CHAPTER X

SETTLEMENT OF MOTOR ACCIDENTS CLAIMS THROUGH

COMPROMISE

"Discourage Litigation, Persuade your neighbours to compromise whenever you can, point out to them how the nominal winner is often a real looser in fees, expenses and waste of time"

Abraham Lincoln

Settlement of cases by mutual compromise is quite often a better method of ending the dispute than the alternative of fighting the case to the bitter end by taking the matter in appeal from one court to another. The litigation apart from burdening the parties with heavy financial expenditure, also quite often leaves a trail of bitterness. Results more in consonance with justice, equity and good conscience can sometimes be achieved by having a mutual settlement of the dispute than by having a court decision one way or the other.

The Need for Compromise

The need for compromise is highly felt in the field of motor accidents claims. Social justice requires that a motor accident victim should get quick relief by way of compensation. Since the damages are unliquidated, a complete restoration of a traffic victim to the original status however may be a difficult process. Albeit, to compensate a victim, in terms of money, can be considered as a relief by way of mitigation of sufferings ensuing from the bodily injury and the sudden death. Though it can never be a full restoration from the impairment or

collapse of physical and mental integrity yet it constitutes the sole remedy which society through the law can apply.

The existing adversary procedure leads a traffic victim to a poignant situation. A switch over to Tribunal system from the ordinary civil court jurisdiction since 1956 for trying the Motor Accidents Claims cases reaped no efficacious results. The appointment of a Motor Accidents claims Tribunal was to dispense with the inappropriateness of the inherited judicial system and its alienation from the common people coupled with intractable problems of delay and arrears resulting in the denial of justice. But the functioning of the tribunals was such disregarding of even the basic characteristics required to be maintained such as openness, fairness, impartiality, cheapness, accessibility, freedom from technicalities expedition and expert knowledge of their particular subjects. The indiscriminate approach by the judiciary treating it par with courts proper and the lapses on the government in providing sufficient infrastructure was in fact crippling the claims Tribunal system.

Unless we are able to part with the bad effects attached with adversary trial procedure, a speedy settlement of a motor accident claim will not be possible. As rightly pointed out by the Law Commission of India "the entire object of appointing Motor Accidents Claims Tribunals and of creating third party liability by statute is set at naught by the inordinate length of time taken to dispose of these

1. 77th Law Commission Report on Delays and Arrears in Trial Court p.37 (1978)
cases". Depicting the explosive situation of motor accidents claims the commission reports that many of these claims are made by widows and children of persons who lost their lives as a result of the accident. Quite a large number of these widows are in straitened circumstances because of their having lost the adult earning member of the family as a result of the accident. At most of the places, the district judge is designated as the Motor Accidents Claims tribunal. He however, because of the pressure of other work has hardly enough time to deal with these cases. Compared to the large number of cases filed in many places, the required number of tribunals are also not appointed resulting the cases pending for five or six years or even more. The various studies on the problem of delay by committee after committee, commission after commission and their reforms implemented so far including the introduction of a unique special list system particularly in Kerala convince us that it is better to find out some other alternatives to dispense justice to poor traffic victims.

It is therefore realised that our problem is not just a question of introducing better management methods but of structural deficiencies and of resistance from vested interests including the legal profession and in this perspective decentralisation, deprofessionalisation, and public participation in the form of alternative forums like people's court

will be a hobson's choice for the 21st century to dispense justice to traffic victims.

**Lok Adalat or People's Court**

The concept of Lok-adalat is definitely not a new concept. But in recent years, the importance of Lok adalat has gained in stature due to several reasons, speedy disposal, less expenses on litigation and taking justice to the door steps of the litigants are the lofty ideals of the Lok-Adalat. The Lok Adalat has created a new horizon for a real, cheap, and quick remedy for the accident victims and brings a new hope for the destitutes and helpless people. Lok Adalat is a significant institution and if it works as it should, it can prove a powerful aid in resolving the problem of the heavy backlog of cases. In the spirit of compromise, there are no winners or losers.

