receipt of premium by the insurance company shall be considered to be the effective date of commencement of policy and the insurance company is liable. Held: Yes.

Madras High Court (2004) in a reported case, the issuance of policy fraudulently by agent of insurance company. Contention that vehicle was not insured with insurance company and act of fraud committed by agent cannot create any liability on the insurance company- Whether insurance company is liable. Held: Yes. If at all insurance company has any grievance, it can only be against its agent.

Andra Pradesh High Court (2006) in a reported case, the vehicle was not insured on the date of accident. Policy produced covers a period subsequent to the date of accident. Tribunal passed award and mulcted liability on the insurance company. Held: The Insurance Company is not liable. It is open to the claimant, to recover the amount awarded from the owner of the vehicle.

Madras High Court (2006) in a reported case, the policy was operative from 10 a.m. on 15.06.1998 to midnight of 14.06.1999. Accident occurred on 15.06.1998 at 05.30 a.m. It was contended that cheque towards premium was given on 12.06.1998 and as premium was paid anterior to the accident, Insurance Company is liable. Held:
The Insurance Company is not liable for the accident that took place before the specific time and date mentioned in the policy. Unless the insurance Company accepts and issues policy, it has no obligation to pay compensation.

Supreme Court (2006) in a reported case, the pillion rider on a scooter died when the vehicle met with accident. Scooter was insured under 'Act only Policy' which did not contain any endorsement of payment of additional premium. The question raised, whether Insurance Company is liable and it was held no.

**Courts Verdict on Rate of Interest**

Supreme Court (2008) in a reported case, for an accident compensation and the interest payable thereon, it was held that the rate of interest depends on bank rate prevalent at relevant time. The award presented in 2005, at that time the prevailing rate of bank interest was 7.5% per annum. It was held that the Claimants therefore entitled to the interest at the rate of 7.5 %. Section 171.

Calcutta High Court (2008) it was held that for interest, if no rate of interest fixed by statute, then it is at the discretion of tribunal. Section 171.

Supreme Court (2008) it was held that mental agony suffered by claimants mother was not ground to grant higher interest, and the interest rate brought down from 10 % to 7%.

**Pay and Recover Clause**

Karnataka High Court (2008) in a case, as on date of accident driver of tempo did not had valid 'Driving License' as the same had expired. It was a breach of conditions of policy, for which the insurer is not liable and subsequent renewal of license was immaterial. Held : However Insurance Co has to pay compensation and recover the amount from the insured.

Supreme Court (2008) in a case, it was held that, in certain situations the insurer would not be liable to reimburse insured. However, the court can direct insurer to pay compensation to third party and recover amount from the owner of the vehicle. Section147,168.
Supreme Court (2006) in a case, the court considered Article 136 read with 142 of the 'Constitution of India' (1950) confers an extra ordinary jurisdiction on the highest court of the country (Supreme court) to issue any direction and excise their power to do complete justice and tribunals do not have such power similar to that conferred under Article 142 and any attempt to follow the excise of such power will lead to incongruous and disastrous results. Hence, the tribunal's excise of such power is not justified.

**Contributory Negligence and the Liability**

Supreme Court (2008) in a case for the claim for compensation in an accident, the doctrine of contributory negligence ordinarily not applicable, in case of children with same force as in case of adults. Section168.

Madya Pradesh High Court (2008) in a case, the driver of moped was driving vehicle with two pillion riders. There was no evidence to show that driver of moped was rash and negligent. At best it can be said there is contravention of Section 128.

**The Insurer is deemed to be a Judgment Debtor and Liability**

Supreme Court (2008) it was held that the liability of insurer regarding the third party risks the statute raises legal fiction that insurer would be deemed to be a judgment debtor in respect of liability. Section 149(1).

Supreme Court (2008) it was held that, in 'Third Party Risk' the liability fastened on insurer and the insurer would be bound to indemnify the insured, unless exceptions provided in Section 149 are attracted. In 'Third Party Risk', the liability fastened on insurer and the insurer would be bound to indemnify insured, unless exceptions provided in Section 149 are attracted.

**Basis of Compensation**

Madras High Court (2006) it was held that, the compensation cannot be awarded under both the heads of permanent disability and loss of earning power separately. It would amount to double compensation.

Bombay High Court (2008) it was held that, the accident compensation for death of son in accident, the order refusing to grant compensation to parents on ground that
parents were not dependent on son as both were in occupation and son was not earning held not proper and it is not a valid reason to reject claim petition. Section 168.

Madya Pradesh High Court (2008) in a case the accident claim and interim compensation grant of, without deciding objection raised by insurance company regarding breach of policy, held improper.

Rajasthan High Court (2008) it was held that, the compensation amount can be enhanced without hearing owner but not without hearing insurance company. It affects interest of insurer.

Andra Pradesh High Court (2008) it was held that accident claim compensation, even in absence of any percentage of disability for injury suffered by claimant, suitable compensation should be granted. Claimant in such a case would be entitled to compensation on conventional basis for injuries suffered by him. Section 168.

Supreme Court (2008) it was held that accident compensation, to calculate the income of victim, it was held not only pay packet but perks which are beneficial to his family must be considered. Section 168.

Karnataka High Court (2008) it was held that compensation under conventional heads cannot be based on predetermined static rates, but must change with times which includes circumstances and money value.

