

A PAPER ON :
**“MOTOR ACCIDENT CLAIMS CASES-
JUST COMPENSATION IN DEATH CASES”**

**Under the able guidance of
Hon'ble Mrs. Anita Dahariya,
District and Sessions Judge,
Jashpur (C.G.)**

VENUE : AMBIKAPUR (C.G.)

ON

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BY

JUDICIAL OFFICERS OF DISTRICT AND SESSIONS COURT

JASHPUR (C.G.)

Introduction

The Motor Vehicles Act, 1988 was enacted to consolidate and amend the law relating to accidents arising from motor vehicles. When a law is enacted to consolidate and amend the law, the Legislature not only takes into consideration the law as it was existing but also the law which was prevailing prior thereto. This Act further aims at regularizing the use of Motor Vehicles and to compensate victims who are injured or died in accident and family members and dependents of the deceased victims.

It is well settled that in case of motor accident claims, an endeavor is made to put the claimants in the per-accidental position. The damages to be awarded are to be adequate in terms of money so that the injured / claimants are put in the same position had they not suffered the loss on account of wrong of the respondent, though, no amount of compensation can restore the loss of limb or experience of pain or loss of life.

Fault liability The person who brings the petition for compensation, must show that the respondent was negligent. For a person to be legally responsible for his action, it is essential to have evidence that he is at fault. For the purpose of such an action, although, there is no statutory definition of negligence, ordinarily, it would mean omission of duty caused either by omission to do something which a reasonable man guided upon those considerations, who ordinarily by reason of conduct of human affairs would do or be obligated to, or by doing something which a reasonable or prudent man would not do.⁷

In Rathnashalvan v. State of Karnataka, the Supreme Court defined „rashness" as follows :- "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may

cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences."

In *State of Karnataka v. Muralidhar*, the Supreme Court defined word „negligence" as follows : "Negligence means omission to do something with reasonable and prudent means granted by the consideration which ordinarily regulate human affairs or doing something which prudent and a reasonable means guided by similar considerations would not do.

Just Compensation

Life cannot be valued. Similarly no human being can put any monetary value of his limb or of any other human being. How does one assess the value of the loss of all faculties when some victim of an accident loses his mental faculties and lives in vegetative state. The courts can only grant compensation for the pecuniary and monetary loss caused and some other expenses, but no court can even attempt to grant compensation for loss of life or limb. Mainly pecuniary loss has to be assessed.

The Tribunal has power to award the compensation above the amount claimed, so as to award compensation which was just.¹¹ In this regard the following observations of the Supreme Court in *State of Haryana vs. Jasbir Kaur*¹², are worth noting:- "7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not

expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations.

It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. if it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra SRTC (1999(1) SCC 90)"

Mode of Compensation

1. **Fault Liability** - Payment of compensation can be ordered in a eventuality of the fault of the driver or the owner such as negligence or rashness in driving the vehicle, in respect of accidents involving the death of, or bodily injury to, persons arising out of such motor vehicle, or damages to any property of a third party or both. A Petition for compensation can be filed under section 166 of the Act.

2. **No Fault Liability** - Irrespective of the fault in occurrence of the accident, the owner of the vehicle which has met with an accident, is liable to pay the compensation to the legal heirs of the deceased or the victim in the eventuality of permanent disability.

Section 140 -

a. Ingredients to be satisfied for awarding compensation

- i. Accident arose out of involvement of a motor vehicle.
- ii. It resulted in either death or permanent disability of a person.
- iii. Claim is preferred against the owner of the offending vehicle and the insurer, if such vehicle is insured for third party risk.

b. Salient Features

Compensation	-	Death - Rs 50000/-
Permanent Disability	-	Rs. 25000/-

The compensation amount cannot be less than the above.

Section -163A Payment of Compensation based on structured formula

- i) Inserted in the act on 14.11.1994 by Amendment Act 54 of 1994 creating a new right.
- ii) Compensation payable on the Principles of no fault. (as Seen from (a) provision to section 140, (b) Section 141(1) (c) option to file claim under Sections 163-B (d) the provision to section 166 and (e) Section 163-A(2) of the Act) Claimant is not

required to plead or establish wrongful act or neglect or default of the owner of the vehicle or any other person like driver.

