CHAPTER V

ACCIDENTS AND COMPENSATION

The term accident cannot be defined accurately in crisp terms. The World Health Organization considered it as “an unpremeditated event resulting in a recognizable injury”.\(^1\) American National Safety Council explains “accident as an occurrence of a sequence of events which usually produces unintended injury, death or property damage”.\(^2\) The word ‘unpremeditated’ and ‘unintended’ imply the human factor. This definitely rules out accidents like earthquakes, floods, volcanoes and pestilence.\(^3\) However, accidents are unexpected incidents beyond human comprehension.

Not a day passes without the appearance of news items of a tragic road accident in the media. Generally, seven principal types of accidents occur on the earth.\(^4\) Among these accidents, millions of lives are lost in road accidents every year all over the world. Nobody ever imagined that the introduction of the automobile would turn roads into graveyards. The subject of road accidents is posing a knotty problem. A variety of factors and battling circumstances which came into play in the causation of accidents. Increasing road accidents is one of the serious problems in transport operation. Keeping this in view, the present chapter aims at analysing the increasing trend of road accidents in India, especially in the Kanyakumari District, its causes, harmful effects, and suggests certain remedial measures to reduce the problem.

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Undoubtedly, nothing is more valuable than life, on earth. But it is unfortunate that in this modern age, in spite of tremendous developments in all spheres including, science and technology, it is a mirage to avert accidents. In India, either due to lack of care of the victim or due to rash and negligent driving, every day over 150 lives are being lost, about 1000 people grievously injured and property loss worth about to Rs.420 lakhs due to road mishaps. Very often, the shocking incidents of road accident and deaths of human beings, hit the headlines of daily newspapers. Hence, liability is shouldered by the Government to protect the lives of the citizens from various accidents through its Governmental agencies.

Usually the accidents on roads occur for the trifling fault committed either by the driver of a vehicle, cyclist or by the pedestrian. The prevailing illiteracy and ignorance, lack of civic sense and traffic rules, the unprecedented expansion of shops, cabins and erection of hoardings on road side, driving of vehicle by incapable persons or driving under the influence of intoxicants, overloading of vehicles, driver’s inattentiveness and the mad-race of vehicles and cycles by youngsters most of the time are the reasons for road accidents.

In the modern developing world, the population and vehicular traffic are increasing day-by-day. But the law-enforcing agencies like Traffic Police and Transport Department Officials with their limited source and strength are trying sincerely to control the heavy traffic on roads to avert accidents. These agencies while on duty, every day face problems of accidents due to above said reasons.

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6 Ibid, pp.120-121.
7 India Today, dated 15.03.1996, p.121.
Causes of the Road Accidents

A perusal of available records reveals the fact that throughout the developing world, variety of reasons contributes to the high death toll due to accidents. The main reason includes, overloading of vehicles, low maintenance of standards, poor quality of roads and lack of education and policing. The bad layout of the road and the defective mechanism of the vehicle can be rectified by engineering devices. But, the part played by the human being in the sequence of events leading to an accident is a highly complicated one. It is an uphill task to bring him round to discipline behavior on road. The physiological and psychological make-up of the human being is so varied that it is impossible to bring about a satisfactory uniformity by a set policy. The reaction and temperaments vary from individual to individual, on the basis of sex, age, nationality and social status are also factors for accidents.

One of the important causes for road accidents is the dilapidated condition of the road. Road accidents may take place due to the existence of sharp curves. In our country, the conditions of many roads are hazardous. On many narrow roads, even vehicles are facing trouble to cross the passing vehicle. On National Highways, where villages are situated on the side where local roads join the National Highways, due to non-marking of zebra crossing marks on the road and for non-construction of Road Island also invariably paved the way for accidents. On roads, many humps are constructed, but no indication mark of it has been given. People of the village areas and few of the town dwellers are still illiterate or ignorant about the traffic rules. Due to wrong use of road by these people also accidents are caused.

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In the town area and on the National Highway sides, due to the encroachment by shop keepers, many roads became narrow for the easy flow of the vehicular traffic. Erection or installation of billboard on road sides, and a few turning points obstructing the straight view of drivers are also responsible for accidents. At few places, due to non-availability of specified market places, usually on the road-sides the vegetables or fish market are established for the villagers and the road becomes fully obstructed. In towns and villages, cattle usually sleep on the roads and in many towns there are no parking places. In towns, lack of truck terminus and planned traffic, inadequate rest sheds for the passengers, lack of pavements for the pedestrians and non-availability of auto complex resulted in heavy vehicular obstruction on road led to many accidents.

Drivers of motor vehicle are also responsible for accidents. The following reasons such as non observance of traffic rules are solely responsible. If the drivers do not follow the traffic disciplines and rules and drive the vehicle without caution and overtake arbitrarily, the drivers themselves will be responsible for accidents.

Besides the causes attributed to the driver, the condition of the vehicle is also responsible for accidents. Usually, in some of the transport depots, the vehicles are not well maintained. Moreover, lack of adequate lights, inadequate lubrication oil and greese, coolend oil and undertaking improper repair work are some other factors causing engine failures and subsequent accidents.

The environment in which the driver operates the vehicle also causes accidents. The sight may be affected due to the closeness of trees, electric and

telephone poles to the pavements also result in accidents. Accidents may also occur due to bad weather: For instance in the high ranges especially in the upper Kodayar accidents are quite possible due to mist and fog. In addition, existence of shops, small markets and educational institutions, other buildings including parking make the road narrow which resulting in frequent road accidents narrowing down the road way, and road side parking.  