**Lok Adalat What it is?**

An alternative to the Anglo-saxon system, an idea has been generated for a more indigenous, less cumbersome socially responsive and

3. "There is no acceptable evidence that any remedy so far devised has been efficacious to any substantial extent. A major lesson of the experimentation with this old problem of delay is that it will have to be solved by marshalling relief measures in groups and not from one injunction miracle cure. There is no such panacea. We must be careful to see that the cures suggested are not worse than the deceases. The ardent champion of speedy justice by over emphasis on quick justice sometimes lend involuntary support for denial of justice"
   K.K.Mathew "Law's delay - How to solve the Riddle" (1978) C.U.L.R. 353, 356

4. P.Ray "Settlement of claims by Lok Adalat 1986" A.C.J. (1) XX

5. Sarat Chandra Rautray "Lok Adalat Claims" 1987 (1) A.C.J. XXXVI

6. Dr. Janak Raj What to do in case of Road Accident (1994) p.116
administratively fair forum in cherishing the noble ideals enshrined in the Directive Principle under Article 39-A and 40 of the Indian Constitution. It is a peoples forum accepted as an informal, voluntary dispute settlement agency involving the people and public spirited, service minded lawyers and citizen. It resembles with early popular Nyaya panchayats settling petty disputes in rural country side. People's court is not a court as understood by lawyers though common people may find attributes of a court in it. Their function is only to enable the parties who voluntarily seek the Adalats intervention to understand their respective rights and obligation with reference to the dispute brought before it and to help keep dialogue going in a fair manner. Apart from being good samaritans, their role is to clarify the law and by gentle persuasion to convince the parties how they stand to gain by an agreed settlement though their role is not to judge the issues thrown up in the discussion nor to give a verdict at the end of it. This institutions is not a rival or a substitute to the court but only an aid or a supplement to the court systems as principles of equity were to the common law. It has no powers to compel attendance whether of a witness or of a party nor can it pass an exparte judgment. Its decision become binding on the parties only when the compromise agreement is entered in to the court and a compromise decree obtained.

7 Art 39-A "Provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

8 Art-40 The state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self - governments.
The modern version of these people's courts is fashioned by the alarm generated by the judicial circles and various committee reports.

In all these reports, they consistently advocated the need for revival of informal system of dispute resolution including the Nyaya panchayat, Legal Aid Camps, Lok Adalats and Mobile Courts. The setting up of the committee for implementing Legal Aid Scheme (CILAS) by the Union Government in 1980 under the chairmanship of Mr. Justice P.N. Bhagawati gave an impetus to the Lok Adalat movement. People's Court or lok Adalat was first born three decades ago and put in to practice by Harivallab parikh in Rangpur, district Baroda in Gujarat. Under the chairmanship of justice Ranganath Mishra then a judge of the Supreme Court (who became the chief justice of India) the Lok – Adalat movement was strengthened further and he has taken an enviable lead to spread the message and to institutionalise the system as an harbinger of justice. In many states like Gujarat, Andhra Pradesh, Tamil Nadu, Maharashtra, Rajasthan and Karnataka this Lok Adalat movement has set a record in its experiment. This experiment has been successfully proved in settling Motor Accident Cases. In many places, Lok Adalats are transfigured as people festivals of justice, in short Neethi Melas. Apart from potential litigation family friction, neighbourly


10(A) Neethi Melas conducted by the People's Council for Social Justice - a Voluntary organisation headed by V.R. Krishna Iyer, J. in Kerala. Through the mediation of the above council, a large number of Motor Accidents cases could be settled in a short span of five years.
quarrels, local complaints against anti social elements and other public
grievance, administrative benefits like old age pensions, invalid
pensions, unemployed pensions, Government employees pensions, often
delayed by the file methodology and paper logged process should be
tackled here cutting through red-tape and other imponderable conditions.

Organising the Lok Adalat sessions are done by the State and
District legal Aid and Advice Boards under the general guidance of the
Committee for Implementing Legal Aid Scheme (CILAS).