- iii) It starts with non-absentee clause.
- iv) The Claimant is prima facie required to
 - (a) demonstrate involvement of the offending motor vehicle in the accident,.
 - (b) death or permanent disablement on account of sustaining injuries in the accident and
 - (c) Claim is preferred against the owner and insurer of the vehicle in respect of third party risk.
 - v) The Compensation needs to be calculated on the basis of the structured formula given in the second schedule appended to the Act.
 - vi) "Permanent Disability" shall have the same meaning and extent as appearing in the Employees Compensation Act, 1923. (However, Section 2(l) of EC Act define "total disablement". Schedule I enumerates the list of injuries deemed to result in Permanent Total Disablement.)

Note (Amendment)

The Central Government has notified Sections 50 to 57 and 93 of the Motor Vehicles (Amendment) Act, 2019 which came into force with effect from 1 April 2022. Sections 51 to 57 of the Motor Vehicles (Amendment) Act, 2019 have wholly replaced Chapter XI of the Motor Vehicles Act, 1988 which dealt with insurance of motor vehicles against third party risks. These provisions have also made

substantial amendments to Sections 163, 166, 168 and 169 of the Motor Vehicles Act 1988 relating to the filing of claims before Motor Accidents Claims Tribunal. Section 93 of the 2019 Act omits that Second Schedule of the 1988 Act which provided for structure Formula for compensation on No-Fault basis under Section 163A.

Determination of Compensation

The expression 'compensation' is comprehensive term which includes a claim for the damages. Compensation is by way of atonement for the injury caused.

The claimant in a claim for award of compensation under Section 166 of Motor Vehicles Act, 1988, is entitled for just compensation. The just compensation has to be equitable and fair. The loss of life and limb can never be compensated in an equal measure but the statutory provisions under Motor Vehicles Act is a social piece of legislation which has been enacted with intent and object to facilitate the claimants to get redress for the loss of the member of family, compensate the loss in some measure and to compensate the claimant to a reasonable extent.

The Constitution Bench in the matter of **National insurance company Limited versus Pranay Setthi (2017) 16SCC** opined that reasonable figures on conventional head namely 'loss of estate', 'loss of consortium' and 'funeral expenses' should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

The Court further held that the amount of conventional head should be enhanced at the rate of 10% every three year.

The next judgment which needs to be noted is **Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram**

and others, (2018) 18 SCC 130, the concept of consortium was explained in paragraphs 21,22 and 23 which are as follows: -

"A Constitution Bench of this Court in *Pranay Sethi* (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldwide have recognized that the value of a child's consortium far exceeds

the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child.

The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

A three-Judge Bench in **United India Insurance Company Ltd. versus Satinder Kaur alias Satvinder Kaur and others, (2020) SCC Online 410**, had reaffirmed the view of two-Judge Bench in Magma General insurance Company Ltd. Three-Judge Bench from paragraph 53 to 65.

The Constitution Bench in **Pranay Sethi** has also not under conventional head included any compensation towards 'loss of love and affection' which have been now further reiterated by three-Judge Bench in **United India Insurance Company Ltd. (supra)**. It is thus now authoritatively well settled that no compensation can be awarded under the head 'loss of love and affection'.

Main Components of the Compensation in the Fatal Accident Case:-

- 1) Income of the deceased at the time accident, including future prospects.
- 2) Deduction towards personal expenses
- 3) Appropriate Multiplier, depends on the age of deceased.
- 4) Conventional Heads:-
 - a) Loss of Estate
 - b) Loss of Consortium
 - c) Funeral Expenses
 - d) Medical Expenses, if any.

Deduction towards personal Expenses of the deceased

Where the deceased was married, the deduction towards personal and living expenses of the deceased, should be

- one-third (**1/3rd**), where the number of dependent family members is **2 to 3**.
- one-fourth (**1/4th**), where the number of dependent family members is **4 to 6**.
- one-fifth (**1/5th**), where the number of dependent family members **exceed six**".

1/2 where deceased was unmarried son/daughter, the deduction towards personal and living expenses of the deceased, should be **one-half**.

Further held that, subject to evidence to the contrary, father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent.

In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where

he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to **one-third** and contribution to the family will be taken as **two-third**".

Future Prospects

Hon'ble Supreme Court in the case N.I. Com v/s. Pranay Sethi, AIR 2017 SC 5157 has held -

While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the **deceased had a permanent job** and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

In case the deceased was **self-employed** or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. **The established income means the income minus the tax component.**

It is also required to be born in mind that House Rent Allowance, Medical Allowance, Dearness Allowance, Dearness Pay, Employees Provident Fund, Government Insurance Scheme, General Provident Fund, C.C.A. etc should be treated as part and parcel of the income of the deceased, while calculating income of the deceased for the purpose of computing compensation.