Apart from this, seventy five percentages of road accidents are caused due to rash and negligent driving and twenty five percent accidents happen due to carelessness of the victim. It is rightly predicted that rashness of vehicle not only consists in high speed, but consists not keeping in mind the rules of safety and prudence. It is seen that without proper test, driving licenses are being issued to the drivers of vehicles. The drivers without having pre requisite qualifications are neither able to read the road-side traffic sign nor have the knowledge of other languages on traffic rules, mostly not aware of road regulations. Some of the drivers, who have defects in their eye-sights, are given the licenses to drive motor vehicles. Many of the drivers who drive heavy vehicles on long routes are addicted to intoxicants and drive the vehicles under that influence on alchocal on over speed. In “Blind” or zigzag curves, these drivers do not blow horns to avoid accidents. They also use high decibel bulb or gas horns and while driving during night did not use dipper to give pass to other vehicle. This tendency of the heavy vehicle drivers overloaded with goods and passengers, their rash and negligent driving practices and tends to overtake the vehicles on road, often lead their vehicles to fatal accidents. These drivers, against rule, often switch on the focus light at night on light vehicles in place of dipper which results in the drivers of light motor vehicles

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to loose control over the steering and meet accidents.\textsuperscript{21} In case of two wheelers, drivers and pillion riders without wearing head guards are inviting fatal injuries in road mishaps. Young or novice or incapable persons who are driving without licenses and lack of training usually cause accidents on road and injure not only themselves but also the by passers.\textsuperscript{22} These factors are some of the reasons for accidents.

\textbf{Harmful Effects}

Though accidents are unexpected incidents and many attempts have been taken to avoid the occurrences of such, it has an undesirable effect on society and economy. One of the major harmful effects of road accidents is death of human beings, which is an irrecoverable loss to the family in particular and to the society in general.\textsuperscript{23} Accidents also resulted in serious injuries to the victims which led to severe monetary loss to the family spent on medical treatment, besides the physical loss which makes the person physically handicapped forever even in the scientific age.\textsuperscript{24}

When a person drives the vehicle, he becomes partially mechanized, and thus his behavior is also affected. The behaviour does not depend upon any law or convention or consideration for other road users. Many a time, speed limits are violated and corners are drastically cut when making turning movements. A psychologist may say that most of the drivers of commercial vehicles are responsible for majority of the accidents that belong to a non courteous class.\textsuperscript{25} It is obvious that if a person meets with an accident and is hospitalized till he or she recovers, the person will have to take a lot of mental tension and the family

\textsuperscript{21} \textit{India Today}, dated15.03.1996, p.121.
\textsuperscript{22} \textit{Ibid.}, p.122.
members will also have to bear with their mental tension caused because of accidents.\textsuperscript{26}

The vehicles involved in accidents will be damaged partially and fully and it is a direct loss to the operator and an indirect loss to the society.\textsuperscript{27} After accidents, the owners of the vehicle face severe economic loss in undertaking repair works and to give compensation to the victims. Generally, due to accidents, society as a whole will have to face the loss.\textsuperscript{28}

**Laws to Regulate Road Accidents**

To regulate motor vehicles on road, the Social Welfare Oriented Motor Vehicles Act was enacted in 1939 (by the Act no.4 of 1939) and has been replaced by Motor Vehicles Act, 1988 (by the Act.No.59 of 1988). The said Act has further been amended on 1994 (by the Act No.54 of 1944) with effect from 14\textsuperscript{th} November, 1994. The present Act deals with provisions to provide compensation to victims of road accidents and seeks to provide more deterrent punishment, to the culprits in cases of certain offences.\textsuperscript{29}

The new Motor Vehicles Act contains provisions regarding instructions for the maintenance of vehicles,\textsuperscript{30} limit of speed,\textsuperscript{31} limits of weight and limitations on use,\textsuperscript{32} the nature and weight of the vehicle,\textsuperscript{33} in overloading, erection of traffic signs,\textsuperscript{34} guidelines for better traffic regulation, provisions of parking places and halting stations,\textsuperscript{35} regulations of driving,\textsuperscript{36} and duties of

\begin{itemize}
\item \textsuperscript{26} *Ibid.*, p. 102.
\item \textsuperscript{27} Borcar, M.V.S. and Ramakrishnan, R., *op.cit.*, p.59.
\item \textsuperscript{28} Report of the Accidents Prevention and Trauma Care Management, Trivandrum 2004.
\item \textsuperscript{29} G.O.Ms.No.48, Transport Department, dated 2\textsuperscript{nd} November 1971, pp.5-7.
\item \textsuperscript{30} Motor Vehicles Act, Section 109.
\item \textsuperscript{31} Motor Vehicles Act, Section 112.
\item \textsuperscript{32} Motor Vehicles Act, Section 113.
\item \textsuperscript{33} Motor Vehicles Act, Section 114.
\item \textsuperscript{34} Motor Vehicles Act, Section 116.
\item \textsuperscript{35} Motor Vehicles Act, Section 117.
\end{itemize}
drivers to obey traffic signs.\textsuperscript{37} Moreover, the Act prescribes that the driver of a vehicle is required to ply the vehicle only according to traffic.\textsuperscript{38} Leaving the vehicle in dangerous locations, riding on running board or sitting on top or bonnet of vehicle,\textsuperscript{39} are depicted in the Act as offences and penalties prescribed for the defaulters.\textsuperscript{40}

It is calculated that in cases of disturbance to a driver, he may loose his control over the vehicle. Hence, to provide him free driving facility, obstruction to driver is also treated as an offence.\textsuperscript{41} In the case of two wheelers safety measures for drivers and pillion riders,\textsuperscript{42} are prescribed and are advised to use of protective head guard\textsuperscript{43} during driving. The Motor Vehicles Act also stressed the need to protect the welfare of the driver or rider and to save them from grievous injury or death in the events of road accidents.

