

Motor Third Party

Claims Management



Celebrating the 60th Year of Excellence



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

MOTOR THIRD PARTY CLAIMS MANAGEMENT



**Committee on Insurance and Pension
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI**

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Foreword

Motor Insurance contract is a personal contract. It is based on statutory requirements of the Motor Vehicle Act 1988 and various terms and conditions formulated for covering the risks emanating from the use of motor vehicles. Insurance of motor vehicle is unique as it combines in itself damage to insured motor vehicle and insurance against liability towards damage to third party property/or any personal injury/death sustained by third party or passengers or persons in employment as described in the policy or arising out of the use of the insured property.

The Motor Insurance Industry is growing at very fast pace and complete knowledge about legal and procedural issues related to third party claims have become need of the hour. Our Institute, being acclaimed as the Partner in Nation building, has always raised to provide technical inputs to intricate Macro and Micro economic issues. This publication is a laudable effort and a step in the right direction as it attempts to provide guidance on critical issues relating to third party claims management to our members, stakeholders and others involved. I am confident that users of this publication will find it very useful while carrying out their assignments.

I appreciate the efforts put in by Shri Govind Johri, Associate Professor and Chief Manager, National Insurance Academy, Pune for associating in the endeavours of the Institute. At the same time, I also complement the Committee on Insurance and Pension and its Chairman, CA. V. Murali, his colleagues in the Committee and the officials of the Committee's secretariat for their valuable guidance and support for bringing out this publication.

New Delhi
4th March, 2009

CA. Uttam Prakash Agarwal
President

Preface

Motor Insurance is a branch of Miscellaneous (Property and Casualty) insurance and like any other contract should satisfy some fundamentals and also the implied principles of a contract of Insurance such as utmost good faith, insurable interest, indemnity and its corollaries i.e., subrogation and contribution. The third party liability claims for compensation are made in respect of accidents involving the death of or bodily injury to persons arising out of the use of vehicles, or damage to property of third party, or both.

The instant publication is a maiden initiative on Third Party Claims Management in Motor Insurance and it attempts to bring out technical issues in a succulent form, which is easy and understandable by all the stakeholders. I am sure, it would be received well by the Members of our Institute willing to develop their competencies in this area.

This publication is intended to cover General principles of Motor Insurance Contracts, Proposal and Policy Forms, Legal Aspects of Third Party Claims, etc. apart from areas like Jurisdiction of Civil courts, Internal Audit, Principles of Damages, etc. Case studies and case laws have been included so that the readers would get practical side of the Third Party Claims Management.

I place on record my sincere gratitude to Shri Govind Johri of National Insurance Academy for preparing the basic draft of this publication. I am thankful to CA. M. Ramadoss, CMD, Oriental Insurance Company and Mr. S. Gridharan, Regional Manager, Oriental Insurance Co. for their valuable contribution in finalising this publication.

I am thankful to CA. Uttam Prakash Agarwal, President of ICAI, CA. Amarjit Chopra, Vice President, ICAI, immediate past president of ICAI CA. Ved Jain and CA. Pankaj Jain, immediate past Chairman of the Committee as well as other members and special invitees of the

Committee on Insurance and Pension for their valuable guidance and cooperation in bringing out this publication.

I appreciate the efforts put in by the officials of the Secretariat of the Committee for their invaluable contribution in bringing out this publication.

New Delhi
25th February, 2009

CA. V. Murali
Chairman,
Committee on Insurance and Pension

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General Principles of Motor Insurance Contracts

This chapter covers the ingredients of Insurance contract i.e., doctrine of uberrimae fides, principle of insurable interest, principle of indemnity and its corollary subrogation and contribution and doctrine of proximate cause as applicable to Motor insurance.

Introduction of General Insurance Principles to Motor Insurance Contracts

A motor insurance contract has all the ingredients of general contract in respect of insured's duty to disclose material facts and insured's right to insure any legal interest, legal liability or damage to third party property, besides insurer is bestowed with the duty to indemnify and as a corollary accrues right of subrogation and contribution. Insurance is a contract, recognised by the law, in which the insurer undertakes to run the risk to a pre specified extent, subject to terms, conditions and warranties and pays compensation for an agreed consideration to the insured/owner of the property on the happening of the event insured against. A positive occurrence of the event is an essential factor differentiating insurance contract from a wagering contract where a profit or benefit does not accrue to either party.

Motor insurance contracts are subject to basic principles applicable to Property and Liability insurance. Insurance of motor vehicle is unique as it combines in itself damage to insured motor vehicle and insurance against liability towards damage to third party

property and/or any personal injury/death sustained by third party or passengers or persons in employment as described in the policy or arising out of the use of the insured property. The liability part of the insurance cover is a statutory duty cast by the Motor Vehicles Act 1988 (1988 Act) by which the owner of a motor vehicle cannot use or cause use of his vehicle in a public place, as prescribed in Chapter XI, Section 146 (1) of the 1988Act.

Motor insurance is a branch of Miscellaneous (Property and Casualty) insurance and like any other contract should satisfy the aforementioned fundamentals and also the implied principles of a contract of insurance. These principles are principle of utmost good faith (*uberrimae fides*), insurable interest, Indemnity and its corollaries i.e., subrogation and contribution.

Principle of *uberrimae fides*

The utmost good faith in insurance contracts demands an absolute standard of good faith between the insured and the insurer. The doctrine of utmost good faith imposes a legal obligation on the proposer to disclose all ***material facts*** to the insurers, in order that the parties to the contract are placed in the same position or on an equal footing with reference to their knowledge of the subject matter of insurance. For covering the risk, observance of utmost good faith by both the parties to the contract is essential.

In ‘Rivaz vs. Gerussi’, the ***material fact*** is explained as ‘one which would affect the judgement of an Underwriter in considering whether to enter into a contract of insurance and if so at what rate of premium’.