Madras High Court (2003) in a case, the 'Doctor's Certificate' simply stated that he assessed and certified the disability as partial and permanent at 75% and the details thereof are not submitted like nature of injury or X-ray in support of his conclusion. Held : He cannot certify above disability on physical verification regarding internal injuries.

Supreme Court (2008) in a case regarding the compensation, for the income of victim the claimant producing documents showing income of deceased as Rs 12,500 p.m., documents so produced found unreliable and the court taking it as Rs 7,000 p.m. Though without any basis, cannot be said to be improper, when no reliable evidence was on record and guess work was inevitable. Section 168.
Karnataka High Court (2008) in a case, the liability of insurance company for the fracture suffered by claimant due to motor accident, no compensation awarded under the head of medical expenses on ground that, he got reimbursement of money spent by him under 'Mediclaim Policy', however amount received under 'Mediclaim Policy' is fruit of premiums paid by claimant and the deduction of said amount, not sustainable.

**Tractor and Trailer Accidents and Insurers Liability**

Andra Pradesh High Court (2008) in a case regarding the 'Third Party Risk', the liability of insurer under the 'Act Policy' no separate insurance is contemplated for trailer, when trailer (non insured) is attached to tractor which is insured. The insurer is liable to compensation in case of death of a person travelling in the trailer. Section 149.

Supreme Court (2008) it was held that for the labourers travelling in tractor trolleys, the insurance company has no liability. Section 147.

Karnataka High Court (2006) in a case, the death of coolie traveling in tractor, where the driver alone is permitted in a tractor the carriage of any passenger in a tractor is prohibited. Held : The Insurance Company is not liable because the policy does not cover the risk of coolies carried in a tractor without a trailer.

Madya Pradesh High Court (2007) in a reported case, the death of a person traveling on mudguard of tractor attached to trailer, when the vehicle turned turtle. Tractor was insured for use for agricultural purposes, but was transporting sand for construction of house. The question arises whether there was breach of policy and insurance company exempted from liability. Held : Yes, there was breach of policy.

Bombay High Court (2007) in a reported case, the death of girl occurred in traveling by sitting on mudguard of tractor. Held, the insurance company is not liable.

Karnataka High Court (2007) in a reported case the death of a person traveling while sitting on plough attached to trailer, the Commissioner held the insurance company liable. The question arises whether insurance company is liable for death of a person on the plough attached to the tractor. Held : No, it cannot even be said that, he was traveling in the tractor.
Involvement of More than One Act

Kerala High Court (2008) in a reported case, regarding the claim for compensation and the status to who can file application for the claim under 'Motor Vehicle Act' can be made by or for the benefit of legal representatives of the deceased. Whereas claim under 'Fatal Accidents Act' can be made only for the benefit of spouse, parent and child of deceased. Section 166.

Kerala High Court (2008) in a reported case, the compensation matter settled in 'Lok Adalat' and it became final. The 'Motor Accident Claims Tribunal' has no power to review the award. If there was any defect, it is for parties to approach High court under the Articles.

Gauhati High Court (2008) in a reported case, the compensation for the victim died in motor accident, the claimants can claim compensation under either 'Motor Vehicles Act' or under 'Workman's Compensation Act', but not under both forums. The claimant is not bound by act of employer, voluntarily depositing compensation under "Workman's Compensation Act".

Owners Position and the Liability Arising There from

Gujarat High Court (2008) in a reported case regarding the liability of insurer when the deceased was travelling in a 'Goods Vehicle' as the owner of goods at the time of accident. He would be covered under the definition of any person in Section 147 and would be considered as 'Third Party' covered by the policy of insurance and insurance company would be liable to pay compensation. Section 147.

Supreme Court (2008) it was held that the liability of insurer, when the owner of goods travelling in goods carriage without goods and travels in capacity other than owner of goods, the Insurer is not liable.

Supreme Court (2008) in a reported case regarding the liability of insurer for the accident of Taxi and the owner driving it, died. The insurance policy covering only the risk of paid driver. Considering the fact that the deceased was the only bread winner of family, the Supreme Court refused to interfere with the award. Section 147.
Himachal Pradesh High Court (2008) in a reported case regarding the liability of insurer, regarding the transfer of ownership of vehicle, the transferor had not fulfilled his statutory obligation under Section 31 and he continued to be ostensible owner, so long as the registration was not changed from his name to transferee. The vehicle was insured in the name of transferor, hence the vehicle thereby legally covered by policy of insurance at time of accident. Held that, the insurer was liable to pay the compensation. Section 94.

Madya Pradesh High Court (2008) in a reported case, it was held, regarding the liability of insurer for 'Third Party Risk' and the failure of owner of offending truck to intimate insurance company about accident will not disentitle claimant, who is 'Third Party' from payment of compensation. Section 149.

Himachal Pradesh High Court (2008) in a reported case regarding the liability of insurance company, where the driver carrying two boys as passengers in goods carrying auto rickshaw and the vehicle turned turtle on account of rash and negligent driving killing boys. Supplement to FIR to state that deceased boys were pedestrians and not passengers. It was not acceptable in view of fact that driver of offending vehicle was father of one of the boys. It was difficult to accept father to have run vehicle over his own son and his companion walking as pedestrians. Such a defence can be said to have planted only in order to foist liability on insurance company. Held: The insurance company not liable to pay compensation.

Andra Pradesh High Court (1995) it was held that, the driver of the motorcycle belonging to his brother was not a 'Third Party' when the motorcycle was insured for Third Party Risk'.