Usually, during the journey, the driver is instructed to follow certain precautionous measures while crossing the unguarded railway level crossings\textsuperscript{44} and to stop his vehicle in certain cases\textsuperscript{45} to avoid accidents. The Motor Vehicles Act prescribed that it is the duty of drivers or owners to inform the matter to the concerned authorities and to furnish informations of insurance, policy to the accident victim.\textsuperscript{46}

The Act provides provisions for payment of compensation in certain cases.\textsuperscript{47} In case of death and disablement in accidents, the Amending Act 54 of

\textsuperscript{36} Motor Vehicles Act, Section 118. \\
\textsuperscript{37} Motor Vehicles Act, Section 119. \\
\textsuperscript{38} Motor Vehicles Act, Section 121. \\
\textsuperscript{39} Motor Vehicles Act, Section 122. \\
\textsuperscript{40} Motor Vehicles Act, Section 123. \\
\textsuperscript{41} Motor Vehicles Act, Section 125. \\
\textsuperscript{42} Motor Vehicles Act, Section 128. \\
\textsuperscript{43} Motor Vehicles Act, Section 131. \\
\textsuperscript{44} Motor Vehicles Act, Section 131 A. \\
\textsuperscript{45} Motor Vehicles Act, Section 132. \\
\textsuperscript{46} Motor Vehicles Act, Section 134. \\
\textsuperscript{47} Motor Vehicles Act, Section 140.
1994 has fixed minimum 50 thousand and 25 thousands of rupees respectively as compensation for victim. Provisions are also made to provide right to claim compensation for death or permanent disablement.\textsuperscript{48} In accident cases, penalties are imposed on the driver or owner to give information to insurance officers concerned.\textsuperscript{49}

In Section 165 of Motor Vehicles Act, details are enumerated regarding the claims of tribunal, which is constituted to provide compensation to a victim. Among the penal provisions of the Motor Vehicles Act, disobedience of orders, obstruction and refusal of information,\textsuperscript{50} allowing unauthorized person to drive the vehicle, driving vehicle in contravention to Section 3 and 4 of the Act, offences relating to licenses, offences relating to construction and maintenance of vehicle, driving at excessive speed, driving dangerously, driving in a drunken mood or under the influence of drugs, driving when mentally or physically unfit, using vehicle in unsafe condition and registration, using vehicle without permit, driving uninsured vehicles, taking the vehicle without authority, and causing obstruction to free flow of traffic, are treated as offences and punishment is stipulated in the Act itself.\textsuperscript{51} The Act also confers power on the police to arrest the defaulter. It also provides that when a person, in the presence of a police officer in uniform, commits an offence, he will be punished under Section 184, 185 and 197 and he is liable to be arrested.\textsuperscript{52} Provisions are also made in this Act for medical examination of the drivers who drive vehicles under the influence of intoxicants. As reflected in Section 185 of the Motor Vehicles Act, the breath test or blood and urine test in a laboratory by a registered medical practitioner within 2 hours from arrest will lead to the launch of a successful prosecution in a court of law.\textsuperscript{53} Under the

\textsuperscript{48} Motor Vehicles Act, Section 141.  
\textsuperscript{49} Motor Vehicles Act, Section 151.  
\textsuperscript{50} Motor Vehicles Act, Section 179.  
\textsuperscript{51} Motor Vehicles Act, Section 192.  
\textsuperscript{52} Motor Vehicles Act, Section 202 empowers police to arrest the offender.  
\textsuperscript{53} Motor, Vehicles Act Section 203 & 204.
Act, police officers are authorized to detain the vehicle and to impound its documents with an object to restrict traffic of defective vehicles on road.

Further, provisions of road safety council and committees are also made in this Act. Section 215 provides to discover new ways to prevent and to control the accidents on roads. Hence, it is inferred that the Motor Vehicles Act of India is one of the best pieces of legislation, which not only contains guidelines for the people’s welfare to save them from road accidents, but also provides provisions to compensate the victims of road mishaps.

Section 279 of the Act deals with rash and negligent driving. Besides, Section 337 and 338 are equally important as they impose punishments for causing hurt by act endangering life or personal safety of others. But Section 304-A was inserted in Indian Penal Code of 1860 by the Act 27 of 1870, which provides penal provision for causing death by rash or negligent driving.54

It is seen that even in cause of fatal accidents due to the reluctance of witnesses and the defects of the investigating officer and non-recording of the relevant evidences at the spot, law. Hence, the investigating officer should know that in these cases, evidence of eye-witnesses, photographs of the spot, seizure of the broken parts of the vehicles and skid marks are relevant as the occasion, cause or effect of the accident cases and expert’s opinion are also relevant for punishment.55 Thus, Motor vehicles Investigator’s opinion, on injuries of accident victims is equally relevant and helpful for the success of the prosecution.

Judgement on Cases of Accidents

Normally accidents, though unexpected, happen without any apparent cause and no day is completely free from accidents. Due to a spread of education and the awareness of law, the families of the victim pursue the court

55 Ibid., pp.5-7.
either for compensation or for punishing the culprit who is solely responsible for the mishap. It is inferred from papers that according to the severity of the crime, punishment is awarded to the wrong doer. Certain accidental cases are pictured as the mishap in which wrong doer usually causes accidents without any intention. Hence, it was a proof that the rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused. It was also held that more fast speed would not amount to rash and negligent driving. The mere fact that there is an accident and some persons are injured does not mean rash and negligent driving. In accident cases ‘rash’ and ‘negligent’ are two important ingredients to provide the charge and “salmond” have defined the negligence as the mental attitude of undue indifference with respect to one’s conduct and its consequences. According to Austin ‘negligence’ is the state of mind of one who inadvertently omits an act and breaks a position duty. He further opines that “negligence” occurs where “the party does an act which he was bound to do because he adverts not to it” and rashness, “when the party does an act breaks a positive duty. He thinks of the probable mischief, but, in consequence of a missupposition begotten by insufficient advertence, he assumes that the mischief will not ensure in the given instance or case”. In these cases, the radical idea denotes that “the party runs a risk of which he is conscious. Negligence is described as a breach of duty. In criminal cases, the amount and degree of negligence are the determining factors.