In ‘Carter vs. Boehm’ 1776 Lord Mansfield observed that: “*Good faith forbids either party, by concealing what he privately knows, to draw the other party into a bargain from his ignorance of that fact and his believing to the contrary*”. In effect the principle of ***caveat emptor***, i.e., ‘let the buyer beware’, applicable to the contract of ‘Sale of Goods Act’, does not apply to insurance contract.

General Principles of Motor Insurance Contracts

In ‘Tallish vs. Jarvie’ it was held that, “*In cases of insurance contracts a party is required not only to state all matters within his knowledge, which he believes to be material to the question of insurance, but all which in point of fact are so. If he conceals anything which he knows to be material, it is a fraud, but besides that, if he conceals anything that may influence the rate of premium which the underwriter may require, although he does not know, it would have that effect, such concealment entirely vitiates the policy.*”

Thus in ‘Turner vs. Green’ the plaintiff was informed of an accident but he did not disclose the same to insurer. Had the defendant been aware of the happening of the accident, he would not have entered into a contract at all. It would, therefore, be necessary for the proposer to submit details of previous accidents and imposition of any terms like compulsory excess on own damage claims by the previous insurer. These terms will enable the insurer to decide the acceptance of the proposal and if necessary, will enable restriction to the scope of insurance cover or impose restriction in driving the vehicle by named persons only.

Contractual Duty of Utmost Good Faith

The submission of proposal form by the prospective insured is, therefore, compulsory in motor insurance. As owner of a motor vehicle, proposed for insurance, the proposer must make full disclosure of all facts relevant and material to the risk related to motor vehicle and its usage and known to the insurer. The material facts are those facts which will influence the judgement of a **prudent insurer** in determining the acceptance of risk and ascertaining the actual amount of premium to be charged subject to terms, conditions and warranties stipulated for acceptance of the risk as proposed.

The factors relevant to the insurance of a motor vehicle are:

- Type of vehicle,
- Its value,

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- Geographical area of operation,
- Use to which vehicle is to be put,
- Safety gadgets,
- History of past accidents and
- Details relating to the driver(s) physical condition and his/her accident track record of traffic convictions and penalties imposed.

In order to elicit adequate information, Proposal form is a must and the declaration clause in the Proposal Form converts the **common law duty** of disclosure into a **contractual duty** of utmost good faith. The answers given in the proposal form are required to be literally true and correct in order to transform the answers given by the insured into warranties. Any wrong answer irrespective of its materiality to the acceptance of risk or determination of premium will render the contract voidable at the option of insurers. The onus of proving concealment and misrepresentation by the insured, however, lies on the Insurer.

Judgement Debtor

The contract of Motor Insurance permits the insurer to avoid its liability in various circumstances e.g., dishonour of premium cheque, post-accident insurance, the vehicle in question remaining unidentified though covered in a fleet, driving licence of the driver not found effective, and valid, vehicle is used for the purpose other than the purpose insured for, etc. If these circumstances do not fall within the purview of Sec.149 (2) of 1988 Act, the insurer cannot invoke defence and escape liability awarded against the insured. The terms of contract between insurer and insured, which determine their **inter se** rights and liabilities, are different from statutory liability of the insurer for the third party risk. If a 'Certificate of Insurance' has been issued complying with statutory insurance provisions of the 1988 Act, Judgement in respect of compulsory

third party liability will be awarded against Insurance Company even though the insurer is entitled to avoid the Policy.

Motor Vehicle Act is a benevolent legislation as far as compensation is payable towards third party liability. Section 149 of 1988 Act provides that, if a 'certificate of insurance' complying with statutory insurance provisions of the Motor Vehicle Act 1988 has been issued, the award in respect of Third Party liability is given against insurer, who, may be entitled to avoid or cancel the policy. The insurer has to pay to the third party, the amount decreed including cost and interest awarded, as if the insurer was the judgement debtor, subject to the statutory limit of property damage and/or unlimited liability in case of death or disability.

Deep Pocket Theory

An insurer is required to pay to Third Parties, even though he may be entitled to avoid or cancel the policy or may have avoided or cancelled the policy. The proviso is an offshoot of deep pocket theory, which requires a capable person to bear. The remedy available to the insurer is to proceed against the insured for breach of contract and to recover the amount so paid to satisfy award under the provision of the Motor Vehicle Act 1988. The Insurer is, however, not liable to pay, where the insurer can not be fastened statutory liability under the provisions of Motor Vehicle Act 1988 as given in Chapter X,XI & XII read with the Central Motor vehicle Rules.

Principle of Insurable Interest

Motor vehicle is the property, which is exposed to loss or damage besides insured's liability towards third party caused by negligent use of the vehicle. This means that extent of ownership interest in a motor vehicle and its continued existence enables the owner or other users to use the vehicle, with owner's knowledge and permission. Motor vehicles are insured against Third party liability and/or only liability risk under the statutory provisions. It would not be correct to argue that as long as the damage to the vehicle is not covered, there is no insurable interest.

Owner of the vehicle as an Agent

The owner of the vehicle may authorise any other person to drive his vehicle. In such a case the owner has no insurable interest in the third party liability caused by such other person. “**Indian insurance industry may device a separate cover for such driver’s liability**” The owner allowing use of his vehicle by another person is vicariously liable for the acts committed by that other person within the ambit of the statute covering liability caused by negligence under Motor Vehicle Act 1988.

In such cases the owner is deemed to act as an agent in arranging the indemnity on behalf of such other persons, who may drive vehicle and incur liability. Otherwise the injured third parties would have no recourse to recover damages.

Principle of insurable interest

It was explained in ‘Lucena vs. Craufurd’ that: “*an insurable interest exists where the assured stands in some legal relation to the subject matter of insurance whereby he stands to incur some legal loss if the event insured against occurs.*”

The ownership interest in the motor car and liabilities to third parties arise out of the use of vehicle in a public place whereby the owner incurs legal liability u/s 146 of 1988 Act.

