

Liability to Compensation under Motor Vehicles Act with Special Reference to the Amendment Bill 2019

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Article Info

Volume 81

Page Number: 4921 -4931

Publication Issue:

November-December 2019

Abstract:

With the increased number of accidents, the government of India enacted the Motor Vehicle Act in 1988 which provides for various laws related to motor accidents, negligence, liability, insurance etc. This paper will mainly deal with the compensation under this act. It will talk about the different provisions in the Motor Vehicle Act dealing with the compensation to the victims. The accidents are numerous and the victims are mainly the pedestrians and the cyclist. The law requires giving compensation to these victims by the motor vehicle owners or the drivers. This paper tries to present all the vowed viewpoints on a given aspect with copious references to the case-law. The current study based on the empirical research. It is consisting of the scientific frame of research. It began with the finding of research problem based on the review of literatures. The major idea of the study is to collect the legal facts of particular area and to test hypothesis of a cause –effect relationship between variables. The sample size is . The data is refined finally reported as . Based upon the results obtained there is an association between the gender and there is still pay disparity between men and women in India in this twenty first century. The study concludes that the law does not perform the way it is meant to be as the victims do not get compensated because they belong to the weaker group of the society. So, through the act of Motor Vehicle, 1988 the victims get compensated for the losses they suffer due to a motor vehicle.

Article History

Article Received: 5 March 2019

Revised: 18 May 2019

Accepted: 24 September 2019

Publication: 24 December 2019

Keywords: Accident, Compensation, Motor vehicle, weaker, rights, Injury, death

I. INTRODUCTION

The motor vehicle accidents has been increasing day by day and the ratio of people becoming victims of such accidents has also raised to a greater extent. Since 1956, the Parliament has made numerous efforts to provide adequate compensation to the victims and to enact a more comprehensive law governing such aspect. Finally the Act of 1939 has been enacted by the legislative assembly and numerous amendments were brought in from time to time by adding new sections. The major amendment brought in the year of 1988 which revolutionized the motor accident victims claim to compensation.

Over the years, the judiciary has no longer best been referred to as upon now and again to critically evaluate the provisions of the law and its effectiveness in protecting the rights of the people in case of reimbursement. The Act, 1988 does no longer provide any recommendations for the identity of the gadgets of loss to be compensated; nor does it lay down any standards for the computation of the quantum of reimbursement for every object of loss. A Right which was otherwise to be had under not unusual law for damages against a tortfeasor turned into incorporated in Motor Vehicles Act for expeditious disposal. In Cases of deaths or accidents in a motor vehicle twist of fate compensation will

also be claimed underneath Section 166 of this Act. The major object of this Act is to provide a speedy remedy instead of a civil suit as is needed below Fatal Accidents Act. Fatal Accidents Act is likewise narrower in this sense that it gives for compensation most effective to sure dependents of the deceased and does not apply except demise is brought about. This Act then again applies even in instances of accidents no longer causing demise and additionally to harm to assets, and whilst demise is caused software for repayment may be made by any representative of the deceased or his agent. But in one recognize Motor Vehicles Act is narrower because it applies simplest in cases of injuries resulting from motor cars. The question of liability of the events, which was ruled through Law of Torts, is unaffected via the Act. It only changes the forum taking away the jurisdiction of the Civil Court.

As to concepts of degree of damages under this Act the amount is to be determined as appears to the tribunal to be just. To examine this extensive discretion definite rules were advanced, that, the amount of repayment ought to be reasonable and ought to be assumed with moderation, regards need to be needed to awards in similar instances, the sums offered must, to a vast volume, be moderate.

II. OBJECTIVES

- To discuss the road accident situation in India.
- To analyse the different provisions in the Motor Vehicle Act dealing with the compensation to the victims.
- To critically evaluate the recent caselaws relating to motor vehicles accident claim.
- To suggest recommendations for further reforms.