The Accident Research Fund Rules, (as per rule 6(b)) contains, an amount of Rs.100/- per passenger vehicles has to be made at the beginning of every according year to the Accident Reserve Fund of the Tamil Nadu State Transport Department in order to meet the accident claims from the parties. Based on this, a contribution of 2 lakhs was provided in the Budget estimates for 1971-72 for this fund. However, with reference to the trend of expenditure

56 Prabhat Chandra Tripathy, op.cit., 127.
57 Ibid., p.128.
during the year, a sum of Rs. 9.25 lakhs was approved. Modification and reappropriate proposal was approved.\textsuperscript{59} Based on the number of vehicles, the contribution to be made to the Accident Reserve Fund was raised. The amount of Rs.2, 08,700 only, which is not sufficient to meet the increased expenditure under the Accident Reserve Fund during 1971-72. The contribution has therefore to be increased to 9.02 lakhs based on the actual expenditure incurred in 1971-72.\textsuperscript{60}

**Remedial Measures**

Accident is an industrial hazard. Despite best efforts and safety devices, it cannot be completely eliminated, particularly in the transport sector. Therefore, we have to create an atmosphere where there are fewer chances of accidents. With a view to bring down the number of accidents, the Central Government has made several amendments in the Motor Vehicles Act, such as stricter procedures relating to issue of driving licenses and provision for issuing fitness certificates for vehicles. Even though road accidents cannot be eliminated completely, attempts can be made to reduce them with the help of certain measures.\textsuperscript{61} At present, in view of the phenomenal rise in magnitude of road accidents it is proposed that Government agencies in collaboration with the work of the Non Governmental Organisations for the prevention and control of road accidents at the larger interest of the people. Non Governmental Organisations and Government Department even by working within their limited sphere can assist the law enforcing agencies to save the valuable lives of the people.

\textsuperscript{59} G.O.Ms.No.407, Finance Department, dated 31st March, 1972,. GO.RT.No.407 Finance Budget Estimate IV dt 31/3/1972). The actual expenditure incurred on the payment of compensation during 1971-72 amounted to Rs.9.02 lakhs. The fleet strength at the beginning of the year was 2087.

\textsuperscript{60} G.O.Ms.No.565, Transport Department, dated 13th July, 1972.

Since road conditions cause accidents, it is necessary to provide better road networks by way of constructing good roads and maintaining the roads regularly, which will help in reducing the problem of accidents. A good road system mitigates the operating expenses and depreciation of road vehicles on the one hand, it also reduces the risk of accident on the other. The view that the construction of roads is unproductive is not proper. Roads are productive and in course of time they yield more than what has been invested on them. The Government draws revenue from road users by imposing different taxes. The Central Government realized a sum of Rs.615 crores in 1972-73 as revenue from roads which increased to Rs.2, 116 crores in 1984-85. Similarly the State Government received Rs.273 crores in 1972-73 as road revenue, which increased to Rs.1, 301 crores in 1984-85. Thus, roads amply return the expenditure caused in their construction and maintenance. It is heartening to note that the Central and State Governments have started giving due attention to the construction and maintenance of roads, and it is hoped that the number of accidents due to good conditions of roads will come down.

Existence of steep curves influences judgment of the drivers and will cause accidents. If curves are lessened and roads are straightened, accidents can be reduced at least to some extent. Narrow roads should be widened and it is also necessary to keep sufficient road margins at soft sides of the roads. Road accidents can be reduced if proper footpaths are laid in the space provided for road margins and if the people are instructed to walk only on the footpaths compulsorily.

65 Ibid. pp. 101-103.
66 Radhakrishnan, K., op.cit., p.46.
67 Ibid., p.47.
The two basic factors, viz., the skill and judgement of the driver play an important role in safety. The skill is the ability of the driver to handle his vehicle in the traffic environment, which is quite complex. The judgement relates to what he decided about a particular circumstance. Skill and judgement are very closely inter-related. The training of drivers should aim not only to improve both skill and judgement but also to enable them to have the knowledge of their capacity. If a person overestimates his driving capacity, he is looking for trouble whereas if he underestimates, he will drive efficiently.\(^6^8\)

Judgement of factors such as speed and distance is important, but many drivers are unable to judge them with some measure of accuracy. Many drivers underestimate the high speeds, which is quite dangerous. Another important factor is the time taken for taking a decision. A speedy decision is necessary but it will be useless and dangerous, if it is an erratic one. On the other hand, if a person takes a long time to take the correct decision, it does not serve the purpose. Hence, a realistic judgement should be taken by the driver swiftly.\(^6^9\)

Most of the motorists have the belief that accidents happen only to other and driver of the vehicle without any preparedness to avoid accidents. A pessimistic approach leads gloom and calamity. Studies conducted show that as many as sixty percent of the drivers involved in accidents were at the time of the accident unprepared for avoiding accidents. To avoid such a situation, the drivers should practice ‘defensive attitude in driving’.\(^7^0\)

Another aspect which warrants careful consideration is the attention of the drivers to traffic environment, i.e., alertness while driving. It is next to impossible to be alerted and concentrate on all the events on the road without any interruption while driving. Mental wanderings are quite common and these are all the more prevalent in the case of tired drivers.\(^7^1\) A lapse of attention may lead to illusion which is a misjudgement of something that actually exists and

\(^6^8\) Fernadez, M. Stanley, *op.cit.*, p.54.
\(^7^1\) RadhaKrishnan, K., *op.cit.*, p.48.
this would lead to unsafe conditions. The frequency and duration of mental wandering vary from driver to driver. A driver, even if he is in the state of mental wandering should have at least ‘diffused alertness’ to what is happening around him. This is quite a difficult subject and needs a careful study. There is a need to educate the drivers to realize the importance of relating optimal vigilance while driving.\textsuperscript{72}

For safe and efficient flow of traffic, the drivers should convey to other road users what they intend to do. There are many hand and light signals which every driver is expected to know. Most of the drivers feel that they know the signaling system, but the fact remains that they do not know the communication system for many maneuvers such as pull in, pull out, slow down, safe to overtake and not safe to overtake.\textsuperscript{73} Some drivers use flash light in all situations. The purpose of flashing from light or fail lights is not given hand signals because according to them, only freshers who lack good driving should be made to realize the importance of the communication system on road and they need to be trained for proper system of signaling. Proper traffic signaling, road markings, and sign posts will also help in reducing the problem of accidents during transport operation. If the traffic regulations are enforced under strict supervision, the problem of road accidents may be reduced considerably.

