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MOTOR ACCIDENT CLAIMS - A HISTORICAL PERSPECTIVE

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The present law of compensation for the Injuries suffered in road accident involving a motor vehicle is very much different from the law as it originated in the common law courts of Great Britain.

Under the original law the bas is of claim for compensation was fault. The courts awarded compensation only when the driver was at fault. Therefore It was necessary for the claimant to compensation to assert and establish that the vehicle involved, at the time of accident, was being driven rashly and negligently. The burden lay on the claimant and the claim failed if the defendant was able to prove that there was sudden failure of brake or the vehicle suffered from some latent defect. The claimant was hardly in a position to rebut the defendant's evidence on these points. In order to shift the burden the common law courts evolved the doctrine of *res ipsa laquitur,* meaning the thing or event speaks for itself. By the application of this doctrine the courts presumed rash and negligent driving where the facts were eloquent enough to lead to that conclusion. Thus where the victim got hooked to the vehicle and was dragged for some distance before the vehicle came to stop, rash and negligent driving was apparent and was treated as established.

The evolution of the above doctrine brought much needed relief to the victims of road accidents. As the number of road accidents increased and untold hardship suffered by the victims and their dependents came to the notice of the courts, they, through judicial verdicts, increased their pressure on the drivers reminding them of their obligation as users of the public highways. They came very close to telling the drivers that they had the duty to so drive their vehicles as to be able to stop them within the fraction of a second. This appears to flow from the following observation made by the Supreme Court in R.-D. Hattangadi v. Pest Control (India) Pvt. Ltd., 1995 ACJ 366 = 1995 SCC (Crl) 250-

> "There has never been any doubt that those who use highways are under a duty to be careful and the legal position to-day is quite plain that any person ~sing the road as a motorist will be liable. if by his action he *negligently* causes physical injury to anybody else."
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> *(Emphasis Supplied)*

The word 'negligently', It appears to me, has not been used in the above extract In the sense of conveying that the liability to pay compensation will arise only on proof of negligence. It appears to have been used to convey the idea that negligence is implicit in an accident. I say so because much prior to the decision of the case the Supreme Court had been recommending to the Parliament to amend the law and introduce no-fault liability and by the time the observation

was made the recommendation had been accepted and the law had been amended.

Article 21 of the Constitution mentions "No person shall be deprived of *life* or *personal liberty* except according to procedure established by law." When death occurs due to road accident Involving a motor vehicle, It is deprivation of life otherwise than according to the procedure established by law. Similarly when accident results In Injury the personal liberty may be curtailed, again, otherwise than according to the procedure established by law. Enforcement of Article 21 is the obligation of the State. The minimum that the State could do - was to provioe for 'no-fault' liability. The State was reminded of this oblIgation by the Supreme Court when In Srimati Manjushri Raha and others v. B.L. Gupta, (1977) 2 *SCC* 174 It was observed-

"The time is ripe for serious consideration of creating no-fault liability."

A reminder was issued in Motor Owners Insurance Co. ltd. v. Jadavji Keshavji Modi and others (1981) 4 SCC 660. The recommendation was accepted when the Motor Vehicles Act, 1939 was amend~ through Act No.47 of 1982. By this amendment S. 92-A (3) was added as follows-

"In any claim for compensation under Sub-Section (1) the claimant shall not be required to plead and establish that the *death* or *permanent disablement* In respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person."

As a corollary, the doctrine of contributory negligence which was available as defence under the common law was also abrogated through sub-section (4). The corresponding provisions in 1988 Act are sub-sections (3) and (4) of S. 140. Sub-section (3) of S. 140 has been reproduced In Sub-section (2) of Section 163-A. S. 140 and S. 163-A both deal with situations where the accident results - either In death of the victim or his suffering permanent disablement. From this it would appear that the doctrine of rash and negligent driving has not been completely abrogated. The extent to which it has been abrogated or it has undergone change will be noticed herein after. At this stage it may only be stated that the change in law is substantial.