III. REVIEW OF LITERATURE

Justice Ahmadi writes that there is an element of subjectivity involved in the matter of the compensation. Jurists differ not only on what counts compensation is due but also on what the proper compensation on each count should be. He further

goes on to write that the recent attempt to standardize such assessment by an amendment in the Motor Vehicle Act has not been able to clear entirely the confusions that prevail in the field.

Ratanlal&Dhirajlal, discusses the concept of no fault liability which is also mentioned in respect of death or bodily injury which will result in the accident mandating compensation to be paid by the driver or owner of the vehicle applying the strict liability. The book mentions Indian case laws too to understand the concept properly.

Dr. R.K. Bangia, talks about the accidents which take place due to the motor vehicles and also talks about the law relating to compensation to victims of such accidents. the author talks about various insurance policy available to owner of vehicle and the compulsory registration for such policy. When the vehicle is met with an accident, the liability of driver as well as insurer is clearly dealt. Explanation of the constitution of Tribunals and the powers and procedures to be followed by these tribunals are made.

Jha Deepak et.Al stated that humans has not been following the policies framed by the government governing the visitors and people driving the non motorised vehicles and the non pedestrians. Most of them had been of the opinion that humans need to observe site visitors rules. However most of them agreed that they'll break the visitors policies beneath one or any other out of excursion conditions.

ManishaRuikarreports that eventhough each healthcare organization offers take care of RTI (Road Traffic Injuries) patients, details of RTI aren't sincerely available, because of the negative information device. Hence the actual problem is likely to be a good deal higher than the reported figures. He similarly says strengthening and venture studies on public health burden and impact, know-how the risk elements, characteristics of trauma and measuring the impact of interventions via nicely designed public health and clinical research techniques(trauma registry, surveillance programmes, hospitals and population based research etc..) is the need of the hour.

Sanjoy Kumar Singh determined that the 30-59 years, the economically active age group, is the maximum prone population group. In general, male face better fatality and coincidence chance than their woman counterparts. Moreover road accidents are distinctly excessive in May- June and December-January which indicates that extreme climate impacts the prevalence of road accidents. There are numerous elements accountable for injuries however drivers fault is the most crucial aspect; drivers' fault accounted for 78% of overall accidents, seventy six.5% of Total accidents and seventy three.7% of the full fatalities.

Rune (2006) indicates that the impact of a number of crucial risk elements on road accidents can be defined in phrases of some notably standard "legal guidelines of twist of fate causation". These legal guidelines determine the shape of the relationship between the threat elements and the incidence of injuries. Instances of these kind of legal guidelines in addition to a dialogue of ways those legal guidelines may be tested empirically were documented in this paper.

IV. MATERIALS AND METHODS

The researcher has adopted Empirical Research Methodology for the purpose of doing this research. As the researcher not only collected sources of Primary Data but also collected Secondary Data. Primary data were collected by administering a well-structured and non-disguised schedule, comprising of questions from people of Chennai by conducting survey using Random Sampling Method and Responses which researcher got from people are about responses. To analysis the data Chi Square analysis, Frequency Analysis and ANOVA has been used.

V. DATA ANALYSIS & RESULTS

H0: The Motor Accident Claims Tribunal does not provide cheaper and speedier remedy to the victims of accidents of motor vehicle.

Ha: The Motor Accident Claims Tribunal provides cheaper and speedier remedy to the victims of accidents of motor vehicle.

2.Age

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 18-25 Years	43	38.7	38.7	38.7
25-35 Years	35	31.5	31.5	70.3
35-45 Years	27	24.3	24.3	94.6
Above 45 Years	6	5.4	5.4	100.0
Total	111	100.0	100.0	

It is inferred from the above table that Majority (38.7%) of respondents belong to the age group of 18-25 years. Yet 31.5% of respondents were

between the age of 25-35 years. 24.3% of respondents were 35-45 years of Age and only 5.4% of respondents were above the Age of 45 years.

5. Occupation

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Government employee	16	14.4	14.4	14.4

private employee	13	11.7	11.7	26.1
self employed	34	30.6	30.6	56.8
Unemployed	48	43.2	43.2	100.0
Total	111	100.0	100.0	

The results from the above study indicates that Majority 43.2% of respondents were unemployed. 30.6% of respondents were self employed. Yet 14.4% of respondents were Government employees and 11.7% of respondents were private employee.