If the traffic regulations are enforced rigorously, the defaulters can be identified without much difficulty. If the defaulter is caught, they should be punished and this should be a lesson to others and thereby help to reduce the problem of accidents.\textsuperscript{74} Accidents can also be reduced through extending incentives in terms of extra cash or in kind, payment to the drivers who do not

\textsuperscript{72} \textit{Ibid.} p.49.
\textsuperscript{73} Letter from the Director of Tamil Nadu State Transport Department Lr.No.4461/J2/72, dated 20.05.1972.
cause any accident during transport operation.\textsuperscript{75} Nowadays such incentives are given to the drivers.

From the point of view of road safety, if every driver has the qualities such as good driving skill, realistic judgement, humble, forgiving, courteous, never worry while driving alert while driving and never in a hurry much of the accidents can be averted. But, it is impossible to find drivers with all such high virtues and ability. However, the qualities of drivers could be improved by proper education and propaganda.\textsuperscript{76} As the drivers trained in driving schools are found better than self-trained drivers, it is suggested that training should be made obligatory by law, to start with for professional and transport vehicle drivers, and later for others too. Training institution should be set up with the Government. For instance, the Government of Tamil Nadu organized IRT training to the selective candidates. The Government of Tamil Nadu has decided to take effective control of these driving schools. A well planned traffic education programme regarding State and efficient use of roads has been organized by the authorities concerned in Madras and many urban centers.\textsuperscript{77} This Department may consider the inclusion of traffic awareness and motor vehicle rules in their respective syllabus or courses of studies beginning from the lower level of the schools. This knowledge about the road safety rules could be beneficial for the students who are conversant with the rules. Thus, it will make them good citizens in traffic awareness campaigns to motivate the people and to control free flow of traffic.

Non-Governmental Organizations can assist and develop traffic awareness among the people with interaction between the government and the administration and with the people as a model agency. Police Department can sincerely control road traffic and arrange traffic weeks, develop traffic

\textsuperscript{75} Mohan D. and Bava, P.S., “An Analysis of Traffic Fatalities in Delhi, India”, \textit{Accident Analysis and Prevention}, 1985, pp.33-43.

\textsuperscript{76} \textit{Ibid.} p.45.

\textsuperscript{77} Gupta D.P., \textit{op.cit.}, pp.111-119
awareness among people. The sincere endeavors can prevent and control road accidents. This department can take immediate steps to undertake roads repair works which are in dangerous conditions. Moreover, speed breakers are laid at the required points. They might plant signal posters on roadsides which can caution the drivers about the obstacles on road beforehand and accordingly they avoid the danger. They can provide better road facilities for the people, by providing street lights, sufficient parking places and pavement system for the better flow of traffic. They can also assist the law enforcing agencies for the removal of the stray cattle taking shelter on the road. This department can arrange regular or intermittent checking camps of eye, ear and blood pressure of the drivers with the assistance of the police. Medical Department may also open camps to provide first-aid- trainings to the personnel of the Non Governmental Organisation and the Police officers to keep them fit for rendering immediate assistance to the injured victim of the spot. This Department is should cheek the motor vehicles at regular intervals and should restrict the flow of defective vehicles on road. They should insist on or instruct the drivers or owners of the heavy motor vehicles and buses to keep first-aid boxes to assist the needy victim on the spot. This department should strictly adhere to the principles and take proper care in issuing Driving License, Fitness Certificate and Registration Certificate to the vehicles because even for their trifling of overlooking mistakes if the same are issued to incapable persons.

Mere tightening the bolt of the vehicle can save one crore rupees daily in the economic analysis of the country. Hence the owners and the drivers should ensure the fitness of the vehicles before rotating these vehicles on the roads.

78 Ibid. pp.121-123.
79 Srivasan, N.S., *op.cit.*, p.5.
82 Ibid. p.135.
They should strictly verify the defects of the vehicle before the vehicles are brought out to ply.\textsuperscript{84}

It is seen that imported vehicles like “Toyata”, Mercedes-Benz”, “Volvo” hardly meet with accidents because of their good brake systems, alignment of wheels, aerodynamic body constructions and suspension systems, which are lacking in the vehicle manufactured in India indigenously.\textsuperscript{85}

In case of traffic violation, the amount of line in the law seems to be inadequate in consideration to the recent inflation rate. Hence, in all cases of road accidents and traffic violations, defaulters may be dealt with an iron hand and deterrent punishments with heavy fines may be awarded to create a sense of fear among the defaulters.\textsuperscript{86}

Government may consider to spend the tax collection for the vehicles and toll collections for the imprecision of old roads, and for widening these because at present conditions of many roads are hazardous. Large number of deaths in road accidents visualizes the lives of innocent persons being sacrificed because of negligent driving of the vehicles. Government may consider the matter with top priority to empower the police with authorities to issue license only after systematic driving tests and would exercise the power to cancel the license in case of defective driving.\textsuperscript{87} Likewise, Government has to ponder serious thoughts for taking immediate steps to confer specific power to the police authorities to impose requisite fines instantly for the traffic violators. These indispensable steps can help for the proper implementation of the Motor Vehicles Act and the Laws for more effective. These radical changes

will bring an effective traffic control system and will prevent the rampant occurrence of accidents on road.\textsuperscript{88}

The present system of licensing drivers, which has many inadequacies, should be improved. The drivers of heavy vehicles cause some more than 60 percent of the fatal accidents and it is a suggested that there should be a better control on these drivers. When a fatal or major accident occurs in air or rail a hue and cry is made and full inquiry and investigations are held to go into the root cause of the accident. But such inquires or investigations are not usual. Therefore, there is every need to make a proper inquiry when a fatal or major road accident takes place and responsible party should be punished. Besides this, a study about by the Center for Road Research Institute on drivers involved in several injury and fatal accidents has shown that majority of these drivers had defective eyesight. Hence, it is desirable to get tested the eyesight of drivers, specially the professional drivers.\textsuperscript{89}

From the prevalent traffic conditions and the way in which the drivers behave without courtesy or consideration for others, it is necessary to carry out effective enforcement for achieving immediate and expected results. These measures could include regular check on traffic violations, point system of control to screening up accident-prone drivers, fresh test before renewal of driving licenses to the drivers, who’s driving leads to personal loss to the entire community. There is a great need for inculcating ‘safety consciousnesses’ in every road user. The school teacher has a part to play in this task. School Children should be drilled to develop road discipline. Emerging from behind buses and parked vehicles, playing on the road, riding recklessly on bicycles, running behind moving vehicles and running across without looking for oncoming traffic are the common mistakes committed by school children.