Who has an insurable interest?

In motor insurance following class of persons have an insurable interest in the vehicle:

1. The Motor Vehicles Act 1988 lays down that the owner of a motor vehicle shall arrange for the registration of the vehicle with the registering Transport Authority and for registration of a vehicle, evidence of valid insurance in the form of a ‘certificate of insurance’ or cover note issued in compliance of 1988 Act is a prerequisite. Therefore, the owner of a motor

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vehicle by virtue of his title and possession has an insurable interest.

2. The seller of a motor vehicle has an insurable interest until the property, in the motor vehicle passes on to buyer and in certain cases as unpaid vendor of the motor vehicle he can exercise the right of lien and to the extent he has an insurable interest.
3. The buyer of motor vehicle acquires insurable interest as soon as the contract of sale is completed, though he may not be in possession of the vehicle.
4. A hire purchase financier of a motor vehicle has an insurable interest until all the instalments are repaid. The person advancing money in respect of motor vehicle under a hypothecation agreement has an insurable interest to the extent of money so advanced or outstanding. Financier is not owner of the Motor vehicle for the purpose of the accident. [(Godavari Finance Co v Degala Satyanarayananamma) 2008 (5) MLJ 748 (SC): 2008 (5) SCC 107].
5. Joint owners of the vehicle or partners of a firm have insurable interest in the Motor Vehicle.
6. Motor traders e.g., garage proprietors have insurable interest as baileys in respect of loss or damage to customer's vehicle that are in their custody for repair purpose. Motor Traders Policy covers such liability separately.
7. Hotel owners and baileys either for reward or otherwise and person in possession of a vehicle have an insurable interest until the vehicle is in the possession.
8. Legal heirs to a testate person, executors administrators, official assignees, official receivers have an insurable interest
9. The user of a Motor Vehicle has an insurable interest, in that

he can propose for insurance of his liabilities to third parties as per the provisions of the Motor Vehicle Act 1988

Principle of Indemnity

In motor insurance contracts the insured is placed after loss, as far as possible, in the same position as he was immediately before the loss, with reference to the subject matter of insurance.

In Castellain vs. Preston, Lord Justice Bowen enunciated the principle of indemnity: "*The very foundation in my opinion of every rule which has been applied to insurance law is this that the contract of insurance.....is a contract of indemnity and of indemnity only and that this contract means that the assured in a case of loss against which the policy has been made, shall be fully indemnified but shall never be more than fully indemnified.*"

Stroud's Judicial Dictionary defines the principle of indemnity as: "*a contract, expressed or implied, to indemnify against a liability, and the liability under which it is coterminous with the liability it is intended to cover, and is independent of the question whether somebody else makes default or not*".

In motor insurance the owner of a motor vehicle insured can recover under his Package policy in the event of physical damage to the vehicle, to the extent he has suffered monetary loss arising out of accident to the vehicle. For partial losses the measure of indemnity is limited to the cost of repairs of the vehicle to its pre-accident condition, but if old parts are replaced by new, suitable depreciation is charged on the cost of new parts. Insurers also reserve the option of repairs or replacement of the vehicle or pay in cash. In the case of a total loss it is the insured's declared value (IDV) of the vehicle as defined in GR (General Regulation) 8 of the revised All India Motor Tariff as mentioned in the Policy or the market value for vehicles over 5 years old. Agreed value policies are prohibited by the All India Motor Tariff except Vintage cars as defined in GR 5 of the Tariff.

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In no case does the insurer's liability exceed the sum insured stated in the policy. However, if the IDV has not been determined correctly by the insured at the time of issuing the cover, insurer cannot escape the liability to the extent as envisaged in GR8, though he may be permitted to recover appropriate premium from the insured. If insurer charges higher premium accepting higher IDV as Sum Insured, the insurer is under an obligation to refund the extra premium so charged. In respect of the liability part of the insurance cover, the motor policy will provide true indemnity on the occurrence of the event giving rise to a third party death or injury claim. The insurer indemnifies the insured for property damage, to the extent for which he sought the insurance cover and in dealing with the claims for physical injury and compensation true indemnity cannot be given a strict interpretation. Indemnity, however, includes legal costs to defend the liability also.

Indian insurers do not issue valued policies in motor department, which may become payable when there is a total loss of the subject matter insured. The value for which a vehicle can be insured and in order that he gets a full indemnity in the event of a total loss, it would be in the interest of the insured to insure the motor vehicle for a value corresponding to the IDV or market value as applicable under terms of Package cover, at which the vehicle's cost will be estimated at the time of loss.

Principle of Subrogation

Subrogation is the transfer of legal rights of an insured against third party, to the insurer when the loss or damage to the vehicle is caused by the negligence of any other person. Insurer steps into the shoes of insured' rights, remedies and options, following settlement of a claim under the policy and the insurer may also exercise administrative control over claims, suits and other proceedings accordingly in the name of the insured. Under common law, subrogation operates after the claim is paid. A policy condition, may, however, provide for subrogation before the payment of claim, in order to minimise the losses.

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In [Castellain vs. Preston] the principle was explained as hereunder:

"As between the underwriter and the assured, the underwriter is entitled to the advantage of every right of the assured whether such right consists in contracts fulfilled or unfulfilled any remedy or tort capable of being insisted on or in any other right whether by way of condition or otherwise legal or equitable which can be, or has been exercised or accrued, and whether such right could or could not be enforced by the insurer in the name of the assured by the exercise or acquiring of which right or condition, the loss against which the assured is insured can be or has been diminished." Lord Justice Bowen further observed, "A person, who wishes to recover from and is paid by the insurers as for a total loss, cannot take with both hands. If he has a means of diminishing the loss, the result of the use of those means belongs to the underwriters."