2.Age * 13. The Motor Accident Claims Tribunal provides cheaper and speedier remedy to the victims of accidents of motor vehicle.

		13. The Motor Accident Claims Tribunal provides cheaper and speedier remedy to the victims of accidents of motor vehicle.			
		strongly disagree	disagree	neutral	agree
2.Age	18-25 Years	5	9	10	5
	25-35 Years	3	6	9	0
	35-45 Years	2	9	2	4
	Above 45 Years	0	1	0	1
Total		10	25	21	10

**Crosstab
Count**

		13. The Motor Accident Claims Tribunal provides cheaper and speedier remedy to the victims of accidents of motor vehicle.	Total
		strongly agree	
2.Age	18-25 Years	14	43
	25-35 Years	17	35
	35-45 Years	10	27
	Above 45 Years	4	6
Total		45	111

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	14.457 ^a	12	.272
Likelihood Ratio	19.169	12	.085
Linear-by-Linear Association	1.155	1	.282
N of Valid Cases	111		

a. 11 cells (55.0%) have expected count less than 5. The minimum expected count is .54.

Inference

It is observed from the above table that the Pearson Chi Square value is 122.241 which is significant at five percent level showing that there is significant association between Age and The Motor

Accident Claims Tribunal provides cheaper and speedier remedy to the victims of accidents of motor vehicle. P value is 0.272 which is greater than 0.05. Thus null hypothesis is rejected.

2.Age * 15. Wearing helmet while driving two wheelers is mandatory

Crosstab

Count

		15. Wearing helmet while driving two wheelers is mandatory			Total
		yes	no	maybe	
2.Age	18-25 Years	24	9	10	43
	25-35 Years	22	7	6	35
	35-45 Years	13	14	0	27
	Above 45 Years	4	2	0	6
Total		63	32	16	111

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	14.845 ^a	6	.021
Likelihood Ratio	18.480	6	.005
Linear-by-Linear Association	1.499	1	.221
N of Valid Cases	111		

a. 4 cells (33.3%) have expected count less than 5. The minimum expected count is .86.

Inference

It is observed from the above table that the Pearson Chi Square value is 122.241 which is significant at five percent level showing that there is no significant association between Age and Wearing helmet while driving two wheelers is mandatory P value is 0.000 which is less than 0.05. Thus null hypothesis is accepted.

2.Age * 20. The bill 2019 tries to infuse more discipline on roads by tightening rules and increasing penalties as well as doing away with redundant regulations.

rosstab

Count

		20. The bill 2019 tries to infuse more discipline on roads by tightening rules and increasing penalties as well as doing away with redundant regulations.			Total
		yes	no	maybe	
2.Age	18-25 Years	27	3	13	43
	25-35 Years	17	9	8	34
	35-45 Years	24	1	2	27
	Above 45 Years	4	1	1	6
Total		72	14	24	110

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	15.601 ^a	6	.016
Likelihood Ratio	15.909	6	.014
Linear-by-Linear Association	3.836	1	.050
N of Valid Cases	110		

a. 5 cells (41.7%) have expected count less than 5. The minimum expected count is .76.

Inference

It is observed from the above table that the Pearson Chi Square value is 122.241 which is significant at five percent level showing that there is no significant association between Age and 20. The

bill 2019 tries to infuse more discipline on roads by tightening rules and increasing penalties as well as doing away with redundant regulations. P value is 0.000 which is less than 0.05. Thus null hypothesis is accepted.

Occupation * 20. The bill 2019 tries to infuse more discipline on roads by tightening rules and increasing penalties as well as doing away with redundant regulations.

Crosstab

Count

		20. The bill 2019 tries to infuse more discipline on roads by tightening rules and increasing penalties as well as doing away with redundant regulations.			Total
		Yes	no	maybe	
5. Occupation	Government employee	13	0	3	16
	private employee	7	3	3	13
	self employed	14	10	9	33
	Unemployed	38	1	9	48
Total		72	14	24	110

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	21.079 ^a	6	.002
Likelihood Ratio	23.218	6	.001
Linear-by-Linear Association	.158	1	.691
N of Valid Cases	110		

a. 5 cells (41.7%) have expected count less than 5. The minimum expected count is 1.65.