\textsuperscript{88} Ibid., pp.22-23.
Therefore, teachers and parents should make children aware of the dangers involved in such mistakes.\textsuperscript{90}

Decision has been taken regarding the starting of Government Driving Schools for regulation of private driving schools, stricter standards for grant of driving licenses, control of drivers by introduction of point system by amending the Motor Vehicles Rules, use of equipments to detect those driving under the influence of alcoholic drinking, painting of goods vehicles with distinct yellow colour so as to give a clear visibility of the vehicles in the light, enforcing the use of crash helmets, evolution of a traffic highway code and amendment to the existing states with the objective reducing the incidence of accidents and for stringent action against those who contravene the traffic rules and regulations. Even though people know the consequences of accidents, it is necessary to educate the road user of the causes and effects of accidents through mass media. This can also be done in the educational institutions at a wider scale with the help of radios, televisions and cinemas, which will also help in reducing the problem.\textsuperscript{91}

Vivid and sustained realization of the appalling horrors involved in accidents and proper traffic education with a touch of emotional appeal are needed. Everyone should consider that every life lost in a road accident is a record have not been satisfactory, suspension of license for one month in the cases of rash and negligent driving and serious offences, revoking the license for driving callously, on-the-spot test of drivers for drunkenness, institutions of separate traffic court and mobile courts for administering punishments more speedily and effectively and uniform policies in enforcement. The fear of these measures would act as a deterrent to traffic violators. Intimidation is not and should not be the only purpose of the authorities, for if that were so the people

\textsuperscript{90} Ibid., pp.25-27.
\textsuperscript{91} G.O.Ms.No.4583, Home Department, dated 30th December 1965.
will again be chaotic, when a policeman is not present. An image of policeman as a friend and as well as custodian of law should be created.\textsuperscript{92}

It is possible to improve defective road conditions wherever they are found to be the cause for accidents. Traffic signs and regulations, if faithfully obeyed by all road users, would certainly avert accidents. In Western Countries, alcoholism is a major cause for accidents. Thanks to prohibition, the Madras State had no such problem. However, the abolition of prohibition created more problems of accidents in Tamil Nadu. Prohibition has not only saved the health of the addict, but has also incidentally contributed to the safety on roads. But quite a sizable percentage of road accidents are attributable to the folly of the road user.

In India the Motor Vehicles Act and rules are being amended from time to time with an object to prevent and control the offences of road accident. The Government improving the conditions of roads, constructing traffic posts and island and improving the standards of the traffic police personnel to regulate the traffic on road. In towns, for free flow of traffic, parking places, rest sheds are being constructed and few roads are declared as “One-Way Traffic” for the better facilities of the people. To control accidents, humps are raised at specific places and signals devices are provided on road-side for the convenience of the driver. The department of Police, including Old Motor Vehicles Department deployed for the eradication of defects of vehicles, to restrict over-loading to control high speed, etc. are at regular intervals checking the motor vehicles plying on roads. The Police Department with the co-operation of Non-Governmental Organizations and in coordination with Public Works Department, Health, Education, Regional Transport Office and Old Motor Vehicles Department are conducting road safety weeks regularly to increase awareness in the public, and to curb road accidents.

\textsuperscript{92} G.O.Ms.No.2697, Home Department, dated 12th October 1970.
In each society, there are little chunks of people who with spontaneous self sacrifices and inherent dedication serve for the people. Because, they believe that “service to mankind is service to God” and the almighty-twilights in every human being. The Voluntary Organizations always work with noble aims and object for the social welfare and thus: They command honour from all spheres and acquire a respectable place in the society. In a seminar which was held at Bhubaneswar the judges of High Court categorized the people who are providing services to the society in six types.93

All India Prohibition Council

The All India Prohibition Council undertook a close study on accidents on Highways in its wider perspective on the world situation in this regard and carried about this problem. The investigation revealed that many countries where permissive social setups had brought about desperate conditions have now awakened to proper sense to have the habit of consuming liquor caused there and enacted stringent legislation to save road traffic from the ravages of alcohol.94 The Council considered that the accidents which were attributable to drunkenness were bound to multiply before long and it was part of the wisdom to take effective measures. The Council suggested that the Motor Vehicles Act

93 The first type of persons who work for the social welfare work at their own cost. (People with self sacrifices). Second type of people provides services to the society without expecting any returns. (Like N.G.Os.). Third type of people provides services to the society and in return they expect something. (Like private doctor provide services taking fees for their subsistence). Fourth type of person provides service to the society and reimburses the cost of their services rendered. (For example Government servants). Fifth type of person provides services to the society by pulling the leg of others. Who has already been in that position and equally render the service but for their own benefit. Sixth type of persons, who only with ill intentions distort the image of society and always put the society in peril. (Mischievous and antisocial elements)

should be amended in four aspects. The Inspector General of Police and the Transport Commissioners of Madras were consulted on the Transport of the All India Prohibition Council. The Inspector General of Police stated that invariably the drunken drivers came to the notice after the accident and when he was produced before the Medical Officer after a delay of few hours, we could get only for violating the provisions, does not apply. Therefore, he considered that there was an imperative need to amend section 117 of Motor Vehicles Act and to bring within its purview all persons who are found drunk while driving.