Appeal and the Verdicts

Madras High Court (2007) it was held that the insurance company came to know new facts at the time of trial and they will be given sufficient time to plead and adduce evidences collected by them in order to conduct the trial in a fair manner. If the insurance company pleads that there is a fabrication, in such cases normally the owner of the vehicle colludes with the claimants, therefore the company will be given an opportunity to plead and adduce evidences through their representative/agency through which such new materials received by them in order to establish their pleadings.
Gujarat High Court (2008) in a reported case, for an appeal there happens to be a delay in filing and condonation requested. The delay of 675 days in filing appeal on the part of insurance company. No sufficient cause shown. The claimants remain without compensation. It was held that, if insurance company remain silent for two years, it amounts to deliberate delay and the delay cannot be condoned.

Bombay High Court (2008) in a reported case, it was held that for an appeal by insurance company against award of compensation, it is maintainable only if leave is granted under Section 170 or if defence under Section 149(2) is available to the insurance company.

Madras High Court (2006) in a reported case, it was held that the cross objection filed by the claimant for enhancement of compensation in an appeal filed by insurance company challenging its liability is not maintainable. (1999) ACJ 135 (Madras) followed.

Madras High Court (2006) in a reported case, the notice of appeal was not sent to the owner and driver of vehicle. Owner and driver were ex-parte before the tribunal and the claim was contested by the insurance company. The tribunal allowed compensation to claimants against the owner and driver exonerating the insurance company on the ground of breach of policy. The award against the owner and driver stands in the absence of any appeal by them. Claimants in their appeal sought imposition of liability on the insurance company and dispensed with notice to the owner and driver. The issue is, whether giving up of the owner and driver in the appeal is fatal which will result in exoneration of the insurance company. Held : No.

Madras High Court (2006) in a reported case, the insurance company filed appeal challenging its liability. Claimants sought enhancement of compensation without filing cross-appeal or cross-objections. Whether the appellate court in the absence of cross-objections can invoke Order 41 Rule 33 of 'Civil Procedure Code' and enhance the compensation. Held, the power conferred under Order 41 Rule 33 is very wide to do complete justice but it is to be exercised judiciously with care and caution and in rare cases; court can invoke such power provided it is consistent with the findings arrived at by the appellate court and the same would remove inconsistencies, inequities or
inequalities in reliefs granted to similarly placed parties; but the power is subject to three limitations; case not found fit to invoke Order 41 Rule 33 and to enhance the amount of compensation.(2001 ACJ 1128 (Madras) held no more a good law).

Capacity of Passenger Travelling and Liability

Supreme Court (2008) in a reported case regarding liability of insurer for the passenger travelling in goods carriage, it was held that, the insurer have no liability. Section 147.

Bombay High Court (2008) in a reported case in an accident with a breach of policy condition, additional insurance amount was paid for six coolies to be carried in tractor trolley where admittedly more than six laborers were carried in tractor trolley at the time of accident. It was held that when such breach is committed, the insurance company has a right to proceed against the insured but it cannot avoid its liability as far as 'Third Party' is concerned. Section 168.

Karnataka High Court (2007) in a reported case, seven persons claim in respect of loaders in truck, who sustained fatal injuries, when the truck met with the accident. It was held that, the insurance company is liable for six highest awards and the seventh award is payable by the owner with adjustment that claimants may get benefit of recovery of compensation from insurance company in other six awards.

Supreme Court (2007) in a reported case, the vehicle carrying more than permitted passengers (90 against permitted capacity of 42), it was held that insurer was liable only in respect of number of passengers for whom insurance taken and not in respect of other passengers in case of overloading. Insurer liable to deposit higher amount of 42 awards, tribunal directed to distribute money so deposited, to all 90 claimants proportionately and 90 claimants have to recover balance from the owner.

Madras High Court (2008 ) in a reported case, regarding the liability of insurer for accident resulting in death of 13 persons and injuries to 15 persons, case of all claimants that deceased and injured were load men /load women. The insurance policy covered risk of only six load men. It was held that, the total sum of six higher awards should be distributed to all claimants proportionately.
Kerala High Court (2008) in a reported case, regarding the compensation entitlement, it was held that merely because claimant alighted from vehicle, when it stopped for passengers to get tea, it does not mean that, he cease to be a passenger and the driver rashly took the vehicle in reverse direction and hit the claimant. The claimant entitled to compensation. Section 168.

Private Vehicle and the Liability of Insurer

Rajasthan High Court (2006) in a reported case, the Jeep insured in 'Act Policy' as a private vehicle was being used as a taxi and passengers were carried for hire and reward. The question arises whether the insurance company is liable. Held : No, and the insurance company directed to satisfy the award and recover the same from owner.

Karnataka High Court (2006) in a reported case, in "Act Policy", for death of passenger in car when it met with accident due to its rash and negligent driving. The contention is that no additional premium was paid to cover the risk of passenger. Held that, the passenger in private car is compulsorily covered under Section 147(1) and the insurance company is liable.

Supreme Court (2006) in a reported case in 'Act Policy' the death of pillion rider on a scooter when the vehicle met with accident and the Scooter was insured under 'Act only policy' which did not contain any endorsement of payment of additional premium. It was held that, the insurance company was not liable.

Madya Pradesh High Court (2006) in a reported case for death of passenger in jeep when the vehicle met with accident and the private vehicle insured for social, domestic and pleasure purposes. Policy covers death of any person including occupants carried in the vehicle, provided such occupants are not carried for hire or reward. No evidence to prove that deceased was travelling as a gratuitous passenger or for hire or reward. It was held that, the occupants are covered under the 'Third Party Risk' and the insurance company is liable.