Lok Adalat requires the participation of the people amongst whom it
is to be held. Mobilisation of people can usually be done through
voluntary organisations and with the help of people who are fair minded
persons committed to the cause of justice to the poor. As such it is
advisable to form several committees with specific tasks months ahead of
the actual date of the Adalat. These committees include one for
publicity and mobilisation. One for research and para legal services.
One for liaison with courts, govt. offices and social service
organisations and one for reception and other organisational
arrangements. It is necessary for the research and para legal service
committees to mount a multidimensional efforts with the help of young
advocates, law teachers, and Law students in surveying the case files
and preparing the briefs, in conducting field investigations and
gathering data on the pattern of problems involving alternate strategies
for settlement on the basis of relevant laws if the parties are so
disposed and in conditioning the parties to make use of the Lok Adalat
in the spirit in which it is conceived.
Undoubtedly, it is a sensitive job which requires knowledge of Law, patience, tact and understanding.

Our law must provide justice. Law and justice cannot remain distant neighbours. Legal assistance to the downtrodden masses is a social imperative. Active participation in a Lok Adalat involves service to mankind as well.

Procedure

The procedure for conducting a Lok – Adalat is very simple with regard to the Motor Accidents Claims. The need for referring Third party Motor Accidents Claims pending with Motor Accidents claims Tribunals to the Lok Adalat was considered in a symposium organised by G.I.C. in August 1985. Procedure to be adopted for settlement of such cases and the role to be played by each involved in the Lok – Adalat process, namely, the Legal Aid and Advice Board for each state, claimant and his advocate, and the respondents such as owner driver and insurer and their counsils, were considered thread bare. As formulated, the proposal for holding the Lok Adalat at a given centre is mooted by Local legal aid committee which forms a panel of judges either on adhoc basis or on permanent basis. The selection of cases is then made from amongst cases pending with MACT where the liability on the driver is more or less certain looking from the circumstances of cases.

Only such cases where dispute is limited to the aspect of quantum are selected for discussion. Generally the concerned member of the MACT

11 Ibid
does not participate in the proceedings. Panel of judges usually consists of three members - one being a retired High court, another a retired member of MACT and the third one will be selected from eminent advocates with the background of social work. The selection of cases is made by the MACT member in prior consultation with the Insurance Company. The advocates of the victims as well as those of the insurance companies present themselves and the arguments on the aspect of quantum may be advanced and no evidence is recorded. For a successful negotiation and settlement, the victims themselves are also encouraged to attend. Similar way, the responsible officers of the Insurers also attend to help their counsels to fix the quantum quickly while negotiation is taking place. Wherever possible, for a successful outcome during the Lok-Adalat, presettlement negotiations are also arranged to resolve the main issues with regard to the aspect of quantum. Having approximately arrived at a quantum, it would be easy for the parties to arrive at a just compensation during the final talk in Lok-Adalat. A very responsible attitude is required to be adopted by the parties to explore the possibility of settlement of such claims. The claimant advocate shall produce copies of document necessary to decide the quantum of compensation. After fixing the quantum, a compromise petition is prepared duly signed by both the parties - Insurer and the victim/representative counter signed by the mediator and the same is handed over to the member of MACT for recording the settlement and for passing the award for the amount agreed up on. Generally, a fixed time limit of thirty days will be agreed to in between the parties for effecting payment by the concerned insurer. A pertinent question has
arisen in United India Insurance Co. Ltd v. Pallappu Sreedevi before the Andhra High Court — whether a Motor Accident Claims Tribunal can grant compensation in excess of the amount agreed to between the parties before the Lok - Adalat. As held, it is for the tribunal to decide the reasonable compensation and the agreement if any before the lok Adalat will not come in the way of the court for granting reasonable compensation. In another case, Sushama Lata v. MACT Jaipur a peculiar question was in issue as to whether a compromise agreement signed by the counsel without claimant's consent is valid. Rajasthan High Court said it is bad and section 96(3) could not be made applicable since the award was passed without the consent of the petitioner. In this case the petitioner could not get any relief since he had filed a writ in the place of appeal under section 110 - D of the Motor Vehicle Act, 1939. It was the justification of the petitioner himself that section 96 (3) of the Civil procedure code will be applicable, by which only an appeal was not preferred. However, one thing is definite that, a compromise without the consent of the claimant is voidable at the option of the claimant. So long as the claimant did not dispute, the compromise signed by his counsel may be sound in practice if not in Law.