In many cases Insurance Companies failed to verify the cause of accidents as influence of intoxicants at the time of occurrence. So the victims of the accidents in such cases were deprived of any compensation from Insurance Companies and were put to serve hardship. The Inspector General of Police therefore considered that the suggestions of the All India Prohibition Council. After that the Transport Commissioners endorsed the view of the Inspector General of Police and the Law Department also agreed the proposal of the Inspector General of Police and requested the department to settle the third party claims. Meanwhile, the Deputy Commissioner of Police (Traffic and Licensing) deputed a team to carry out a survey of drunken driving in through Tamil Nadu. The Legal Advisor to the Commissioner of Police has stated that Section 96 of the Motor Vehicles Act restricts the grounds of

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95 (a). Drivers of motor vehicles involved in accidents or suspected to be under the influence of liquor should be subjected to compulsory breath/blood/urine tests. (b). Authority should be vested in the Police and/or other appropriate Government agency to take such drivers into custody and cause these tests to be carried out. (c). Maximum and minimum penalties for first for the alcoholic concentration in the blood to exceed which it would be an offence. (d). Maximum and minimum penalties for first and subsequent offences should be prescribed. [Ibid., pp.2-3.]  
97 Madras Motor and General Insurance Company Limited, Incorporated in India, Madras.
defense to be taken by the Insurance Companies in respect of claims made against these companions.

As per the existing provision, it will not be open to the Insurance Companies to take up a defense that the drunkenness of the driver would disentitle the claims made against the Insurance Company, because the condition of policy, as laid down in some of the specimen forms do not at all indicate that the Insurance Company will disown any liability in the event of the driver of a motor vehicle being found drunk at the time of the occurrence. However, in order to avoid possible new conditions being incorporated in the conditions of the Insurance Policy, the Legal Advisor suggested that a provision may be added to section 96 of the Motor Vehicle at the time of accidents shall not be a ground of defense for the insurer. 98

In the meeting that was held in the Chamber of the Ministers for Transport on 2/8/1972, some recommendations 99 were proposed by the Central Road Research Institute and it was accepted by the Chamber of the Ministers for Transport. These proposals are amended in Tamil Nadu Motor Vehicles Rules, 1940. Natesan, J, of the Madras High Court in Ambalal case, held that “it is the duty of every man who drives a vehicle on a public highway, and a vehicle on a public highway, to drive it with such care and caution as to prevent, as far as possible any injury to any person”. In accident cases, legal formalities are attached to be performed by police, and for this reason medical practitioners in many instances denied to treat the injured of accident cases immediately. But in 1989, in public interest litigation, the apex court of India

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99 The recommendations are (i). that legislation may be undertaken to prohibit drinking while driving or to lay down a limit of intoxication which, when exceeded would render a driver liable to prosecution and conviction;(ii). That the point system of control of drivers should be introduced by amending TamilNadu Motor Vehicles Rules; and (iii). That as visual capacity shall deteriorate with the advance in age; it is all the more important to have periodical visual examination of drivers.
clarified the position stating that “every injured citizen brought for medical treatment is to be given medical-aid instantaneously to preserve life and thereafter the criminal procedure law is to be allowed to operate in order to avoid negligent death.” In this case, the apex judiciary has interpreted that doctors are duty bound to protect the life of the injured and to extend medical assistance to preserve life without waiting for police formalities, because this right of the victim flows from Article – 21 of the Indian Constitution. Recently, in a case where the Government Hospital has failed to provide timely emergency medical treatment to a poor in need, the Apex Court has ordered the Government to pay compensation of Rs.2500/- to the victim.

With an object to provide compensation to victims of accidents, the Old Motor Vehicles Act was amended in 1988 and in 1994. Likewise, the judiciary of India has also developed a victim compensating trend in the cases of accident for the welfare of the accident victims. With regard to this social welfare oriented legislation, the rule of beneficial construction that ordains that, if a statue is capable of two constructions that construction is more beneficial to the interest of the persons in whose interest the Act has been passed, Justice J.S. Verma of the Supreme Court has stated that “Judicial Activism is like a sharp-edged tool which has been used as a scalped by a skillful surgeon to cure the malady, not as a Rampur knife which can kill. In the said context, the apex judiciary has stated that the span of life of the person killed in accident should be taken to be 70 years in view of high rise in life expectancy and this view of the judiciary enhances the quantum of compensation to the victim. In cases of fatal accidents, it was held that loss to parents should always be calculated on the expectancy of the parents. In this regard, M.P. High court for the welfare

100 Palmer, op.cit., p.273.
of the victim, settled, that “determination of compensation in Motor Accident claim must be liberal, but not niggardly.”

It was held by the course that compensation to claimant for his suffering and disablement has to be substantial and not merely a token amount. The tribunal is obliged to pass an interim award under Section 140 of the Motor Vehicles Act just on its prima facie satisfaction. And it was held that the liability of the insurer and the owner of the vehicle are being joint and several, includes also in respect of compensation under Section 92A and there is no question of apportionment between them. It was further held that an insurer would be liable to indemnity of the insured in respect of compensation awarded against him for the death or bodily injury to a gratuitous passenger also. It was also settled by the Court that there is no bar for tribunal to grant a compensation higher than the one claimed in the petition, and even state is made liable for damages occasioned by the negligence of its servants by the principal of vicarious liability except where tortuous act committed by its servants was in exercise of its sovereign powers. To help the poor and the downtrodden in the society, the court can even relax the period of limitation to file the suit, has held that poverty, illiteracy and backwardness have to be treated to be sufficient cause for condonation of delay. So, a conclusion can be drawn that in India, the judiciary has thought of the necessities of the time, have rightly developed a victim compensation trend to assist the victims of accident.

COMPENSATION

Compensation in cases of accidents is the monetary reimbursement given for the suffering incurred by a victim either for the loss of life or for the

property in cases of accidents. The quantum of compensation is decided by a tribunal set up for that purpose. Usually, the insurance companies with which the vehicle involved in the accidents pay compensation, it insured. Generally in cases of private agencies, which are involved in accidents, the insurance companies used to pay the compensation because the private vehicles are insured with the organizations. As a matter of fact, it seems that the State Transport Department is made liable for the payment of compensation. As such the department assigns some particular amount for the payment of compensation whenever required. In spite of the availability of this fund, the Transport Department either due to its lethargic attitude or due to the cumbersome procedure the amount of compensation will not be paid at a time. A perusal of records reveals the fact that many cases seeking compensation were either pending in the court for final disposal or some cases disposed of were not adhered to by the transport departments. Therefore, contempt of court was filed for speedy payment of compensation. Several instances of such type of cases are found in the records and newspaper reports.