Inference

It is observed from the above table that the Pearson Chi Square value is 122.241 which is significant at five percent level showing that there is no significant association between Occupation and

The bill 2019 tries to infuse more discipline on roads by tightening rules and increasing penalties as well as doing away with redundant regulations. P value is 0.002 which is less than 0.05. Thus null hypothesis is accepted.

Occupation * 21. The regulation of taxi aggregators such as Uber and Ola under the new bill is acceptable

		21. The regulation of taxi aggregators such as Uber and Ola under the new bill is acceptable		
		strongly disagree	Disagree	neutral
5.	Government employee	1	1	11
	private employee	5	2	1
	self employed	5	14	7
	Unemployed	8	4	13
Total		19	21	32

Crosstab

Count

		21. The regulation of taxi aggregators such as Uber and Ola under the new bill is acceptable		
		agree	strongly agree	
5.	Government employee	0	3	16
	private employee	2	3	13
	self employed	2	6	34
	Unemployed	4	19	48
Total		8	31	111

Chi-Square Tests

	Value	Df	Asymptotic Significance (2-sided)
Pearson Chi-Square	36.326 ^a	12	.000
Likelihood Ratio	34.043	12	.001
Linear-by-Linear Association	1.500	1	.221
N of Valid Cases	111		

a. 12 cells (60.0%) have expected count less than 5. The minimum expected count is .94.

INFERENCE

It is observed from the above table that the Pearson Chi Square value is 122.241 which is significant at five percent level showing that there is no significant association between .Occupation and The regulation of taxi aggregators such as Uber and Ola under the new bill is acceptable. P value is 0.000 which is less than 0.05. Thus null hypothesis is accepted.

VI. THE GUIDING PRINCIPLES FOR COMPENSATION UNDER MOTOR VEHICLE ACT, 1988

A) Just Compensation

As the phrase itself says that the compensation given is just which means fair and equal. The Claims Tribunal has power to award the compensation above the amount claimed, as to award compensation which was just. The case of State of Haryana v. Jasbir Kaur¹ can be a very good example under this principle.

B) Death Cases

In these cases there are three principles which need to be considered while granting compensation to the dependants and victims.

i. Ascertaining the multiplicand

In this the multiplicand is the income of the deceased per annum subtracted the personal expenses of the deceased. It is the contribution to the dependent family.

ii. Ascertaining the multiplier

Multiplier needs to be selected by having regard to the age of the deceased and period of active career. The choice of the multiplier has to be based on the age of the deceased or claimant whichever is the highest.

iii. Actual Calculation

Under this, the researcher mainly will focus on death cases of the child and housewives. As both these people i.e. the child and the housewife do not contribute to any income of the family, it is believed that their death need not get compensated, but, under the Motor Vehicle Act 1988, it is believed that the deceased i.e. the child and the housewife need to get compensated. Few cases that are relevant under this principle are LataWadhawa v. State of Bihar(death of a child) and Rakesh Kumar v. PremLal.

C) Injury Cases

There comes the injury case under the guiding principles too. Injury can be of severe nature and it can be of mild nature also. Here too, two main factors need to be kept in mind, one of them is accessibility, in some cases it becomes difficult to access a fair compensation like where there is grave damage to the brain or any body part, this is the reason why the compensation should be in a conventional figure. The other factor is predictability; the parties should be able to predict with some accuracy the amount compensation.

Motor Vehicles (Amendment) Bill, 2019

□ *Pay for street mishap exploited people:* The authority will build up a plan for cashless treatment of street mishap unfortunate casualties during brilliant hour. The central government may likewise make a plan for giving interval help to inquirers looking for pay under outsider protection.