Gratuitous Passenger and Insurers Liability

Supreme Court (2004) in a reported case, gratuitous passengers in a "Goods Vehicle" are not entitled for compensation from the insurance company. Law was not
clear until clarified in (2004) 2 SCC 1 on 06.01.2004. However, the decision shall have only prospective effect. For cases of erstwhile accidents insurance company shall ‘Pay and Recover’ from the owner of the vehicle.

Supreme Court (2005) in a reported case, gratuitous passenger in a truck (goods vehicle) died when the truck met with accident. Tribunal allowed compensation but exempted the insurance company from liability. High Court in appeal affixed liability on the insurance company. The Apex Court has exonerated the insurance company from liability and directed the claimants to recover the awarded compensation from the owner of the vehicle.

Supreme Court (2005) in a reported case, policy describes the vehicle as commercial vehicle, lorry with open body and licensed carrying capacity of goods is specified as two tons. Vehicle is a goods vehicle and not authorized to carry passengers. Insurance company is not liable for the death/injury to passengers.

Andra Pradesh High Court (2006) In a reported case, the deceased was engaged in the midway by the driver for unloading the goods and he was travelling as a coolie, but the contention is belied by FIR lodged by the claimant, who is father of the deceased and was accompanying in the vehicle along with his wife and two other sons. The deceased was neither employee of the insured nor owner of the goods. Held, the deceased was a passenger in a goods vehicle and insurance company is exempted from liability. The insurance company cannot be directed to pay the amount of compensation in the first instance, and then recover the same from the insured.

Madras High Court (2006) in a reported case, following the decision of supreme court in 2004 (2) SCC1 (Baljit Kaur case) it has been held that in respect of accidents prior to 06.01.2004 insurance companies shall have to pay and recover in respect of accidents after 06.01.2004 the insurance companies can avoid liability to such persons in total.

Supreme Court (2007) in a reported case, for *Gratuitous Passengers, the liability of Insurer, provisions of Act do not enjoin any statutory liability on owner of vehicle to get vehicle insured for any passenger traveling in goods carriage, the insurer, therefore is not liable.
*Gratuitous Passengers- High Court affirming finding of tribunal holding insurer liable to satisfy award in view of decision in Satpal Singh, 2000 (1) SCC 237 states that it was not sustainable and the decision in Satpal Singh overruled in Asha Rani, 2002(8) Supreme 594= 2003 ACJ 1.

Madras High Court (2004) in a reported case the 'Pillion Rider' on scooter sustained injuries – Claimants contended that in view of omission of clause (ii) of proviso to Section 95 (1) (b) of Motor Vehicles Act, 1939, in Section 147 of 1988 Act, 'Pillion Rider' is covered by the term 'any person' and even if the vehicle is covered under 'Act only' policy, insurance company is liable. 'Pillion Rider' is a 'Third Party' and a gratuitous passenger.

Supreme Court (2005) in a case, the gratuitous passenger in a truck (goods vehicle) died when the truck met with accident. Tribunal allowed compensation but exempted the insurance company from liability. High Court in appeal affixed liability on the insurance company. The Apex Court has exonerated the insurance company from liability and directed the claimants to recover the awarded compensation from the owner of the vehicle.

Calculation of Compensation Section 163 A

Gujarat High Court (2008) Compensation of structured formula basis. Accident compensation under Section 163-A. It was held that, plea and defences of victim of accident being tortfeasor, pillion rider, gratuitous passenger or employee of insured not available to the insurance company. Section 163-A.

Delhi High Court (2008) The claim petition filed under Section 166 converted into petition sec 163 A. The requirement to prove rash and negligent the act of the driver of offending vehicle, not necessary.

Himachal Pradesh High Court (2008) The claim petition regarding the excise of option to file claim petition under Section 166 and Section 140 by claimant, Option fructified into legal and binding award. Held : It would be no longer open to the claimant to convert the original petition to one under Section163 A of the Act.
Multiplier, Calculation

Kerala High Court (2008) for calculation of compensation using "Multiplier", 'Age of Parents' taken into consideration while calculating 'Multiplier' erroneous. The age of victim is the factor to identify multiplier. Section 163 A.

Himachal Pradesh High Court (2008) regarding compensation the choice of 'Multiplier', the age of deceased alleged to be 51 years by claimants, but postmortem report recorded his age as 65 years and even panchayat records showed his age as 70 years. Held: 'Multiplier' of more than 5 cannot be applied. Section 168.

Supreme Court (2004) in the reported case, the deceased being aged 48 years and a state government employee earning Rs.2570 p.m., 'Multiplier' of 10 rightly applied. Judgment passed by the Division Bench called for no interference.

Karnataka High Court (2006) in the reported case, the question arises, whether salary which the deceased was drawing at the time of his death could be the basis for computation of compensation where 'Multiplier' applied is higher than number of years the deceased had before superannuation. Held: No, after retirement amount of pension is relevant.