Settlement through Lok - Adalats are voluntary on both sides and are at liberty to withdraw the case being finalised at Lok Adalat at any stage if either of them feels that the settlement is not in his

12 1993 A.C.J. 575
13 1989 A.C.J. 352
14 Section 96 (3) of the civil procedure code "No appeal lies from a decree passed by the court with the consent of the parties"
interest. The most important aspect of Lok Adalat is the opportunity allowed to the aggrieved to continue the case before the MACT if it is a pending one. In other type of cases, the party is free to approach the Tribunal or any court of Law to get his grievances redressed.

Role of General Insurance Corporation of India

The constitution of India has given the constitutional guarantee to the citizen of India that they cannot be deprived of justice, whatever might be the reasons. So far as the General Insurance Corporation of India and its General Insurance Industry is concerned there is great scope to continue to make ceaseless efforts and still more efforts to ensure that the aforesaid constitutional guarantee remains intact. They must find out different media under which the progress of settlement is accidented. It is gratifying to note that the G.I.C and its four subsidiaries have come out from time to time with novel media of settlements like Jalad Rahat Yojana (a prelitigation scheme for settlement of Motor Accidents Third party claims) Lok Adalat, conciliation proceedings and out of court cum compromised settlement through MACT. It is also a fact that the Herculean efforts made by G.I.C and subsidiaries for settlement of Third party claims through Lok Adalalt medium itself has resulted in settlement of 1.21 lac claims since 1985, paying a total amount of Rs. 338.42 crores. No doubt, it has definitely produced a dent on the ever swelling figure of pending Motor Third party claims and constant inflow of new applications due to ever increasing number of accidents in the country.

16 Ibid
With regard to settlement of Motor Accident cases through Lok Adalat, its success mainly depend up on the sincere role played by the insurance company. It is the past experience that they have extended fullest co-operation. However, it is felt that, they can have a far better show since they are having sufficient infrastructure to deploy for the same. It is necessary that the persons who represent the insurance company must be legally qualified. The number of legally qualified persons are very few in number representing the general insurance industry - from within. It is required to recruit more number of legal officers for the third party claims. Processing and scrutiny of third party claims is the most important aspects for the success of Lok Adalat. Last but not the least, the investigating agency who undertakes preliminary survey and collects the required details for the insurance company seldom gives a correct report. The practice of the insurance company is to utilise private persons for investigation. It is a matter of concern and their loyalty and integrity towards the company and towards the society in general varies. In the case of investigators also, the General Insurance Industry has recruited only very few persons. They are not properly utilised. For the third party motor claims more number of investigators should be appointed. Once the rank and file is more strengthened the insurance company would be able to participate in more number of lok - Adalats and settle more number of third party claims.

Statutory recognition under the Legal service Authorities Act, 1987

On the enforcement of the Legal Service Authorities Act, 1987 Lok Adalat movement will have a new facet of life. Under the Act, the Lok
Adalat has every power to pass an award and every award shall be deemed to be a decree of a Civil Court or Tribunal and it is final and binding without any appeal.

It has all the trappings of a court by vesting with a power of summoning and enforcing attendance of any witness and examining him on oath, for the discovery of production of any document, the reception of evidence on affidavit and the requisitioning of any public record or document or copy of such record or document from any court or office. A Lok - Adalat organised for an area shall consist of such judicial officers of the area as may be specified by state or district authority constituted under the Act for organising such Lok Adalat. Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, it shall be open to the parties to continue the trial of dispute before the same court or tribunal where the matter was originally pending. The legislative attempts though seems to be a good start yet this piece of legislation has been criticized by Mr. Justice P.N. Bhagawati and V.K. Krishna Iyer J. as inadequate. The provision that a sitting member of the bench shall preside over the Adalat has drawn maximum criticism. It would however be a progressive step in providing a statutory recognition and protection to the compromise awards passed by the Lok - Adalat. But at the same time no such delicate court procedure would be there to compel .