□ *Engine Vehicle Accident Fund:* The Act requires the appropriate government to establish a Fund, to give necessary protection spread to all street clients in India. The Fund will be used for: (I) treatment of people harmed in street mishaps according to the brilliant hour plot, (ii) pay to agents of an individual who kicked the bucket in an attempt at manslaughter mishap, (iii) pay to an individual intolerably hurt in an attempt at manslaughter mishap, and (iv) pay to some other people as endorsed by the central government. This will be credited through: (I) installment of a nature informed by the central government, (ii) an award or advance made by the focal government, (iii) parity of the Solatium Fund (existing asset under the Act to give pay to attempt at manslaughter mishaps), or (iv) some other source as recommended the central government.

□ *Great Citizens:* The Act characterizes a decent citizen as an individual who renders crisis therapeutic or non-medicinal help to an unfortunate casualty at the area of a mishap. The help more likely than not been (I) in compliance with common decency, (ii) willful, and (iii) without the desire for any prize. Such an individual won't be obligated for any affable or criminal activity for any damage to or passing of a mishap unfortunate casualty, caused because of their carelessness in giving help to the person in question.

□ *Review of vehicles:* The Bill enables the Central government to arrange for review of engine vehicles if an imperfection in the vehicle may make harm the earth, or the driver, or other street clients. The maker of the reviewed vehicle will be required to: (I) repay the purchasers for the full cost of the vehicle, or (ii) supplant the damaged vehicle with another vehicle with comparative or better particulars.

□ *National Transportation Policy:* The central government may build up a National Transportation Policy, in discussion with state governments. The Policy will: (I) build up an arranging structure for street transport, (ii) build up a structure for award of licenses, and (iii) indicate needs for the vehicle framework, in addition to other things.

□ *Street Safety Board:* The Act accommodates a Road Safety Board, to be made by the appropriate government through a warning. The Board will prompt the central and state governments on all parts of street wellbeing and traffic the board including.

□ *Offenses and punishments:* The Act expands punishments for a few offenses under the Act.

□ *Taxi aggregators:* The Act characterizes aggregators as computerized middle people or commercial centers which can be utilized by travelers to interface with a driver for transportation purposes (taxi administrations). These aggregators will be given licenses by state. Further, they should conform to the Information Technology Act, 2000.

Issues with the bill:

□ With a Fund previously existing to give pay to attempt at manslaughter mishaps, the reason for the new Accident Fund is hazy.

□ State governments will give licenses to taxi aggregators according to central government rules. At present, state governments decide rules for utilizing of taxicabs. There could be situations where state taxi rules are at fluctuation with the focal rules on aggregators.

□ While the punishments for contradicting arrangements of the proposed plan on interval alleviation to mishap exploited people are determined in the Bill, the offenses that would warrant such punishments have not been indicated. It might be contended that overwhelming punishments without knowing the idea of the offenses is outlandish.

□ States additionally have worries about their forces being reduced in the Motor Vehicle (Amendment) Bill

□ Compensation for road accident victims: The central government will develop a scheme for cashless treatment of road accident victims during golden hour. The central government may also make a scheme for providing interim relief to claimants seeking compensation under third party insurance.

National Insurance Company Limited v. PranaySethi

The Hon'ble Supreme Court has issued certain guidelines regarding the computation of compensation for road accidents taking place by the negligence of the drivers of motor vehicles. The factors like living and physical expenses of the dependants, their medical expenses and the amount of loss incurred will be considered.

MukundDewangan v. Oriental Insurance Company Limited

In this landmark case, one of the seminal issue became whether a driver who is having a license to power 'light motor car' and is riding 'transport car' of that elegance is needed moreover to gain an endorsement to drive a shipping automobile?

It is held that there is no requirement to reap a separate endorsement to power shipping car. It changed into in addition stated in the case that if a motive force is holding license to power a mild motor automobile, he can force shipping automobile also of such elegance without any endorsement to that effect.

National Insurance Company Ltd vs Kamal Kishore and others.FAI(MVA) No. 564 of 2018

"There is no such stipulation or condition therein (in the policy) that the insurer will not be liable toward third party risk for want of valid registration certificate of the vehicle...