Supreme Court (2003) in the reported case, the deceased was aged 26 years, drawing Rs.1,638/- p.m. in a government undertaking. Claimants are father aged 53 years and mother aged 48 years. Tribunal assessed dependency at Rs.1,000/- p.m., adopted 'Multiplier' of 12 and assessed Rs.1,44,000/- plus Rs.3,000/- for loss of love and affection and Rs.3,000/- for funeral expenses, made deduction of 20% on account of lump sum payment and awarded Rs.1,20,000/-. High Court in appeal disallowed deduction and enhanced the award to Rs.1,50,000/-. Apex Court assessed dependency at Rs.1,100/- p.m., adopted 'Multiplier' of 12 and allowed Rs.1,58,400/ plus Rs.6000/and totally Rs.1,64,000 and rounded off to Rs.1,65,000/-.

Madras High Court (2007) in the reported case the deceased, aged 54 years, being employee of Public Limited Company would have serve only for 6 years. Held that "Multiplier" of 6 is appropriate.
Madras High Court (2005) it was held that the "Multiplier method" cannot be mechanically applied in all cases of injury or permanent disablement to ascertain future loss of income or earning power. But it depends upon factors such as nature and extent of disablement, avocation and extent to which employment or earning power affected. In such cases no need to adopt same period as that of fatal cases as provided under II Schedule. If there is no amputation and likelihood of improvement in future, lesser period may be adopted. It mainly depends upon avocation or nature of employment attended by injured at the time of accident.

Pillion Rider and the Liability of the Insurer

Bombay (2002) it was held that the pillion rider was held not covered under 'Third Party Policy' in the absence of extra premium paid for his coverage.

Calcutta High Court (2008) in a case due to rash and negligent driving of motor bike victim fell down and died no other vehicle is involved. It was held that the insurance company not liable to pay compensation, as no extra premium was charged for taking responsibility of pillion rider beyond statutory liability of third party risk. Section 147.

Supreme Court (2006) in the reported case, the "Pillion Rider" on a scooter died when the vehicle met with an accident. Scooter was insured under 'Act Policy' which did not contain any endorsement on payment of additional premium. Held : The Insurance Company is not liable.

Karnataka High Court (2006) in the reported case the 'Pillion Rider' sustained injuries when motor cycle met with an accident. Insurer contended that risk of 'Pillion Rider' was not covered under 'Act Policy'. No additional premium was paid to cover 'Pillion Rider', hence, insurance company is not liable. (1998 ACJ 1101(SC) followed)

Traffic Safety Rules, Court's Interference

Supreme Court (2008) it was held that the traffic safety on roads, the various matters relating to traffic safety on roads and minimization of road accidents. It is adequately taken care of by the Act itself. Lacuna or defect, if there is any, can be corrected by legislature by amending the Act and not by the court. Section 215.
No Fault Liability

Madras High Court (1997) in the reported case, the accident occurred on 21.11.1991. The amendment under Section 140 of 1994 Act is not retrospective. Held : The claimant is not entitled to Rs.25, 000/- on the basis of 'No Fault Liability' for permanent disablement.

Bombay High Court (2003) in the reported case, the scooterist fell down due to his own negligence and died. Claimant claimed and tribunal awarded compensation under Section 140 for 'No Fault Liability'. Further compensation under Section 163 A could not be awarded. Section 163 B bars a claimant to claim compensation under both Section 140 and Section 163 A.

MLJ (2006) Motor Vehicle Act, Section 59 of 1988, Sections 140, 143 and 166 and 'Workmen's Compensation Act' (Section 8 of 1923), claim for compensation, rejected on the ground that the injured claimant had admitted his guilt before the criminal court and paid the fine. On appeal to High Court, the driver/claimant had admitted that the accident took place due to his rash and negligent driving. Hence, he is not entitled to any compensation. Claimant having chosen the forum under the 'Motor Vehicle Act', is not entitled to fall back upon the provisions of 'Workmen's Compensation Act'. Held : The claimant entitled to compensation on the basis of 'No Fault Liability' alone, and the appeal dismissed.

Transfer of Vehicle and Insurers Liability

Madras High Court (2006) in a reported case, a vehicle covered by insurance Policy transferred to a transferee. No intimation given by owner or purchaser as required under 'Motor Vehicle Act'. The liability of Insurer does not cease so far as "Third Party" is concerned. Accident took place on 17.3.1992. Vehicle sold on 26.12.1989, however owner continued to pay premium for vehicle till 1992. No explanation given by owner as to why he continued to pay premium for vehicle though it was sold as early as 26.12.1989 nor insurer explained as to why it continued to renew policy and receive premium long after transfer. Insurer disowned its liability because they had not been intimated of transfer. Third parties' right will not be affected notwithstanding failure to intimate to insurer about transfer (SC followed). It was held that the insurance company cannot escape its liability to pay compensation even under "Workmen's Compensation Act".
Supreme Court (2006) regarding the transfer of certificate of insurance and the liability of insurance company towards 'Third Party Claims' it was stated as follows. A Scooter was transferred before the date of accident and the registration certificate of the vehicle was transferred in the name of the transferee but no notice thereof was given to insurance company for transfer of insurance certificate. The question arises, whether the insurance company is exempted from liability to third party, if the owner or purchaser of vehicle fails to give intimation of transfer to insurance company. It was held no.