18 Id. at p.3.
any parties to appear before the Lok - Adalat either as a witness or as a proper/necessary party.

The success of the people's court would surely depend upon the wholehearted co-operation of the entire unit. Such a spirit can be gradually developed and generated as a long standing measure. Therefore a statutory touch should not exceed the limit to the extent of a magic touch of judicial extravagance.

The growth of this movement may ultimately structure the society against the litigation neurosis.

A comparative overview

In countries like Japan, France and Norway settlement of cases through conciliation has become a very successful affair in the day to day administration of justice. In Japan it is the duty of the court either on the application of the parties or Suomoto to send all civil proceedings either to a body consisting of two laymen and a judge or to judicial commissioners for a negotiated settlement.

If the conciliation court succeeds in persuading the parties to arrive at a settlement its terms are recorded by the Court and the order becomes binding as a judgment. In the event of failure the proceedings are dealt with in the ordinary manner.

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In France, all cases, go to a Cantonal Court presided over by a layman for conciliation and an agreed settlement. Failing a settlement the case goes for disposal to the court.

In Norway, it is a condition precedent to be placed before a conciliation council, composed of three mediators designated by the local authority.

We may profitably refer to the procedure adopted by the conciliation council in Norway.

"It is up to the one who intends to bring the action to request mediation by filing a summons with the conciliation council, usually at the place where the other party, is domiciled. The summons must state the subject matter of the dispute. The chairman of the conciliation council will then summon the parties to a sitting of the council, where they, as a rule must appear in person. They are not allowed in any case to let professional barristers appear in lieu of them or appear accompanied by barristers. If the conciliation council succeeds in bringing about a settlement between the parties, a formal agreement is entered into and is recorded in the official records of the conciliation council. Such a formal agreement will in the main, have the same effect as a final judgment. If that parties fail to agree, the dispute will usually be referred to the Court for trial."

20 Ibid
22 Ibid
The system of conciliation has also been tried in Pakistan. The conciliation courts ordinance was promulgated in 1961. The ordinance brought about important changes in regard to settlement and adjudication of petty civil and criminal cases. Primarily the role of the court is to conciliate between the parties and that is why it has been given the name of the conciliation court. The chairman has to constitute the court every time a case is brought to him for settlement. Each of the parties to the dispute has to nominate two representatives out of whom one must be a member of the Union Council concerned.

As reported, the conciliation courts in Pakistan have been playing a very useful role in settling dispute amicably. By and large people are satisfied with the sense of participation the system often given them.

Scope of Professional Lawyers

The tools and strategies of the conventional lawyers are found inadequate to the new challenges in a variety of situations traditional and modern, rural and urban. Further, several situation where lawyers have been involved in the past are now found capable of being effectively handled by people with lesser qualification for much lesser fees. In short, the professional lawyer in third world countries trained in colonial systems is increasingly in danger of turning irrelevant in the conciliatory dispute settlement process unless he

adapts himself to the changed circumstances. As a fact, there is demand from rural and urban communities for more Lok-Adalats in their areas. Indeed a silent revolution is under way to set in motion an alternative style of dispute settlement in which lawyers will play a secondary role to social activists. Antagonism and reactionary tendencies will not help to stop the revolution. It would be better to realize the gravity of the situation and flow along with the current by attaining necessary adaptability.

A reform is therefore needed to strengthen the Lok-Adalat movement. A reference to the Lok-Adalat for the purpose of a compromise settlement may be made as a condition precedent to start with the trial before the Motor Accident claims Tribunal. In case of failure, a failure report shall also be made compulsory for the purpose of submitting before the Tribunal along with the compensation application. This will definitely help to reduce the overload of the Motor Accidents Claim's Tribunal.