There is no such defence available to the insurer for repudiation of the claim on the ground of invalid/absence of registration certificate". The Court concluded that "merely because vehicle is not registered, the Insurance Company cannot escape its liability towards third party"

Prasanna v Kabeer (2018 (4) KLT 722)]

It is settled that the the insurer is liable to provide the insurance amount to the insurer unless the insurer has cancelled the insurance coverage and intimated the same to the insured and registered authority.

Ramla and others v. National Insurance Company Limited and others CIVIL APPEAL NO.11495 OF 2018

The Supreme Court held that the just compensation does not restrict the power of the court in granting compensation to the victim and his dependants since the object of the legislation is the welfare of the people. the court can even provide enhanced compensation based on the facts and circumstances of the case.

Vimla Devi &ors. v. National Insurance Company Limited &ors. Civil Appeal No. 11042 of 2018

The Supreme Court opined that non-exhibition of documents is a procedural lapse and does not disentitle a claim when otherwise sufficient evidence is adduced and documents established the identity of offending vehicle.

VII. CONCLUSION

The Act plays a predominant role in regulating and combating the motor vehicle accident. it gained more significance through various guidelines issued by the judiciary. The recent Amendment Act of 2019 has increased the rate of compensation and has mandated the establishment of a Fund to provide adequate compensation to the victims and his dependants. The Act incorporates a variety of innovative concepts, that was due for long. Considering the features like providing enough protection to good Samaritans, this bill will go a long way in ensuring the safety norms in India, which is the prima facie of saving a life. From the above study, it is clearly proved that The Act 2019 tries to infuse more discipline on roads by tightening rules and increasing penalties as well as doing away with redundant regulations since Majority of

respondents accepted this. India requires a hefty penalty to make people deter from breaking the law, provision mentioned in the bill of putting people to pay for wrongdoing and breaking traffic rules is a good idea.

[15] RamaswamyIyer, *Law of Torts*, 10th Edition, LexisNexis Butterworths, 2007

REFERENCE

- [1] R.K. Bangia, *Law of Torts: Including Motor Vehicles Act, Consumer Protection Act and Competition Act*, Allahabad Law Agency.
- [2] S. R. Myneni, *Law of torts & Consumer protection*, Asia Law House, 2009
- [3] Justice Deepak Gupta, *Award of Compensation under Motor Vehicles Act, 1988 guiding principles for Motor Accident Claims Tribunal*.
- [4] Dr. Janak Raj Jai, *Motor Accident Claims: Law & Procedure*, Universal Law Publishing, 2010
- [5] Ratanlal&Dhirajlal, *Law of Torts: With Exhaustive Notes, Comments, Case-law References, Also Containing Commentary on Motor Vehicles Act, 1939, the Consumer Protection Act, 1986*, Lexis Nexis Butterworth, Wadhwa, Nagpur, 2010.
- [6] Janak Raj Jai, *Compensation Under the Motor Vehicles Act: A Critique*, Daya Books, 2002
- [7] Andrew Suszek, *Accident Claims based on Negligent Road Contribution*
- [8] "Comprehensive insurance covers car occupants and pillion riders". Business standard. 2014- 02- 21.
- [9] Sri C.LakshmiNarain, *Claims for compensation before Motor Accident claims Tribunal*
- [10] David Grogen J.D, *Car Accidents caused by negligence*
- [11] <http://www.lawteacher.net/free-law-essays/commercial-law/third-party-motor-claims-in-indian-insurance-commercial-law-essay.php#ixzz3Xrydr4RE>
- [12] <http://www.swaniti.com/wp-content/uploads/2017/11/Brief-Note-on-the-Motor-Vehicles-Amendment-Bill-2017.pdf>
- [13] Justice S. C. Mathur, *Motor Accident Claims - A Historical Perspective*, J.T.R.I. Journal– Second Year, Issue – 4 & 5 - Year – March, 1996.
- [14] Spitisarkar, *Legal Pronouncements for Compensation under Section 166 of the Motor Vehicles Act, 1988*.