The existence of the right of action against a wrongdoer or third party is a fundamental requirement for application of the principle of subrogation. In the case of insurance of motor vehicle, loss or damage to a vehicle parked stationary may be caused by another vehicle and the owner/insurer of the offending vehicle will become liable. In the case of theft of parts from a private car, the insurers are entitled to the stolen parts when recovered, by virtue of the application of the doctrine of subrogation. In practice, subrogation has been modified by 'Knock for Knock' agreement between insurers.

As the insurer steps into the shoes of the insured to enforce the principle of subrogation, the right of recovery of Insurer from the third parties is limited to the amount of claim settled and any excess amount so recovered will have to be passed on to the insured\owner of the vehicle. On the other hand, if the amount recovered or recoverable is less than the admissible amount of the claim, the insurer cannot restrict his liability to the amount of recovery, as it would be contrary to the principle of indemnity.

This also infers that the insured is barred from making any admission himself or compromising the amount of recovery from third parties, after the insurers have settled his claim. The insured

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cannot give up or waive his right of recovery against third parties, since the benefit of protection availed by the insured through insurance contract Policy cannot be passed on to others. Recovery of loss from the owner of the offending vehicle involves issues such as negligence and the same will have to be proved and liability properly established for recovering the loss. However, insurers do not acquire any better title of interest than what the insured possessed at the time of accident, and if insured has no right of action, the insurers too in turn do not acquire any rights.

Subrogation rights are enforced after settlement of a claim by obtaining a 'Letter of Subrogation' duly stamped and signed by the insured. Legal costs and expenses incurred in any recovery action pursuant to the principle of subrogation will be to the account of the insurer. The insured is required to extend full cooperation and join the insurer as co-plaintiff in any legal suit of recovery. In case the insured himself recovers damages through legal proceedings without any assistance from the insurer and perchance the insurer has settled the claim, the insurer will be entitled to the benefit of recovery so made by the insured to the extent of amount of claims paid.

Principle of Contribution

The principle of contribution relates to '**double insurance**' of the same risk, inadvertently or otherwise subsisting at the time of claim. In order to ensure observance of the Principle of Indemnity, insurers meet the liability to the extent of a rateable proportion of the loss.

In a case between North British & Mercantile Insurance Co. and Liverpool & London & Globe Insurance Co. the learned judge observed that, "...contribution exists where the same thing is done by the same person against the same loss and to prevent a man first of all from recovering more than the whole loss from one, which he could have recovered from the other, then to make the parties contribute rateably. But the principle states that the interest must be with more than one Office".

Non Applicability of Principle of contribution to Third party liability

The principle of Contribution does not apply to third party liability for death or bodily injuries arising out of the use of the motor vehicle and the Courts do not entertain any plea from the insurer seeking rateable contribution for this liability under their policy.

Section II of the Motor Policy dealing with liabilities to third parties stipulates that:

“In terms of and subject to the limitations of the indemnity which is granted by this section to the insured, the insurer will indemnify any driver who is driving the motor car on the insured’s order or with his permission provided that such driver is not entitled to indemnity under any other policy”

In commenting upon the ‘*rateable proportion clause*’ appearing in the policy, Mr. Raoul Colinvaux in his book “The Law of Insurance” discusses the rights of the insured/driver vis-à-vis the insurer as hereunder:

“The burden of proving that the assured is entitled to call upon the other insurer to pay in the event of a loss lies upon the insurer who is praying the clause in his aid.” If both policies are legally binding, covering risks, they will become enforceable and contribute a rateable proportion of the loss.

The author feels that the contribution condition needs to be specially worded in Private Car Policies to cover the owner of the motor vehicle, for third party liability while driving cars not belonging to him.

Doctrine of cause proxima

The application of the doctrine of ‘cause proxima’ or rule of proximate cause is equally important. The definition of the rule of proximate

cause was laid down in **Pawsey vs. Scottish Union** as hereunder:

... "Proximate cause means, the active efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source."

Therefore, the Insurance policy is liable to pay for the loss when a peril or risk occurs and is attributable to a “dominant, operative and efficient” cause. The maxim “*causa proxima non remota spectatur*” meaning that the proximate and not the remote cause is the factor to be taken into account. The aforesaid loss is the loss against which the motor vehicle is insured under the policy.

Loss or damage to a motor vehicle may be occasioned by one cause or a combination of causes, for example, a stationary vehicle may be hit by another vehicle in running condition from the rear end, the stationary vehicle may injure persons or damage property, but in deciding the cause of claim or admissibility of the claim, the principle to be looked into is, what is the direct or dominant cause rendering loss?

Statutory Liability in Motor Portfolio

Motor Insurance is a different specie altogether in the context of contract of insurance and the liability of an insurer under it vis-à-vis Third Party claims. It is premised on the fact that motor insurance is compulsory vide Sec.146 MV Act, 1988 (erstwhile Sec.94 of MV Act, 1939). In view of the statutory nature of the said liability, the Courts have tended to come to the rescue of the victims. In 1987 ACJ 411 (Skandia Insurance Claim) the Supreme Court made it clear after advertizing to [(Captain Itbar Singh) 1958-65 ACJ 1 (SC)] that the purpose of a contract of motor insurance was to provide protection to the community of innocent motor accidents victims. It was not intended for the insurer to obtain motor insurance premium and run their business on commercial lines. The courts would be inclined to “iron out the statute’ to aid the victim and it was for the insurer to so manage their business on commercial lines. These

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decisions of the apex court have stood as beacon of light and had been reiterated number of times as in Kamla, Lehru, Swaran Singh cases and so on. Of course, the Apex court, including the High Courts have also been dutifully following this mandate. Hence, it needs to be primarily understood and kept in mind by us that the construction of a motor insurance policy viz. a Third Party liability would be diametrically different from the construction of the same contract in relation to an own damage liability. This distinction has been made clear by the Supreme Court in [Complete Insulations' case] vis-a-vis Seema Malhotra and Laxmi Narain Dutt's cases also. This distinction need be kept in mind while understanding the verdicts of the courts and pursuing further litigation in relation to awards of Motor Accident Claims Tribunals, High Courts.