The next noticeable change is in regard to the persons entitled to claim compensation. Under the traditional law the only person entitled to claim compensation was the victim. The connotation of victim was restricted. It was confined to the person actually hurt in the accident. The dependents of the victim, in the event of his death. were not treated to be victims of the accident and were therefore not entitled to claim compensation. The maxim then operating was Actio personalis moritur cum persona, meaning, personal action dies with the person. By operation of this maxim pending suit for compensation abated on the death of the claimant. The cause of action did not survive to the heirs or legal representatives. This caused great hardship to the members of the family of the deceased victim who were dependant for their livelihood solely on

his income. They were rendered without support. Although the law of compensation for road accidents developed in the courts of equity, they did not replace the maxim with another suitable one. The credit for providing relief was taken by the British Parliament when It enacted Fatal Accidents Act, 1846 for Britain and Fatal Accidents Act, 1855 for India. These Acts entitled specified relations of the deceased to maintain claim for compensation. The relations entitled under the Indian Law were- (1) wife (2) husband (3) parents and (4) children. In 1956, Motor Vehicles Act, 1939 was amended through Act No.100 of 1956 and S. 11 OA was Introduced. Under Clause (b) of Sub-section (1) "legal representatives of the deceased" were given the entitlement. This entitlement has been maintained in S. 166 (1) (c) of the 1988 Act. The term "legal representative" was not defined in 1939 Act. It has not been defined in 1988 Act also. However Rule 2 {c) of the U.P. Motor Accidents Claims Tribunal Rules, 1967 framed in exercise of the power conferred by S. 111 A of 1939 Act borrows the definition of the term contained In S. 2 (11) of the Code of Civil Procedure, 1908. That definition is very wide and includes even an intermeddler with the property of the deceased.

From the above development It can be noticed that the concept of compensating loss of the Individual has given place to the concept of compensating loss to the estate.

In Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai, AIR 1987 SC 1670 the Supreme Court has held that Fatal Accidents Act has no application to claims under the Motor Vehicles Act.

The party against whom compensation may be claimed has also undergone change. Since under the traditional law the basis of claim was fault, the party liable was the wrongdoer only. Sometimes when the wrong-doer was the chauffeur employed by the owner of the vehicle it became difficult to ensure payment of the compensation, on account of the poor financial position of the wrong-doer. This situation was met by development of the principle of vicarious liability of the master for the acts of his servants done in the course of employment. With the development of this principle, the owner of the vehicle and the chauffeur both became liable to pay compensation jointly and severally. Situations came to notice where even the owner of the vehicle was not possessed of sufficient means to satisfy the claim. The way out was found by mandatorily requiring the owner of the vehicle to get the vehicle insured against third party claim. In 1939 Act the provision was contained in Chapter VII'. S.95 falling under this Chapter prescribed the matters which were required to be incorporated in the policy of Insurance. Sub-Section (2) fixed the limit of Insurer's liability depending upon the type of vehicle -whether goods vehicle or passenger vehicle etc.

In 1988 Act the provision of insurance is contained in Chapter XI. S. 146 falling in the Chapter prohibits use of a motor vehicle in a public place, except as a passenger, unless there is in force in relation to the use of the vehicle, a -

policy of Insurance complying with the requirements of the chapter. Sub-sections (2) and (3) provide for exemption from the requirement of insurance in respect of vehicles owned by the Central Government, the State Government, local authority and State Transport undertaking and the conditions subject to which exemption may be granted. Requirements of the policies and limits of insurer's liability are mentioned In S. 147.

From the above it is seen that the list of persons liable to satisfy the claim swells to three-(1) the actual wrong doer (Chauffeur) , (2) the owner of the vehicle, and (3) the insurer.

The forum has not lagged In undergoing change. Originally the claim was filed in the ordinary civil court of competent jurisdiction in the form of plaint which was registered as a suit. By S. 11O of 1939 Act the State Government was empowered to constitute Motor Accidents Claims Tribunals for the purpose of adjudicating upon claims for compensation In respect of accidents involving death of, or bodily injury *to,* persons arising out of the use of motor vehicles, or damages to any property of a third party. Sub-section (3) prescribed eligibility qualifications for appointment to the Tribunal. The three alternative qualifications were "(a) is, or has been, a Judge of a High Court, or (b) is, or has been a District Judge, or (c) is qualified for appointment as a Judge of the High Court." Under the ordinary forum the suit would have been cognizable, depending upon the amount of compensation claimed, by either a Munsif or a Civil Judge. The Tribunal was constituted of more experienced persons. The constitution of the Tribunal was discretionary with the State Government, but once the Tribunal had been constituted, its jurisdiction was exclusive as provided in S. 11O-F which barred the jurisdiction of the Civil Court in the area for which tribunal had been constituted.

In the Act of 1988 the corresponding provisions are Sections 165 and 175.