**Difference in Awarding Compensations**

The awards in various cases shows the difference and inconsistencies in awarding compensations for example : Kapil Kumar Vs. Kudrat Ali (2002) Rs. 1,00,000 was awarded for one fracture of the wrist, NWKSRTC Vs. M. S. Shettiar (2002) Rs. 2,00,000 was awarded for amputation of leg, In Zumar Ali Vs. NandKishore (2007) and Imtiaz Vs. National Insurance (2001) Rs. 4,50,000 was awarded for amputation of leg, in PTC Vs. Jaganathan (2001). Rs. 4,00,000 was awarded for shortening of leg involving no amputation. In Sasahendra Lahiri Vs. UNICEF (1998) Personal Injury, loss of four teeth, tribunal proceeded as if claimant sustained permanent disability of 40% and awarded Rs.2,63,010/- as compensation. The amount awarded by the tribunal, held, exorbitant and the quantum liable to be interfered with. The claimant lost four teeth and to replace the same claimant has to spend only about Rs.30,000/-, pain and suffering the claimant entitled to Rs.10,000/-. Totally claimant entitled to Rs.40,000/- with interest at 9% per annum. Tribunal not only proceeded with as if claimant sustained permanent disability but also fixed quantum by applying 'Multiplier' as if there is loss of income due to loss of teeth.

**Doctors as Stock Witness**

Madras High Court (2003) in a reported case, it was held that some of the doctors who are issuing disability certificates without treating the road victims and without looking into the medical records and giving evidence on the claimants side in order to get unreasonable and boosted compensation from the insurance Company and the tribunal should not give weightage to their documents and evidences while granting compensation to the claimants and such doctors should be called as 'Stock witness'.
Karnataka High Court (2003) it was held that some of the doctors who are issuing disability certificates without treating the road victims and without looking into the medical records and giving evidence on the claimants side, in order to get unreasonable and boosted compensation from the insurance Company and the tribunal should not give weightage to their documents and evidences while granting compensation to the claimants, and such doctors should be called as 'Stock Witness'.

**Driving License Related Defence for Insurance Companies**

Supreme Court (2007) in a dynamic judgment in case of 'Swaran Singh' the Supreme Court has almost taken away the 'Driving License' related defence for insurance companies by holding; Proving breach of condition or not holding driving license or holding fake license or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of owner. (ii) Learner's license is a license and will not absolve Insurance Company from liability. (iii) The breach of the conditions of the policy even within the scope of Section 149(2) should be material one which must have been effect cause of accident and thereby absolving requirement of 'Driving License' to those accidents with standing vehicle, fire or murder during the course of use of vehicle. This judgment has created a landmark history and is a message to the government to remove such defence from the legislation as the victim has to be given compensation.

**Date and Time of Commencement of the Policy**

Karnataka High Court (2007) in a case, the cover note was availed subsequent to the occurrence of accident and time was mentioned also for commencement. The policy of insurance, following the cover note, failed to mention the time. On that premise it was ruled that insurer shall have to pay and recover from the insured.

Himachal Pradesh High Court (2007) in a case, in the policy of insurance the time was not mentioned but the cover note was from 3.15 p.m., it was held that, connivance between the owner and insurance official can be inferred and the insurer shall have to meet the claim, but have recourse against its official.
Madras High Court (2007) in a reported case, the dispute on whether the cover note related to the vehicle involved in the accident was resolved against the insurer on the premise that mentioning of the numerical chassis number would suffice and non mentioning of the alphabetical series was not detrimental to the interest of claimants.

**Drunkenness and Insurers liability**

Madras High Court (2001) in a reported case, the driver of 'Auto Rickshaw' drove it under the influence of liquor, hit a cyclist and he sustained injuries. Insurance company cannot be exempted from 'Third Party Liability' on the ground that the driver was under intoxication. The insurance company may seek refund from the insured on the basis of violation of policy condition.

Madras High Court (2006) in a reported case, the appellant under the influence of alcohol while driving a two wheeler was hit by a school-van and in the process, he was injured and sustained disability which was assessed at 35%. Accident registered produced by the appellant containing a remark that, he was under the influence of alcohol. Based on the information the appellant has contributed to the accident, accordingly the percentage of disability was reduced. It further states that while considering the claim for compensation the reliance was placed on the medical records by the accident register, 'Wound Certificate' issued by the doctor who happened to treat the appellant immediately after the accident. The court held, there is no reason why the said observation (under the influence of liquor) recorded by the doctor should be eschewed from consideration.

**Adverse Inference (Age)**

Madras High Court (2001) in a reported case the claimants gave the age of the deceased as 47. The respondent, employer did not choose to adduce evidence to contradict it. Tribunal adopted the age of the deceased at 52 as per 'Post-Mortem Certificate'. The question raised, whether Tribunal was justified in departing from the evidence led by the claimants with regard to the age of the deceased. Held : No, age of deceased fixed at 47.

TNMAC (2004) in a reported case, the 'FIR' lodged by independent eyewitness shows age of victim as 40 years. 'Post-Mortem Certificate' mentioned age as 44 years.
Held: Age given by Doctor in 'Post-Mortem Certificate' can be taken as his opinion and cannot be taken as conclusive and the safe course would be to take average and proceed on that basis. Age fixed as 42.

TNMAC (2005) in a reported case, the 'Post-Mortem Certificate' fixing age at 50, 'Birth Certificate' issued by Church disclosed age as 41 and the tribunal assessed the age as 41. It was held that the age fixed under 'Post-Mortem Certificate' cannot be stated to be an accurate age, and same could be referred to only in absence of any other materials: When contemporaneous 'Birth Certificate' disclosing age of deceased as 41, no justification to reject said certificate.