Limited Defences available to insurer

In consonance with the disclosed view of the apex court on the true import and construction of motor insurance policies, it needs to be understood that defences of the insurer have been clearly demarcated under Sec.149 (2). It was made clear in Captain Itbar Singh case [1958-65 ACJ 1 (SC)], the earliest judgment from the apex court that Parliament had consciously restricted the defences of the insurer. If so, it would not be for courts to add to them. That the insurer may be "prejudiced" by such a restricted defence mechanism, is not the concern of the courts, as they simply have to carry out the mandate of the will of the people as represented by Parliament. If so, the insurer cannot traverse beyond the permitted defences under Sec.149 (2). Of course, the benefit of Sec.110-C (2A) then and now Sec.170 is to contest on merits by obtaining specific permission of the court to do so. This rule of law has stood the test of time and in Sankarayya, Nicolletta et al it has been affirmed several times.

Hence what matters would be the defences open under Sec.149 (2) and not the terms and conditions under the contract of insurance until the courts start appreciating the fact that the insurance companies are not charitable institutions and are present to protect the contractual liability taken up by them by virtue of payment of premium by the insured for the risk of insured.

Changing Approach of the Apex Court

A combined reading of the above said legal position, in succinct terms has meant that insurer's foundational defence on Sec.64-VB Insurance Act, 1938, has also, from their point of view has suffered a dent. But the perception of insurer needs to be understood clearly. A reading of Sec.64-VB of Insurance Act, 1938 would show that it is an "embargo" placed on the insurers not to issue covers without receiving premium "in advance". Payment of premium by cheque is permissible. If the insurer chooses to obtain the cheque and issue a cover, then if cheque is dishonoured, the consequences thereof, cannot befall on the innocent Third Party victim of accident, as the statutory protection afforded to him in law vide Sec.146 MV Act,1988 would take away the right to claim compensation. Insurer cannot rely upon Sec.64-VB and contend that as "consideration" for the contract, a basis requisite as per the Indian Contract Act,1872, was not received, hence there was no valid and enforceable contract against them. The Supreme Court has negated such a defence and ruled in Sunitha Rathi, Rula etc that even if the cheque had been dishonoured, the insurer may still have to meet the Third Party claim. They would, however, be entitled to proceed against their insured for recovery of the statutory liability met out by them on the insured behalf.

While taking the position as such, the apex court has drawn two distinctions, which need to be noted while defending claims of this genre. Firstly it is only in respect of Third Party claims that dishonour of the cheque for premium would not be a valid defence. In respect of OD claims, it would be a valid defence and the insured cannot enforce his claim (Laxmi Narain Dutt's case). Secondly, in a recent pronouncement, the Supreme Court would appear to suggest that if the cancellation of the cover had taken place prior to occurrence of accident and the insured was put on notice of such cancellation, then they might be entitled for avoidance of liability. It appears to be a saving grace for the insurers. But, if the decision in Rula is properly read and understood and the facts are applied correctly, it would appear that cancellation prior to accident may not be defence in a Third Party claim. Nevertheless, as on date, Supreme Court

judgment of recent origin is protective of the insurer and there is a decision of the High Court Madras as well to this effect.

Insurable Interest and Ownership under MV Act

The statutory nature of the contract of insurance is always kept in mind while dealing with the Third Party claims. That it is meant to come to the rescue of the innocent motor accidents victims is never lost sight of. It is in line with this approach that Parliament had mandated Sec.157 of MV Act, 1988 granting compulsory transfer of benefits of a contract of insurer in favour of the purchaser of the vehicle. It is generally understood by the insurer that the customer seeking insurance must have a legal right to insure the subject matter of insurance. Therefore insurers insist on the Registration Certificate of the vehicle being in the name of the insured, at the time of availing cover. But as per Sec.146 motor insurance is compulsory, and it is a settled law that any “user” of the road is required to ensure that there was a valid policy in force. It is equally well accepted that such “insurable interest” need not flow from “ownership” or “registration” alone. In 1991 ACJ 625 the High Court, Madras had gone into this aspect and ruled that it did not matter whether the Registration Certificate was in the name of A and the policy of insurance in the name of B, so long, as there was a cover existing as on date of accident. Hence, insurable interest and General Regulation 32 of the All India Motor Tariff have to be understood contextually. That is, in case insurers had issued the insurance policy, without ensuring that the Registration Certificate was in the name of the insured, they cannot later on suggest that the contract of insurance was not enforceable or it was not valid as far as Third party liability is concerned. The contract of insurance, even if issued, contrary to GR 32, would be valid and enforceable as insurable interest, in the context of statutory motor insurance; it is not premised on ownership and registration alone. More importantly, it needs to be understood that the sale of a motor vehicle, a movable goods, comes under Sale of Goods Act,1930 and not under MV Act,1988. So, even if the Motor Vehicle was not transferred in the name of purchaser, the purchaser

would still be the legal / defacto / de jure owner as on the date of purchase, as held by the Supreme court in 1980 ACJ 233 itself, which is good and binding law.