Under S. 11o (2) of 1939 Act the Tribunal within whose territorial jurisdiction the accident occurred alone was competent to entertain the claim. This position was retained in S. 166 (2) of 1988 Act as originally enacted. Amendment Act 54 of 1994 however added two more fora viz (1) the Tribunal within whose local limits the claimant resided or carried on business, and (2) the

Tribunal within whose local limits the defendant resided. With this amendment the claimant now has the option to choose one out of the three fora. The consequence of the amendment Is that the certainty of forum has been lost and in certain cases the owner of the vehicle and the Insurer may be put to great hardship and inconvenience, especially when the vehicle involved In the accident is a passenger bus carrying passengers residing or carrying on business at different places spread over several states. In such a situation a single accident may give rise to several claims filed at a number of places. The owner and Insurer will have to run to all the places from where they receive summons or notice till, under orders of the Supreme Court, all the claims are transferred to a Tribunal located at a particular place.

When the civil court exercised jurisdiction, limitation for filing suit was governed by the provisions of the Limitation Act. Article 21 of the Limitation Act, 1908 prescribed the limitation of one year from the date of death for a suit by executors, administrators or representatives under the Fatal Accidents Act, 1855. Article 82 of the Limitation Act, 1963 prescribed the period of two years for a suit of identical nature. S. 11 OA (3) of 1939 Act prescribed the limitation of six months computed from the date of accident. Under the proviso to the sub-section the Tribunal was empowered to condone the delay in filing the claim. There was no limit to the period for which the delay could be condoned .

S. 166 (3) of 1988 Act as originally enacted, maintained the limitation of six months but the modified proviso put restriction on the period for which delay could be condoned. That period was only six months. The consequence of this restriction was that on the expiry of the period of twelve months from the date of occurrence of accident, the right to file claim for compensation was irretrievably lost. This was indeed a very harsh situation and has now been relieved through amendment Act 54 of 1994. By this amendment Sub-section (3) along with the proviso has been omitted.

The question now arises whether a claim can be preferred even after 10 years or 20 years or the residuary Article of the Limitation Act will apply requiring the claim to be filed within three years.

The prefatory note to the Amending Bill, after giving a short background, states .'Therefore, the proposed legislation has been prepared In the light of the above background. The Bill inter alia provides for-

“.....

(ii) removal of time limit for filing of application by road accident victims for compensation.

.....”

This indicates that the intention of the Parliament is that a claim for compensation under the Motor Vehicles Act should not be governed by any law of limitation. If the restriction in the proviso regarding the period for which the delay could be condoned caused hardship to the victims of the accident the complete lifting of bar of limitation is likely to cause similar hardship to vehicle

owners and insurers, particularly the latter whose relevant records may be weeded out by the time the claim is preferred.

Rules of limitation, resjudicata and order 2 Rule 2 of C.P.C. serve a social purpose, the same being of achieving finality within a reasonable period of time. It is against public Interest to keep controversies alive indefinitely. The sword of Democles should not remain hanging indefinitely over the head of a person under liability. If an accused sentenced to death is entitled to have the sword removed by conversion of the death sentence into one of life Imprisonment, there appears to be no good reason for the sword to remain hanging over the head of a person who has incurred civil liability. Everyone is entitled to arrange his financial affairs. If there is no limitation, a person who has Incurred the liability to pay compensation will never be able to arrange his affairs finally. Not only such a person but even his heir may be haunted with the claim throughout his life. The ideal situation was to fix a period and provide for condonation of delay without restriction of period. Perhaps the Parliament has overreacted to the hardship of the victims of the accidents.

Another question that the amendment raises is- whether It will revive claims which became dead under the unamended provision ?

Sub-section (3) of S. 166 has been omitted by Section 55 of the amending Act 54 of 1994. It merely says "sub-section (3) shall be omitted." It does not specify the date from which it shall stand omitted. It also does not say that It shall never be deemed to have been there in the Statute. Sub-section (2) of Section 1 of the amending Act says that the Act will come into force on such date as the Central Government appoints. By notification dated 6.10.1994, the Central Government has appointed 14.11.1994 as the date of commencement. From this It would appear that the deletion will be effective from 14.11.1994. Law of limitation is procedural and amendment of procedural laws affects pending proceedings but such amendment normally, in the absence of specific provision in that behalf, does not revive a dead claim. Unfortunately, on this issue the Parliament has not made itself clear.

In view of the difficulties pointed out above, it is desirable that the Parliament may once again amend the Act and fix a period of limitation and provide for condonation of delay in filing the claim and clarify its intention in respect of the claims which became dead prior to 14.11.1994 by expiry of the period of twelve months from the date of accident. If the matter is left to judicial interpretation it may become a fertile hunting ground for Ingenious lawyers and traditional, activist and moderate judges to pursue their own well settled, dynamic, modern, social and legal philosophies resulting in inconsistent decisions and uncertainty, as the principles of interpretation are as various as the philosophies, like benignant legislation, social justice literal construction, legislative intent, to name only a few.