TNMAC (2005) in a reported case, the tribunal fixing age of injured/claimant as 25 years on the basis of 'Oral Evidence' and 'Wound Certificate'. 'Wound Certificate', if conclusive proof in the absence of 'Birth Certificate' and no contra evidence let in by the appellant/insurer to show claimant's age different. Therefore, contention as to non-production of 'Birth Certificate' of no consequence. The burden to substantiate case about the age is on claimant and the same prima facie done by his oral evidence and as found in 'Wound Certificate'. 'Wound Certificate' though not age certificate, will only reflect the contention of victim at the time of entering into hospital for treatment. Held that, the claimant's statement before police and medical officer as found in FIR and 'Wound Certificate' cannot be disbelieved.

TNMAC (2007) in a reported case, the injured (claimant) given his age in claim petition as 55 years- Even while deposing as PW1 (Prosecution Witness) claimant stated his age as 55 years. No document viz. 'Birth Certificate'/ 'School Certificate' produced to prove age. Age in 'Accident Register' entered as 60 years. Since it can be presumed that age in 'Accident Register' could have been entered based on information furnished by claimant, same can be relied upon to decide age of claimant on the date of accident and the same corroborated by "Disability Certificate" assessed by doctor, which shows age as 62 years on the date of examination i.e. 16.11.1998 (accident took place on 31.5.1996). It was therefore held that the claimant was aged more than 60 years and below 65 years on the date of accident.
Land mark Case Applicable even to Non-TP claim Cases

Swaran Singh (2004) it was held in that context that any condition in the policy whereby the right of the third party is taken away would be void. The Insurance Company is required to prove the breach of the condition of the contract of insurance by cogent evidence. Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time. Insurance companies, however, with a view to avoid their liability must not only establish the available defences raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them. The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case. Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving license is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-Section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.
Police Duty

Supreme Court (2007) Regarding the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 159 and in Form 54 by the police officers directed that all the State governments and the Union Territories shall instruct, if not already done, all concerned police officers about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 159 and in Form 54. Periodical checking shall be done by the 'Inspector General of Police' concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials.

Need for Speedy Trial

Supreme Court (2000) it was held that the time-tested rule is that, acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt, a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that, the appellants were the real culprits.

Supreme Court (2007) in a reported case, it was held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. Therefore, it is needless to say that the right to speedy trial can be regarded as reasonable, fair and just. The victims of crimes knock at the doors of justice with pain and anguish in their hearts with the fond hope of getting justice. In spite of the delay, which they experience, the confidence reposed by them in the institution has not been eroded in any manner. Therefore, it is imperative for the judiciary to rise up to the occasion to ensure speedy justice by taking effective steps to avoid delay. At the same time, it should not be forgotten that the elements of judiciousness, fairness, equality and compassion cannot be allowed to be sacrificed by
rash disposal of cases. Judges should remember that justice has to be ensured; justice cannot be hurried to be buried. Judges have to "decide" the cases and not just "dispose them of".

Supreme Court (1980) in a reported case held that, no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

In Hussainara Khatoon case the honorable Apex Court has also observed that, it is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial.

Supreme Court (1992) held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution. In that decision, the Honourable Apex Court has also held as the fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

2.3 LITRATURE CONCLUSION

Literature are studied and classified under the heading problems and solutions separately and it is further classified into several sub headings for in depth understanding. Court cases are reviewed separately and classified under sub heading for proper understanding of the court's view.

'Problems' in 'Third Party Claims Management', literature are classified and discussed under several heads and the following are the summary /bird's eye view of the study taken for review .Regarding the impact of Commercial vehicles on 'Third Party Claims', Babu Paul (2006), Bhat (2006) points out that as a single category Commercial
vehicles contribute to the largest number of claims. In Business Line (2006) it was stated that the claims ratio in 'Third Party' segment is above 200 percent. Venkatesan (2010) states about the highest number of road accidents and the longest response time in securing first aid and medical treatment. Bhat (2006), Ananthakrishnan (2006), Suresh (2006) points out that the courts for the sake of social obligation, have insisted that the claims of victims be necessarily honored by the insurers even in cases of no-liability etc. Ramesh (2007) points out that the 'Motor Claims Tribunal' has the powers to alter the application from one Section to the other it will affect the insurers. Sarbajeet K. Sen (2003) stated about the increase/loading of premium by insurance companies. Business Line (2007) points out that, the premium hike become inevitable as the 'Third Party Claim Ratio' is 250 percent. Bhat (2006) states that the flaw lies with premium rates now being charged. Rao (2006) states that 'Motor Third Party' alone contributes to nearly 280%. Babu Paul (2006) discussed about 'Jald Rahat Yojana' and its failure, He also states that the 'Third Party' cases are reported after a considerable time lapse. The geographical jurisdiction is also removed and same person filing claims at different tribunals at different places for the same accident. Bhat (2006) states that the major reasons that makes the portfolio unmanageable and eating into their resources is because it is the only class of business where the insurer needs to deal with a stranger to the insurer. Business Line (2006) states the IRDA warned the general insurers that the motor third-party insurance cover is mandatory, required under Section 146 of the Motor Vehicles Act, 1988 and cannot be denied by any insurer and such denial would attract necessary action. Court in a decision. In National Insurance Co. Ltd., Coimbatore Vs. K. Nandabalan reported (2005), Insurance Company Limited Vs. Director General of Police and 28 others reported in (2006) it was felt the necessity of constituting one central agency (CBI) for dealing with the bogus insurance claim cases with a view to stop such a serious menace defeating the very object of the beneficial legislation. Babu Paul (2006) states that fraud claims is that it pushes up the cost of insurance and the rates will shoot up three to four times, especially for commercial vehicles. He also discussed about the frauds committed inside and outside the span of insurance companies. Bhat (2006) states about the Police involvement in fraudulent claims. Transparency International (2007) states that in corruption rate in India is high. Giridharan (2006) states that after July 1, 1989
gratuitous occupants were statutorily covered and the insurance companies cannot escape liability. He discussed about the 'Pay and Recover clause' and states that it was always a standard practice for courts to look for avenues to fasten liability on insurers in keeping with the concept of welfare legislation. He also states the size of the 'Solatium Fund' has to be enlarged and replenished every year. Ramesh (2007) states that the burden of proof lies with the insurance company to avoid paying liability. Giridharan (2006) examines about the legal aspects regarding driving licenses and states that rule 141 of 'Central Motor Vehicles Rules' etc are not in favour of insurance companies. He also states that an innocuous change made in Section 149 (4), which brought about a serious change in the nature of liability cast on the insurance company. Also states that Section 166 of the 'Motor Vehicles Act' has totally deleted the period of limitation. Also points out that after the amendment of Section 166, it is now open to file a claim petition at any place. Radhika Menon (2006) in her article states that on an average, each of the four companies has around two-and-a-half lakh pending cases with respect to 'Third Party Accident Claims'. These are cases where accident victims sue insurance companies for inadequate claim settlement. Giridharan (2006) states that under Section 170, there is a duty cast on the insurance company to obtain permission to contest on merits. Ramesh (2007) states that the 'Motor Vehicles Amendment Bill', 2007 has not tackled important issues affecting the insurer. Suresh (2006) makes a comparative study on the enormous variance in injury case awards referring the reported judgments. Shivkumar (2006) states the 'Probable Maximum loss'(PML) were unknown and the major problem lies not in the value of claims but the number of claims, which are on the high side comparing to global trends.