Purport of Third Party claims Management

Third Party claims Management occupies a very vital cog in the wheel of an insurer. It forms a major component of the portfolio of any insurer. From Ambassador to Nano, India has come a long way in the development in automobile sector. India is now the 11th largest producer of motor vehicles. The total number of registered motor vehicles in India, as on date, is in the vicinity of 100 million. Indian roads carry 85 per cent of the passenger traffic and 70% per cent of freight traffic in the country. The highways, which make up just 2 per cent take a load of 40 per cent off it. The roads in India are notorious for their treacherous nature and come monsoon, they turn into death traps. No wonder, there were 4,30,000 accidents in 2004, up from 3,20,400 in 1994. There were 92,618 deaths in 2004, 94,968 in 2005, 1,05,000 in 2006, 1,20,000 in 2007, and 90,000 in 2008 till date and they are alarmingly on the rise estimated to touch 1,20,000. It means that every 6 minutes a person dies on the Indian roads. The global economic loss arising from motor accidents is pegged at 500 billion US dollars and we are saddled with 6 per cent share in it to the tune of Rs.56,000 crores of rupees, more than three per cent of our GDP. Consider these statistics, which is life and limb on the economic costs on the insurers' bleeding motor portfolio, and you have a scary scenario. The general principles of insurance law may seem mutilated to the insurance industry, but viewed in context, as to economic costs on the Nation and nay on the affected families', it is eminently understandable. The basic insurance concepts and general principles change contextually, in relation to compulsory motor insurance. Hitherto, Third Party claims management may have received step motherly treatment, as it did not "fetch" dividends. But cutting losses and saving on it is "income". That realisation has dawned and not a day too soon. Prudent Third Party claims management requires proper understanding of the nature of jurisdiction and mere awareness of the general principles governing

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insurance contract would do no good. General principles per se may be the bedrock or foundation of insurance, but they have to be and must be tailored for understanding and appreciating the construction of the applicability of such general principles in the light of statutory nature of the contract of motor insurance and benevolent intention of the Parliament, reflecting the will of the people, to provide succour and relief to the innocent victims of rising tide of motor accidents what with the exploding vehicle population and alarmingly slow quality growth of the infrastructure component vis-a-vis the road network in India. That is the purport of this Third Party Claims management, to drive home the truths and be told as they are.

2

Proposal & Policy Forms

This chapter deals with the need for proposal form to understand factors affecting the risk including material facts pertaining to the Scope of Motor Policy and certificate of insurance in the Contract of Motor Insurance.

Need for Proposal

Motor Insurance contract is a personal contract. It is based on statutory requirements of the Motor Vehicle Act 1988 and various terms and conditions formulated for covering the risk emanating from the use of motor vehicle, on the basis of proposal form submitted by the proposer. Proposal forms for insurance of motor vehicle have been broadly classified into three major categories viz. Private Car, Motor Cycle & Scooter and Commercial Vehicle. Proposal form for commercial vehicle includes insurance of vehicle used for commercial purpose, special type of vehicles with body construction suitable for the desired purpose. Varying factors are taken into consideration for proper assessment of the risk, determination of liability for loss or damage and also the third party liability as per legal requirement of the Motor Vehicles Act.1988.

The insured and/or his agent submit the duly completed and signed proposal form, which forms part of the Insurance Policy. The special circumstances and requirements for additional cover not required statutorily are included in the standard form of policy and these requirements are also met by eliciting information through proposal

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from the owner of the motor vehicle. The Proposal form seeks information with the following format:

- Physical hazards of the risk
- Place of use of vehicle
- Moral hazard of the proposer
- Occupation of the proposer
- Details of the driver of the vehicle.

These questions and their answers form the terms of the contract and some of the answers carry the effect of a ‘representation’, while some other answers become ‘**continuing warrantee**’, due to the proposer’s signed declaration of truthfulness of answers given in the proposal form which forms part of the Policy.

The proposal form is an offer signifying “expression of a willingness to be bound” as defined by Anson in his ‘Law of Contracts’. A completed proposal form along with remittance of premium as per Section 64 VB of the Insurance Act 1938, amounts to an offer with consideration by the proposer, which once accepted by the insurer, forms a valid insurance contract, subject to other ingredients such as consensus ad idem, majority of the party to agreement and subject matter of the contract to be within the Public Policy.

Who can make an offer?

The owner of the vehicle may avail of the insurance cover for a motor vehicle individually, or jointly, the cover can be hypothecated to financier or the cover may be issued in the name of the Hire purchaser, jointly incorporating the interest of the Hire purchaser and hirer. There are individuals functioning as agent, duly licensed by the Insurance Regulatory and Development Authority under the relevant regulation of IRDA for grant of Agency/ Corporate Agent/ Broker’s licence to act as agent / Corporate Agent /Broker. These agents act as intermediaries to place insurance risks for appropriate

covers. However, proposal form whether filled by proposer or agent, the proposer remains solely responsible for the truthfulness of the answers mentioned in the proposal form due to their signing the declaration at the end of the proposal form, which forms the basis of underwriting the risk proposed i.e., accepting the risk and determining the extent of premium based on the assessment of hazards, proposed to be covered by the insured.

Notice to agent

An agent of the insurance company who knows that answers to some of the questions in the proposal Form were not correct, gives rise to a peculiar situation in respect of material information given in the contract, which forms the basis of insurance contract. It was observed by Stratton, L.J. In (Newsome Boris's vs. Road Transport and General Insurance Co., Ltd) — *"If untrue and he knows it, he is committing a fraud which prevents his knowledge being the knowledge of the insurance company. If the answers are untrue but he does not know it, I do not understand how he has any knowledge, which can be imputed to the insurance company. In any case, I have great difficulty in understanding how a man who has signed, without reading it, a document which he knows to be a proposal for insurance, and which contains statements in fact untrue, and a promise that they are true and the basis of the contract, can escape from the consequences of his negligence by saying that the person he asked to fill it up for him is the agent of the person to whom the proposal is addressed."*

In the same judgement Greer, L.J. observed thus, *"I also take the view that notice to the agent whose duty was to obtain a signed proposal form and sent it to the company, was not notice to the company of anything inconsistent with the signed proposal form, and that in filling up the form, whether he mistook the instructions of the insured, or whether he intentionally filled in some thing different from what he was told, he was not acting as the agent of the company, but as the agent for the insured".*

Therefore, an Agent completing a Proposal Form cannot be said

to be totally bound by the answers given therein in as much as the owner of the vehicle signs the proposal Form duly affirming the correctness of the answers given therein and the proposal form is made an integral part of the policy. The effect of such answers will be that of a 'warranty' against the insured. The Proposal form is part of the contractual terms and enables the insurer to assess the factors contributing to the risk and decide the rates of premium.