The mode of computation of compensation has undergone interesting changes. From the earlier requirement of adducing oral and documentary

evidence on a number of matters, a substantial amount of compensation can now be obtained without adducing any evidence whatsoever if the factum of accident is admitted, there is no dispute about the sufferance of the specified Injury and the identity of the vehicle, Its owner and Its insurer are beyond controversy. Under the traditional law of tort, in the event of death, compensation was determined on the basis of supposed monetary contribution of the deceased out of his earnings to his family for the period he was expected to live. This necessarily involved adduction of oral and documentary evidence to establish -(1) his monthly or annual income at the time of death (2) the future prospects In this income (3) his actual and presumptive contribution to the family out of the actual and presumptive income, (4) the actual and presumptive spending by the deceased on himself out of the said income (5) longevity in the family of the deceased, (6) amount, if any spent, on medical treatment of the deceased in the event of death not being Instantaneous, and (7) other relevant matters. The nature of the evidence mentioned herein, itself shows that there could be no fixity or certainty about the quantum of compensation to be awarded in a particular case. Some amount of speculation also entered the process of assessment. Different Benches were adopting different strategies to quantify the compensation. Ultimately the Apex Court showed preference for the multiplier method (See National Insurance Co. Ltd. v. M/s Swaranlata Das and others, 1993 *Supp* (2) *SCC* 743- *Para* 8).

Apart from evidence on the above matters, since the basis of claim under traditional law of tort was fault, some evidence was required to be given on the speed of the vehicle at the time of accident. Negligence could be inferred from the speed itself.

The burden of adducing the above evidence was indeed onerous. It was more so when the claimants were widow and minor children of the deceased. This burden continued to hang on the shoulders of the claimants till 30.9.1982. With effect from 1.10.1982, 1939 Act, as noticed herein above, was amended by Act No.47 of 1982 and a new chapter Vil-A entitled "Liability wIthout Fault in certain cases" was added. This chapter provides limIted relief to victims of accidents. Its applicability is confined to the situation when the accident results either in the death of the victim or his permanent disablement. In such a situation by virtue of sub-section (3) of the newly added S. 92-A, the claimant is not required to plead and establish that the death or permanent disablement was due to any wrongful' act, neglect or default of the owner of the vehicle. This eliminates the necessity of adducing evidence on rash and negligent driving. By the succeeding sub-section (4) it is provided that the claim shall neither be defeated by reason of any wrongful act, neglect or default of the victim of the accident nor shall the amount of compensation be reduced for the said reasons. Sub-section (2) fixes the amount of compensation that will be payable in event of death or permanent disablement. In the former event, the amount is As. 15,000/- and in the latter, it is As. 7,500/. For claiming the limited amount

mentioned herein, the claimant does not have to undergo the ordeal of collecting and adducing evidence on the matters referred to hereinabove. This is a great boon to a claimant who has handicaps in procuring and adducing evidence. However, a claimant who is not satisfied with the limited amount and does not suffer from any handicap and has the willingness and Inclination to collect and adduce evidence in support of claim for higher compensation, is not debarred from doing the same as S.92-B (I) specifically states that "the right to claim compensation under Section 92-A...shall be in addition to any other right...to claim compensation in respect thereof under any other provision of the Act or any other law for the time being In force."

In the 1988 Act, as originally enacted, the figures As. 15.000/- and As. 7,500/- were replaced in S. 140 (2) by As. 25,000/- and As. 12,000/- respectively. By the amending Act 54 of 1994 the amounts have been further enhanced to As. 50,000/- and As.25,000/-. Thus, as of now, these amounts can be obtained without adduction of any evidence where the basic facts, mentioned herein- above, are not in dispute.

In the 1988 Act, the term "permanent disablement" is defined in S. 142. As. 25,000/- cover all kinds of permanent disablements as defined in the Section. In my opinion a permanent disablement which results in immobilisation of the victim is worse than death so far as the person hurt in the accident is concerned, and therefore calls for fixation of a higher amount of compensation.

Another provision which curtails oral evidence although to a lesser degree, is S. 163-A which was added to 1988 Act by Act No.54 of 1994. This provision is absolutely new. A parallel provision was not contained either in 1939 Act or in 1988 Act as originally enacted. This provides for payment of compensation on the basis of structured formula given in Second Schedule to the Act. Under the schedule, in case of death the compensation is calculated on the basis of age -range, annual income and the multiplier. The amount reached by this calculation is reduced by 1/3rd which represents the amount which the victim would have supposedly spent on himself, if he had survived. Paragraph 2 of the Schedule says that the amount of compensation shall not be less than As. 50,000/-. In order to claim compensation higher than As. 50,000/- the claimant will have to adduce evidence regarding the age of the deceased at the time of accident and his annual income at that time. He need not lead any evidence on longevity in the family as a statutory multiplier is available in the schedule. Deficiency in evidence on the question of age and income need not worry the claimant as even then he would get at least As.50,000/-. In addition, the claimant will get general damages mentioned in paragraph 3. The amount of compensation for funeral expenses, loss of consortium (If the claimant is spouse) and loss of esate is statutorily fixed under clauses (i), (ii) and (iii) of this paragraph. Therefore no oral or documentary evidence is required in respect of these items. Documentary evidence will be required in respect of medical