JALD RAHAT YOJANA -

A PRELITIGATION SCHEMES FOR SETTLEMENT OF MOTOR ACCIDENTS CLAIMS

This is the most ambitious and the novel scheme offered by the General Insurance Corporation of India. The master brain of this scheme is Hon'ble Mr. Justice A.M. Ahmadi of the Supreme Court, who is now the Chief Justice of India. In order to deal with ever increasing number of road accidents, when third parties are victims, it is felt essential to deal expeditiously the claims of compensation. Recourse to M.A.C.T. or Lok Adalat could not contain the huge arrears or even arrest the
staggering movement. An idea was therefore mooted out that the General Insurance Industry should deal with Motor Third Party claims even at prelitigation stage. With this background, it is felt essential to pool all resources available and establish a combined office for all the four companies at the metropolitan centres in order to have a uniform approach, take loss minimisation measures and arrive at settlements as expeditiously as possible. These combined offices are named, Motor Third Party Claims offices. As decided by the General Insurance Corporation in the month October 1990, the Motor Third Party claims were constituted first at Metropolitan Centres such as Madras, Calcutta, Delhi and Bombay and thereafter at Poona, Cochin and Bangalore. The Motor Third party claims offices of Kerala is centered at Ernakulam.

**Steps to be taken for implementation of the Scheme**

General Insurance Corporation has prescribed certain steps as follows:

1. Calling for application from claimants who desire to secure compensation at prelitigation stage.

2. For this purpose, it may be necessary to insert public notice so that the claimants who are having complete documents may apply for compensation in the prescribed form which can be obtained from the address indicated in the public notice.

24 Though it is a joint venutre of all the four subsidiaries, constitution and establishment of such offices is the responsibility of the Flag Company of that zone. The United India Insurance Co. Ltd. being the Flag Company of the Southern zone, United India has to take all the measures to set up one in Kerala.
3. The claimant has to submit the prescribed application duly completed along with the supporting documents as enumerated in the application.

4. The application along with the documents may be scrutinised to confirm that the application so received can be considered for payment of compensation at the prelitigation stage.

5. Motor Policy of the involved vehicle is required to be verified to ensure that accident has fallen within the policy period.

6. There is a valid insurance at the material time of accident due to compliance of Section 64 V B of the Insurance Act, 1938.

7. To ascertain that the liability about the accident reported is established under the policy.

8. Vehicle documents and driving licence of the person driving at the material time of accident needs to be verified.

9. On considering the foregoing, if the application is found in order, the amount of compensation can be estimated.

10. A panel to recommend the quantum of compensation consisting of retired judge and medical practitioner as nominated by the State Legal Aid Board may be constituted.

11. A retired Insurance Executive to work on the panel may also be nominated by Chairman, GIC/CMD of the company.

12. Notice about the date of session may be given to claimant and issued to remain present before the panel to negotiate compensation.

13. Once the amount is agreed in the presence of the claimant, insured and representative of the Insurance Company, a prescribed form of agreement may be signed by the concerned parties.
14. A discharge voucher in the prescribed form may be obtained from the claimant so as to disburse the amount of compensation as agreed.

15. An intimation of the agreement and the amount agreed may be furnished to the concerned MACT to record with them the compromised settlement.

Basic Formalities:

A claimant who needs compensation under the Jald Rahat Yojana Scheme may submit the prescribed application form duly filled along with a copy of the F.I.R., details of the vehicle, Insurance, driving licence, proof of age and income, photographs, medical certificates, ills and other hospital records to the Motor Third Party Claims Offices. A photograph of the injured must be affixed on the application form. After certification and necessary investigation, a date will be intimated to the claimant to attend the negotiation before an independent panel of judges. If the amount offered by the panel is acceptable to the claimant a compromise agreement will be arrived at and the Motor Third Party claims office will immediately make payment to the claimant subject to the receipt of the discharge voucher duly signed. The procedure is very simple. There is no evidence taking other than producing the most relevant documents to fix the quantum of compensation. The presence of a lawyer is not necessary. No fee like Court fee is exacted from the claimant. This scheme would prove beneficial to claimants who do not have to file any action before the MACT or with any other court or statutory authority as a pre-requisite
to the settlement under this medium. It costs nothing and could well become the quickest mode of settlement. It is devised to avoid the exploitation of the middlemen and ambulance chasers.