Proposal Forms

Objective of eliciting information in proposal forms

Identification particulars

- 1 Registered letters and number
- 2 Make of the vehicle
- 3 Year of manufacture
- 4 Cubic capacity or Horse power
- 5 Carrying capacity
 - 5.1 Permitted laden weight for goods carriage
 - 5.2 Licensed seating capacity for passenger vehicle
- 6 Seating capacity including no. of drivers, age and experience of the driver
- 7 Type of body
- 8 Invoice price, date of purchase and date of putting to actual use in case of bare chassis under going construction of the body.

- 9 Proposer's estimate of present value including accessories and spare parts
- 10 Extra fittings - item wise list of electronic and non-electronic items, make and value for each item. (Applicable to Private cars and Motor cycles and Contract carriages with video and audio facilities)
- 11 Geographical area of use of vehicles
- 12 Occupation for which the vehicle is intended to be used

Other Information

- Proposer's name
- Proposer's (Residence) Address
- Proposer's (Business) Address

Area of residence/use

The geographical area of use for Private cars and Motor cycle is 'anywhere' in the country, but the answers in the proposal form lead to the knowledge of the area of greater use, place of residence of the user, the place where the vehicle is garaged etc. Based on such information, the premium is determined taking into consideration area and place of use of motor vehicle. The permanent address and business address of the proposer are solicited, where the address of residence is nearer to some satellite township, while the business is carried on in a Metro city, where the motor vehicle might largely be used. Insurers institute enquiries or seek more information at the time of acceptance of proposal for coverage in such cases, to rate the risk adequately.

Factors affecting the Risk

The various factors, which affect the risk, are based on correlation

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of the factors with the risk proneness. US uses 75 risk factors, while Indian market rating is so far based on merely 4 risk factors, although the claims continue to be prejudiced by other factors as given below [(Test Drive by Govind Johri, Associate Professor in Asia Insurance Post, January and February 2008 p. 48-49 (both issues)]]

1. Registration details
2. Carrying capacity of the vehicle
3. Seating capacity of the vehicle
4. Usage of the vehicle (Private or Commercial or Agricultural or special purpose)
5. Use for social, domestic and pleasure purposes
6. Route Permit
7. Load Permit
8. Eligibility for no claim discount
9. Geographical area (coastal, hilly, desert, plain)
10. Climate of the area (cold regions, arid, hot)
11. Driving experience of the person
12. Driving history of the driver
13. Drivers health condition
14. Drivers attitude (conscientious or aggressive)
15. Gender of the driver
16. Other vehicles owned

17. Multiple drives and multiple vehicles
18. Credit rating of the insured
19. Traffic density, variety of vehicle on the road
20. Road conditions

Material facts relating to the Contract

Material facts relating to the Contract

The **ownership** of the vehicle and **financial interest** of Hire Purchase financier are material to the risk as these lead to the determination of insurable interest. The legal owner is entitled to the use and possession of the vehicle and is under duty to disclose identification particulars, description and purpose and manner of use of the motor vehicle.

Material Alteration

The purpose for which the vehicle will be used, whether it be social, domestic or pleasure purpose for private cars and motor cycle or for commercial purpose only, will determine the class of vehicle e.g., Public carrier or a Contract carriage. Therefore, the replies given in proposal form amount to '**continuing warranty**' and remain applicable throughout the period of insurance. It should not mean that making a statement of fact is to be restricted to the point of time at which the proposal was made.

If, for instance, a private car is converted into a taxi and used for hire or if a private carrier with a necessary permit is being operated as a public carrier in an authorised manner, this will be a material alteration to the risk, and as there is no breach of the '**continuing warranty**', the proposer may give due information and pay appropriate premium relevant to the risk.

Proposer's eligibility for '**No claim discount**' gives a blurred idea of the driving history of the vehicle and is used for allowing 'No claim discount' in arriving at the premium payable for the insurance of a vehicle.

The author feels that the concept of no claim discount is merely '*an incentive for not preferring claim*' and has little to do with the driving prowess of the variety of drivers who tend to use the vehicle during the policy period.

Physical health of the driver

Private car policies cover driving of the vehicle by "**any person**" with a **valid and effective driving licence**; the motorcycle policies permit the '**insured or any other person**' on his order to drive, the Commercial Vehicles cover, whilst vehicle is being driven by '**any person**' provided the '**person driving is in the employment**' of the insured and possess a valid and effective driving licence and has not been disqualified to hold the licence. The driver is a vital risk factor, as the driver of the vehicle and his performance and management while driving the vehicle, leads to fortuitous circumstances, giving rise to claims under the policy.

The author feels that "the physical health of a driver, particularly his vision and hearing faculties and also handicaps if any, may allow the insurer to decide the exposure of the risk. This may also entitle the insurer to impose restrictions in driving by the named persons, e.g., young driver (say 18 to 25 years) or very old drivers (say 70 to 85 years) or '*an inexperienced driver*' (say driver possessing licence for less than one year)".

Previous insurer declining or restricting the risk

The name of the previous insurer and refusal by any insurer to accept the risk, or accept the risk with loading of premium or break-in-insurance, are also material factors while accepting the

risk and granting the cover, when the insurance policy is switched over to another insurer, from the existing insurer of the vehicle. The insured's failure to disclose such material information amounts to nondisclosure of material facts. A refusal by an insurer would indicate that they had come to know of certain special circumstances relevant and material to the vehicle. The proposer is under a duty of utmost good faith to disclose such information. Any failure to answer this question would mislead the insurer, who has been prevented from taking a reasoned decision to accept or decline the coverage.