Literature regarding the 'Solutions' for effective 'Third Party Claim Management' is summarized as follows:- Sukumar (2003) discussed about the Research Institutes of IRDA. Bhat (2006) reiterated that only a sincere and concerted effort by all together can now contain the 'Third Party Claim Problems' Business Line (2006) Manish Basu (2009), Shivkumar (2006) stated that, all third party risks are to be transferred to the 'India Motor Insurance Pool' in line with the insurance. The risk pool will be called the 'Indian Motor Insurance Pool' (IMIP) with all the non-life insurers, both the public and private sector, becoming members. Balu (2007) stated that the plan for amendments to the Motor
vehicles Act, 1988 form part of a national effort to control accidents, Shivkumar (2007) examines about the Ratings and Insurance Companies and it was said that 'Credit Rating' will impose financial discipline on insurers Venkatachaki Jagannathan (1999) 'Merger' of all four companies into one is the solution for the problems. Suresh (2006) stated that the companies that have resorted to compromise settlements have been able to control their losses. Radhika Menon (2007) examines the possibility of appointment of consulting firm Bhat (2006), Venkatesan (2010) examines the proposal about additional cess on fuel by Government as an alternate for insurance. Giridharan (2006) states that there are only two avenues for the insurers to make their Motor portfolio less crippling. The first is to make out a strong case for increase in third party premium by presenting complete and accurate premium and claims statistics. The second is to aggressively push for compromised settlement of MACT cases. Giridharan (2006), Venkatesan (2010) discusses about the yearly Vs. long term premium collections He also states that jurisdiction to claim has to be fixed. Radhika Menon (2006) states that online, real-time computerised network to avoid lapses in the claims mechanism and commercial vehicle accidents may soon see quick settlement. Radhika Menon (2006) while attempting to examine the third party insurance cases states that while solutions such as 'Lok Adalat' have been suggested, no alternative has materialized till date and the third party portfolio has also been bleeding the insurance companies. Bhat (2006) states about the effects of 'Surface Transport Ministry' and the 'Finance Ministry' set up a Committee in 1999. James (2006) discussed about the need to bring back serious underwriting skills in the area of business.

In the review of court cases on 'Motor Third Party Claim', the Supreme Court and High court cases relating to 'Third Party Claims' are studied and classified in suitable heads like 'Drivers Action and Liability of the Insurance Company', 'Fake/Forged Licenses and Liability of Insurer', 'Fraud Claims and Liability', 'Comprehensive / Package Policy and the Liability', 'Policy Terms and the Liability', 'Courts Verdict on Rate of Interest', 'Pay and Recover Clause', 'The Insurer is deemed to be a Judgment Debtor and Liability', 'Basis of Compensation', 'Tractor and Trailer Accidents and Insurers Liability', 'Involvement of more than One Act', 'Owners Position and the Liability Arising There from', 'Appeal and the Verdicts', 'Capacity of Passenger Travelling', 'Private Vehicle and the Liability of Insurer', 'Gratuitous passenger and Insurers Liability', 'Calculation of
compensation under Section 163 A', 'Multiplier calculation', 'Traffic Safety Rules and Court's Interference', 'No Fault Liability', 'Transfer of Vehicle and Insurers Liability', 'Difference in Awarding Compensations', 'Doctors as Stock Witness', 'Driving License Related Defence for Insurance Companies', 'Date and time of Commencement of the Policy', 'Drunkenness and Insurers liability', 'Adverse Inference' (Age), Land mark 'Swaran Singh Case', 'Police Duty', 'Need for Speedy Trial'. It gives the insight of the court's view on several aspects of 'Motor Third Party Claim' related cases."
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