expenses mentioned in Clause (iv). Oral evidence may also be required to prove the bills and vouchers, if their genuiness is not accepted by the respondent. However the maximum amount awardable under this head Is As. 15,000/. In the absence of evidence on medical expenses the minimum compensation that a claimant who Is a spouse can get under the schedule is As.59, 500.00 as follows

(1) Para 2 (minimum) As.	50.000.00
(2) Para 3 (i) funeral expenses As.	02,000.00
(3) Para 3 (ii) Loss of consortium As.	05,000.00
(4) Para (iii) loss of estate As.	02,500.00
Rs.	**59,500.00**

This is As. 9,500/- more than the compensation contemplated under S.140.

Paragraphs 4 and 5 and partly paragraph 6 deal with determination of compensation for injuries and disabilities.

For the purpose of calculating compensation on the basis of income a notional income of As. 15,0001- per annum is fixed in paragraph 6 (a) for those who had no income at all i.e.; for non- earning persons. Under clause (b) a notional income is fixed for non-earning spouse of an earning person; it is 1/3rd of the income of the latter.

S. 1638 debars a claimant from claiming compensation under $. 140 (2) as well as S. 163A. To the same effect is the provision contained in S. 141 (1). Therefore, option will have to be exercised by the claimant before filing the claim.

Chapter XII contains the general law of adjudication of "claims for compensation in respect of accidents involving the *death* of, or *bodily injury* to, persons arising out of the use of motor vehicles, or *damages* to *any property* of a third party, or both." (emphasis supplied). While Sections 140 and 163A falling under Chapters X and XI respectively are confined to claims arising from death and permanent disablement, the provisions of Chapter XII are not confined on the basis of the nature of injury suffered. While Sections 140 and 163A prescribe definite figures of compensation, no such definite figures are mentioned either in Section 166 which deals with preferment of claim or in any other section falling under the Chapter. From this it would appear that claims falling under this Chapter are to be adjudicated on the basis of the general law of torts. Thus, after the enforcement of 1994 amendment there are now three modes of determination of compensation arising from a motor accident depending upon - the nature of injury suffered and the option exercised by the claimant. The progression which started with the number of claimants is maintained at this stage also.

So far as the determination of quantum of compensation under the general law of torts is concerned the principles thereof are well settled and they have been reiterated in two recent decisions:

1 United India Insurance Co. Ltd. v. Brijesh Kumar, Jain and others, 1995 ACJ 399 (H.C All. D.B.) (See para 2)

2. R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others, 1995 ACJ 366 (See para 9). The principles reiterated are: there is no straitjacket formula and quantum of compensation depends upon the nature of injuries, status of the victim, effect of the injury on victim's future, pecuniary loss, including expenses on medical treatment, mental and physical shock, pain and suffering, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. etc.

When the claims were entertained by the Civil Courts, a decree was passed which was executed in accordance with the provisions of Order XXI of the Code of Civil Procedure. Now under S. 174 the amount awarded can be recovered as arrears of land revenue. This provision has been made obviously in the hope that it will result in expeditious realization of the amount awarded. Whether the hope Is rightly placed or misplaced depends on the attitude of the Collector and his staff. In post independence era the Collectors are more busy performing protocol duties and statutory duties fall in the background. In my judicial career I had occasion to deal with petitions claiming writ of mandamus to command the Collector to perform his statutory duty of taking action on the recovery certificate which was lying in his office unattended for the last several months.

The Parliament has done its job to ensure payment of just compensation expeditiously. It is now the job of other authorities- the insurers, the Tribunals.and the Collectors to give practical shape to the Parliament's intention. The minimum the Insurer can do is to make Immediate payment of Rs. 50,000/- to the dependant In the event of death and of Rs. 25,000/- to the victim who has suffered permanent disablement. Where the insurer fails to discharge this obligation, the Tribunal can proceed to make a preliminary award under Order XII Rule 6 of the C.P.C. and send recovery certificate to the Collector in accordance with S. 174 of the Act. The Collector may not lose time in issuing the necessary process. I close by saying Amen.

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