Use of Multiplier

For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42.

It has been directed to apply following multiplier:-

Age of the victim	Multiplier
Up to 15 years	15
Above 15 to 25 years	18
Above 25 to 30 years	17
Above 30 to 35 years	16
Above 35 to 40 years	15
Above 40 to 45 years	14
Above 45 to 50 years	13
Above 50 to 55 years	11
Above 55 to 60 years	09
Above 60 to 65 years	07
Above 65 years	05

The age of the deceased should be the basis for applying the multiplier.

Conventional Heads

Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-,

Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

How to determine monthly income of the deceased or injured when no document in support thereof is not produced:-

In the case of Govind Yadav (supra) and Sanjay Kumar v/s Ashok Kumar, reported in 2014 (5) SCC 330, it has been held that when there is no proof of income, income of the deceased or injured claimant shall be decided by taking into consideration prevalence minimum wages.

Compensation on Death of a child

The problem arises when the compensation is to be awarded in case of death of a child, because, the child may not be earning anything and may be studying. Therefore, in such cases the parents cannot be said to be dependent on the child. But even then the parents would be suffering the loss of the child and for that they have to be compensated suitably. The Supreme Court recently in **R.K. Malik Versus Kiran Paul III (2006) ACC 261** was dealing with a case of death of a child. After considering its earlier judgments on the point including **Lata Wadhawa vs. State of Bihar AIR 2001 SC 3218** and **M.S. Aggarwal vs. Deep Chand Sood II (2001) (ACC 540)** wherein compensation in case of death of school children was granted, it was held that in addition to awarding compensation for pecuniary losses, the compensation was also to be granted with regard to future prospects of the child. The Supreme Court had held in R.K. Malik's case 28 as under:-

In the case of Lata Wadhwa (supra), wherein several persons including children lost their lives in a fire accident, the Court awarded substantial amount as compensation. No doubt, the Court noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that higher compensation awarded was for deprivation of life and the pain and suffering undergone on loss of life due.

Death of house wife

In India the Courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches her small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children. In case of **Lata Wadhawa vs. State of Bihar AIR 2001 SC 3218** the Value of service of taken 3000/- per month in 36000/- per annum. In the case Arun Kumar Agrawal Versus National Insurance Company 2010 ACJ 2161 S.C. up held that compensation of rupees 6.00

Lacks by taking value of service of deceased at rupees 5000/- per month considering that the income of the spouse of deceased was rupees 154166/- Rs. per month.

Compensation in case of death of a professional/student pursuing professional course

The compensation in respect of death of professional is computed on the basis of earning capacity of the deceased as held by the Hon'ble Supreme Court in the case of **Haji Zainullah Khan v. Nagar Mahapalika** 1994 ACJ 1993 and followed by Delhi High Court in the case of **Union of India v. Dr. Rita pant** IV (2009) ACC 696. The compensation in respect of death of student pursuing a professional course is determined according to his earning capacity after completion of the professional course. In **New India Assurance Company Limited v. Ganga Devi & ors.** III 2010 ACC 6, the deceased had completed his MBBS and was doing one year internship. It was proved that after completion of his internship he would have earned Rs. 18000 to Rs 20000/-per month which was taken into consideration for computation of compensation.

Compensation in Cases of no Proof of Income of Deceased

In **Kiran Devi v. Surjeet Yadav** an accident resulted in to death of man aged 44 Years having no proof of income. The minimum wages as prescribed by the State Government at the time of accident were taken for the purpose of compensation. Following the judgment of Delhi High Court in **Kanwar Devi v. Bansal Roadways** 2008 ACJ 2182

and National Insurance Co. Ltd. V. Renu Devi 2009 ACJ 1926, the Court took judicial notice of the increase of minimum wages to meet the price index and inflation rate. The Court held the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects. The Delhi High Court Took the average of minimum wages of Rs. 4100 and its double to compute the loss of income and applied the multiplier of 14 to compute the loss of dependency at Rs 774900/-.

Income Tax Return for assessment of income

Determination of annual income of deceased-Reliance of income tax return of deceased-Determination of annual income of deceased must proceed on basis of income tax return, where available - Income tax return is statutory document on which reliance may be placed to determine annual income of deceased. **Malarvizhi and others v. United India Insurance Co. Ltd. and another, 2020 (1) SCCD 5 (SC).**

" Who Can Be The Claimants "

In Injury Cases, it is the injured, who is the claimant. In Death Cases, the legal heirs of the deceased are claimants. Those who are not dependents but are the legal heirs are also entitled to compensation. 4 But the Legal Representative of a person who is himself guilty of rash and negligent driving, cannot claim compensation.5

It has however been held in Sarla Verma vs. Delhi Transport Corporation 6, as under: " Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a

dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent.....”