Existing Limitation of the Scheme

Death cases, cases involving minors and 'Hit and Run' cases are outside the purview of the scheme. As amended, the new Motor Vehicle Act, 1988 creates no difficulty with regard to period of limitation. At any time a claimant can take the advantage of the machinery. Previously, an application for compensation was necessarily to be filed with in the required period i.e., six months. Since the time limit is now deleted, one can select his own convenient date for filing the same. Since it is a prelitigation scheme, it presupposes that no case is filed before the Motor Accidents Claims Tribunal. A settlement under this scheme is most advantageous to the claimant. The amount paid under the scheme will go directly to the third party without the intervention of any unscrupulous element. If the claimant is not satisfied with the compensation offered by the panel, he will be at liberty to pursue his remedy before the Motor Accident Claims Tribunal. It is the cheapest and quickest scheme, safe guarding the interest, of the claimant in a real sense. It gives them great solace, physically and mentally without incurring any expenses.

However, we may notice the intervention of some middlemen in the form of agents who act as helping hands to the poor victim. In practice, Section 152 of the Motor Vehicles Act, 1988, validates an agreement entered into between the insurer and the insured alongwith the third party.
they exploit these poor victims more than the professional men. Once the scheme is more widespread and accustomed with, the poor victim may be able to dispense with such tourts or agents. The foul play of these agents become possible only with the silence of the Insurance official. If the officials of the Motor Third Party claims officers are vigilant they can easily find out these touts and keep away to a larger extent. It is also necessary to entertain death cases and cases involving minors under the Jald Rahat Yojana Scheme. The present system of payment must be modified. Instead of lumpsum payment, periodical payment must be adopted.

Out of Court and Compromised settlement through the Motor Accident Claims Tribunal

In Kerala, out of Court and compromised settlement through the Motor Accidents Claims Tribunal (MACT) has also been a successful affair. It is done as follows: The Motor Accidents Claim Tribunal prepares a list of cases in which prima facie liability is established. Since there are four Insurance Companies, one or two days will be allotted to each company. Usually, the list contains eighty to hundred or even more number of cases. These cases will be posted to a convenient date of all the parties with prior consultation. Recently it has become a monthly affair and the dates for each Insurance company is fixed. Through a process of conciliation, a good number of case may be settled. Experience shows that the number of cases which can be settled through this process varies from 50% to 75%.
Conciliation Courts

This is a novel court project to clear backlog of the cases pending with Motor Accidents Claims Tribunals. The conciliation court project was first conducted in Himachal Pradesh, during the tenure of its Hon'ble Chief Justice Mr. P.D. Desai. This project met with a remarkable success as a record number of 30,000 cases were disposed of by the Courts in Himachal Pradesh.

Under this project an attempt is made to bring about reconciliation between the parties at the early stages of litigation. At Nagpur, where the project was lodged on experimental basis, six courts designated as conciliation courts and they were presided over by different judges like Civil Courts of Junior and Senior Division, District and Session Judge etc. The cases were to be decided by the panel of the retired judges. As observed by the Law Commission, the results of the conciliation court project in Himachal Pradesh were so encouraging that the success of the model could not be put in to question and its impact on reducing litigation was noteworthy. As desired, the scheme would be very effective and must be made obligatory in all courts.

The Role of People's Council for Social Justice

In Kerala, the impact of voluntary organisations is tremendous. The success of these organisations is mainly due to the whole hearted co-

27 The Law Commission of India, 129th Report
28 Ibid.
operation of the public spirited citizen. Their programmes are transfigured as peoples programmes. Among the voluntary organisation who stand for the Legal Aid and Legal Literacy Programmes, a pivotal role is played by the people's council for social justice. It is a society, registered in 1985 under the Travancore - Cochin - Literary, Scientific and Charitable Societies Registration Act, 1955. This council had placed too such emphasis on the conduct of Lok Adalats or Neethi Melas as well as non litigative settlement of disputes by utilisation of the good offices of senior members of the Bar, retired judges, and other responsible members of the society through negotiation and mediation. The State Legal Aid and Advice Board in Kerala was not functioning well during the years of 1985 to 1988. It was the people council alone who could took an envious lead in organising Lok Adalats especially for setting Motor Accidents claims.