Some cases of such types, which occurred recently, are elaborated as examples. One Arumuga Pillai of Kottaram was knocked down by a state owned bus when he was standing at Kottaram bus stop junction on 6/1/2002. On hearing this news the police rushed to the spot and admitted him in the Government Hospital at Kanyakumari and registered a case in the first additional District Court, Nagercoil. After a thorough hearing and verification of witnesses, the court granted to pay a compensation of rupees thirty five thousand to the victim. However, the State Transport Department failed to settle the claim of compensation. Therefore, the victim further approached the court for the nonpayment of compensation. Accordingly, the Justice Pittchammal gave her verdict stating that the department should pay the sum of Rs.50,510 including court expenses and interest on the compensation

109 Ibid., p.18.
sanctioned earlier. Even then, the department did not sanction the compensation. Hence, a contempt suit was submitted and the court decreed for attachment proceedings. Consequently, an Air Conditioned bus belonging to the department was attached to a notice to that effect and the bus was brought to the court. Still, the case is pending in the court.

Same is the case with many a case of claims for compensation. Sukathmenon (Age 22), Son of Mohan of Marthandam lost one of his legs in an accident at Vettumani (Marthandam) on 31.08.2004. He approached the Kuzhithurai Sub-Court for a compensation of 15 Lakhs. The sub-judge who heard the case sanctioned a compensation of 6, 94,573 including expenses and interest of the amount on 13.12.2006. But the State Transport Department did not settle the compensation amount to Sukathmenon and so transport bus was attached just one year back. Upon this attachment the department remitted the three lakhs and promised to pay the balance within a short time. Since the department failed to keep this promise the victim again approached the court and the judge Nazir Ahammed ordered for the attachment of another state bus.

In yet another instance, one Antony Sebastian (Age 27), a van driver parked his van at Padanthalamood and walked to the nearby tea shop. At that time a State Bus knocked him down and was seriously injured. Though he was taken to Government Hospital, Kuzhithurai he was declared dead. The Kaliakkavilai police registered a case. The victim’s wife Sayed Ali Fathima claimed a compensation of 15 lakhs in the Sessions Court at Nagercoil. Justice Ramaswamy ordered a compensation of Rs.52, 000 to Fathima, her child and

112 Dhinathanti, dated 10th February 2010, p.11.
113 Dhinamalar, dated 1st September 2004, p.10.
115 Dhinathanti, dated 17th June 2010, p.13.
116 Dhinamalar, dated 13th September 2003, p.11.
mother-in-law. The State Transport Department did not adhere to the judgement. Since the compensation was not paid it rose to rupees 6,92,417 and Fathima approached the court for the payment of the said amount. As a result, a State owned Air Conditioned bus was attached and brought to the court complex.\textsuperscript{117}

A number of such incidents are available in the archives of court proceedings which tell the fact that compensations sanctioned by judges tribunals or seldom properly met with by the State Transport Department. They used to settle accounts only when attachments are made and buses were brought to the court premises. Even in such cases they settle the compensations in installments. A positive change in this procedure of the Transport Department may go a long way in helping the heirs of the victims of accidents.\textsuperscript{118}

The quantum of compensation is decided on certain norms like age of the victim, his position, earning capacity and his position in the family.\textsuperscript{119} In the case of a victim who is the head of the family and his income is the only source for the maintenance of the family, a higher compensation is used to be fixed on the basis of his job, income and age. If the victim sustained serious injuries or lost an organ, the compensation will be decided commensurate to the loss. However, the quantum of compensation is fixed by a court taking into account all the factors mentioned above and according to the law.

In the wake of courts attaching buses for non-payment of compensation to the victims, the Government came forward to introduce a new system for payment of compensation without inordinate delay. A special fund was created for the purpose of setting accident cases. With consolidated fund of 102 corers

\textsuperscript{117} The Hindu, dated 15th July 2010, p.7.
\textsuperscript{118} Dhinathanti, dated 14th July 2010, p.2.
\textsuperscript{119} Srinivasan, N.S., “Driver Aspects of Road Accidents”, Tamil Arasu, Vol.II, No.12, Madras, p.44.
the scheme was to distribute compensation\textsuperscript{120} then and there through the lokadalat\textsuperscript{121}. Because of the increase in the number of buses, accidents have increased. In road accidents in Tamil Nadu a tentative estimate of 13746 people are affected every year. Of them, atleast over 1400 deaths occurred due to accidents involving State Transport buses. Those who sustained injuries and the family members of those fatally injured are to be settled with compensation. The transport department is paying crores of rupees as compensation settlement. It is a well known fact that courts attached buses for non-payment of compensation\textsuperscript{122}. In 1991-92 the department paid 10.03 of rupees as compensation to the accident victims. This amount substantially increased during the years that followed. Moreover, delay in court proceedings in the settlement of compensation have put the people involved into untold miseries. As a result, the Government of Tamil Nadu decided to introduce a new scheme to settle the accident disputes as early as possible. Therefore, for that purpose, the Government decided to create a substantial corpus fund to provide enhanced compensation to the victims at an early date through lokadalat. When this proposal is fully implemented, attachment of buses may disappear. Moreover, persons who have to indulge in unnecessary litigations may be relieved.

The Government allots funds from the budgetary provisions to the State Transport Department to pay compensation to the accident victims. The department has to depend on this consolidated fund to pay compensations. At times the number of cases for the realization of compensation may be disproportionate to the available funds with the Transport Department, resulting in default in payment taking into consideration, the nature of default

\textsuperscript{121} Transport Department Policy Note, Demand No. 24, p.28.
\textsuperscript{122} Dhinathanti, dated 21st July 2010, p.14.
paving a way for court disputes and attachment on transport buses, the Government decided to sanction more funds.

Accidents are imminent in a road transport system. Though various reasons are attributed to accidents, sometimes it is beyond human comprehension. Despite various devices were evolved to avoid accidents, accidents are quite frequently occurring. However, with the growth of judiciary and Non Governmental Organisations attempts were made to pay compensation to the victims of accidents based on the severity of injury or loss of life or property.