In view of the judgment of Supreme Court in Manjuri Bera vs. Oriental Insurance Company 7, even the brothers or father would be entitled to the compensation.⁸

Practice And Procedure

A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependant family members) before the Motor Accident Claims Tribunal constituted under section 165 of the Act is neither a suit nor an adversarial lies in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete Code in itself.

United India Insurance Co. Ltd. Vs. Shila Datta, (2011) 10 SCC 509. Bimla Devi vs. Satbir Singh, 2012 (4) SCALE 217.

Evidence Act is strictly not applicable. However, Courts/Tribunals should not admit into evidence photocopies of documents. Documents are required to be proved. In Claim Cases, it is difficult to get witnesses, much less eye witnesses, thus extremely strict proof of facts in accordance with provisions of Indian Evidence Act may not be adhered to religiously. Some amount of flexibility has to be given to

those cases, but it may not be construed that a complete go-by is to be given to the Indian Evidence Act.

The Motor Vehicles Act is a social piece of legislation and has been enacted with intent and object to facilitate the Claimants/Victims to get redress for the loss of family member or for injuries at an early date. In any case, money cannot be any substitute for it, but in the long run it may have some soothing effect. Thus, it is desirable to adopt a more realistic, pragmatic and liberal approach in these matters.

A proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (claimants) under section 166(1) or section 164 of the Act or suo moto by the Tribunal, by treating any report of accident (forwarded to the tribunal under section 159 of the Act (Amended) as an application for compensation under section 166 (4) of the Act.

No Application for compensation shall be entertained unless it is made within 6 months of the occurrence of the accident. Section 166(3).

Pay and Recover

The Legal Position in this respect has been beauty fully by the Apex Court in **new india assurance Co. Simla Versus Kamla AIR 2001 S.C. 1419** as under.

"When a Valid insurance policy has been issued in respect a vehicle as evidenced by a certificate of insurance the burden in on the

insurer to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid the by the insurer to the third parties can be allowed to be recovered from the insured if as per the policy condition the insurer had no liability to pay such some to the insured".

The genesis of the principle can well be traced to the observations made in *British India General Insurance Co. Ltd. Versus Captain Itbar Singh* AIR 1959 S.C. 1331.

The Legal Position regarding the principle of pay and recover can be summarized as under -

- a. Once there is a policy of insurance, the insurer is under an obligation to satisfy the award regarding the claim of third party even if there is a breach of the condition's of the policy coming within Section 149(2) of the Act.
- b. The aforesaid liability will not arise where the policy has been obtained by misrepresentation or fraud as contemplated by Section 149 (2) (iii) (b).
- c. The tribunal can determine in the main proceedings itself the right of the insurer to recover from the insured, the amount to be paid by it to a Third Party. The issue can also be raised in execution proceedings.
- d. Before releasing the award amount in favor of the claimant, the owner of the vehicle (insured) should be directed to furnish security for the entire amount payable to the claimants.
- e. The vehicle involved in the accident shall be attached as part of the security and the assistance of RTA, if found necessary, can be taken for the purpose.

- f. If the insured fails to make the payment to the insurer, then the executing Court can direct realization of such amount by disposal of the security furnished by the insured as well as by the disposal of vehicle attached by the Court or any other property of the owner of the vehicle.

Conclusion

Just Compensation: Duty of Tribunals

The question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident.

The right of the victim of a road accident to claim compensation is a statutory one. He is a victim of an unforeseen situation. He would not ordinarily have a hand in it. The negligence on the part of the victim may, however, be contributory. He has suffered owing to the wrongdoing of others. An accident may ruin an entire family. It may take away the only earning member. An accident may result in the loss of her only son to a mother. An accident may take place for variety of reasons. The driver of vehicle may not have a hand in it. He may not be found to be negligent in given case. Other factors such as unforeseen situation, negligence of the

victim, bad road or the action or inaction of any other person may lead to an accident.

Thus, the Tribunals are duty bound to award not only compensation but just compensation and tribunals must adopt pro active approach to award just compensation based on evidence to the victims/their legal representatives.