Through their mediation and incessant efforts, thousands of Motor Accidents Claims were amically compromised and settled for the delivery of social justice to the poor victims.

Need for Reforms

The primary and the sole objective of the law relating to compensation is how to deliver Speedy justice to the poor accidents victims or their dependants. The existing machinery the Motor Accidents Claims Tribunals in particular as well as supplementary forms like Lok

30 See Chapter IV
Adalat, Jald Rahat Yojana and conciliatory courts in General have been considered. It is our experience that either the Motor Accidents Claims Tribunals or the supplementary forums in their individual status and capacity could not deal and contain the whole subject matter towards delivery of speedy justice to the victims. No doubt, the existing machinery, the Motor Accidents claims Tribunal can be improved to a further extent, but such an improvement with, in the framework 'traditional fault' concept appears to be a futile exercise and it remains as a stumbling block against its reforms.

In the alternative, it is suggested that the existing Tribunal system itself should be overhauled and reorganised. The functional importance of the Motor Accidents claims Tribunal has to be necessarily redefined. A Motor Accidents Claims Tribunal must be given a dual status - both of conciliatory and adjudicatory, whatever be the supplementary forums are in operation, a final disposal of a claim is possible only with the approval of the Motor Accidents Claims Tribunal. Therefore, a co-ordination of functions under a common platform, i.e. Motor Accidents claims Tribunal can be suitably structured without any financial burden.

When an application for compensation is filed; a tribunal must have sufficient infrastructure to complete the summons within fifteen days. On its first appearance itself the parties shall be required to produce all the documents relating to the vehicle, accident and victim. Only in extraordinary circumstances, an adjournment shall be allowed for a period of maximum ten days. After that, a date will be fixed for

31 See Chapter V
considering the case before a conciliation court statutorily provided for.

Constitution of Conciliation Court/Committee

Under a Motor Accidents Claims Tribunal five different conciliation committees need be constituted. Since there are four subsidiaries of insurance companies, it is essential to have separate committees for each company. Other than the Insurance companies, the fifth committee is for the state and such other undertakings like K.S.R.T.C. etc. In each committee for conciliation, the Tribunal - judicial member will be the chairman. Other than the chairman two more members shall be nominated. One member must be a qualified Orthopaedic Surgeon preferably from the District headquarters. For each committee different medical members need be engaged. The other member is the representative of the insurer. In case of Insurance Companies also according to the subsidiaries, different representatives shall be nominated. The members of the committee other than the permanent judicial member shall be governed by their respective parent organisation. Their appointment to the conciliation committee shall be for a maximum two years on deputation basis. In a week, four days can be allotted to the four subsidiaries for conducting conciliatory sessions. For filing an application no fee shall be imposed at the initial stage. On application a photograph of the injured/deceased shall necessarily be affixed. When the case is compromised a fixed sum of Rs.100 shall be realised towards administrative costs. Appearance of parties through advocates shall be made optional only. Filing of written statements or other pleadings
shall not be insisted for considering before the conciliation court. On enforcing the structured compensation formula, the conciliation process will be very simple and quickest. The award can be passed immediately on the standardised printed formats prepared in triplicate. A copy of the award will be presented to the claimant and another copy will be handed over to the representative of the insurance company and the third copy will be retained in the file of the tribunal. Though the award is passed by the tribunal, the same needs to be countersigned by the other members of the conciliation committee besides the actual claimant himself. Though the amount is determined on the lumpsum, the payment to the victim shall be on the periodical basis for which a separate procedure for periodical payment shall be devised.

There are several circumstances under which a prima facie liability cannot be established or the insurance company may not be able to accept the liability on violation of policy conditions such cases have to undergo adjudication. It is definite that such cases are only few in number. As provided under the structured compensation, if a claimant need not prove fault, it only helps the conciliatory court to settle the maximum number of cases.

Therefore, the conciliatory function of the Tribunal may be redefined, and statutory provision for conciliatory courts/committees may be incorporated.