No insurer can refuse "Act Only" risks on the aforementioned grounds as IRDA guidelines make it mandatory for insurers to provide insurance cover for third party liability towards motor vehicles used in public place. At the most the insurers may restrict driving by certain persons, if the information about past losses and adverse claims record concern only one driver, or the insured is known for his carelessness, reckless driving and his general attitude is towards disregard for observance of the rules of road and regulations.

Past claims history

The history of past losses reveals the nature of losses e.g., if the vehicle is stolen frequently it would be an indicator of poor security arrangements or susceptibility of the place or of the vehicle being prone to thefts due to available alternate use of some machinery parts. Similarly, in case of frequent accidents, details of the parts of the vehicle affected would give a clue as to whether the vehicle is in a good state of repairs and running condition or there is an element of moral hazard of the insured in claiming losses. The past losses therefore, permit the insurer to decide the scope of cover to be granted or to impose certain conditions or additional deductibles; so that the exposure to the risk is reasonably measurable and preventive steps are taken at the time of acceptance of the proposal.

Declaration Clause in the Proposal Form

Motor proposal forms end with a declaration clause which results inter alia into a ‘binding warranty’ confirming the truth of the answers and holding them to be in the nature of warranty.

The proposal form incorporates:

1. Offer and acceptance
2. Duty of utmost good faith requiring full disclosure of material facts
3. Payment of the consideration from insured to insurer
4. Foundation of the contract

The consequences of a declaration and warranty of truth in the words of Christopher Shaw cross are:

1. *“Warranty of truth and disclosure, which renders any question of materiality or “substantial misstatement” irrelevant as far as the terms of the proposal form are concerned.”*
2. Warranty that the declaration shall be promissory, which as far as it has any effect will bind the assured to continue to observe the limits and duties laid upon him in the proposal form as completed, particularly as to the user of the insured vehicle. This may give to statements the force of continuous warranties so that if, for example, the assured has said that his vehicle is only used for private pleasure, its use at any time for business may vitiate the whole policy. It may also make any alteration of the risk a ground of avoidance.
3. *“Warranty that the proposal form shall be the basis of the contract between the assured and the insurer, which again, entitles the insurer to repudiate liability under the*

terms of the policy itself without relying upon the Common Law grounds of non-disclosure or misrepresentation, both of which impose upon him an onerous burden of proof than is required by mere proof of a breach of an essential stipulation of the contract".

Blank columns in a completed proposal form

What would be the effect of the answer columns having been left unfilled or with a dot in a Proposal form? Barry, J observed [in (Roberts vs. Avon Insurance Co. Ltd).] that: "*The inference to be drawn from leaving blank the two lines provided for the purpose of stating any exception can, to any reasonable applicant and to any reasonable insurer, have only one meaning, namely, that no exception exists .It seems to me perfectly clear that any applicant for insurance, completing this form, would appreciate without any doubt or ambiguity that the insurers required particulars of any previous loss in respect of contingencies specified to be set out on the two blank lines left for that purpose, with the date ,amount and the name of the insurers who were concerned in respect of each of those losses.*

If that information is clearly required, it seems to me that the only inference, and the obvious inference is that the applicant intended the blank lines to represent what I think has been described as a negative answer .As this statement is in a declaration, the obvious inference to be drawn from the applicant leaving those lines blank is that there was in fact no exception to his categorical statement that he has never sustained any loss in respect of any of the contingencies specified".

Consequences of wrong statements/ incorrect answers

What are the consequences of incorrect answers, intentional or otherwise, material or immaterial to the risk? When do we make categorical assertion that the Proposal is the foundation of the

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contract? In [Dawson's Ltd. vs. Bonn] Justice Viscount Haldane said that:

"It is clear that the answer was textually inaccurate. I think that the words employed in the body of the policy can only be properly construed as having made its accuracy a condition. The result may be technical and harsh; but if the parties so stipulated, we have no alternative, sitting as a court of justice, but to give effect to the words agreed on. Hard cases must not be allowed to make bad law. The proposal in other words- the answers to the questions specifically put in it is made basic to the contract .It may well be that a mere slip, in Christian name, for instance, would not be held to vitiate the answer given if the answer were really in substance true and unambiguous. **Falsa demonstration non nocet.** But that is because the truth has been stated in effect within the intention shown by the language used. The misstatement as to the address at which the vehicle would usually be garaged can hardly be brought within this principle and in the light of authorities such as those which I have already cited, it appears to me that, when answers, including thawing question, are declared to be the basis of the contract, this can only mean that their truth is made a condition exact fulfilment of which is rendered by stipulation foundational to its enforceability".

Is it fair to interpret an answer in the Proposal form that the proposer or driver is wearing glasses as 'defective vision' prohibiting them from driving? In [Austin vs. Zurich General Accident and Liability Insurance Co., Ltd.] Tucker, J as under, answered this:

"With regard to the alleged, detective showed that he wore 'thick glasses'. There was no evidence before me as to the significance of "thick" glasses as distinct from any other glasses. Although Austin was not altogether convincing with regard to discrepancies in his evidence at the trial and at the inquest, in the absence of any contradictory testimony before me there was no material on which I could find that there was any defect in (the insured's) vision when wearing glasses, or that the necessity for wearing glasses, or that the necessity for wearing them in any way affected

his driving. The evidence was that he was a good shot and billiards player and that he drove without difficulty by day and night. It is well known that a high proportion of people use glasses for reading but not for long distance sight, and have perfect vision for driving purposes, yet in a sense their vision is defective. I cannot suppose that such people are required to answer "Yes" to this question .Its meaning must be construed in relation to the circumstances in which it is put, and I think that when occurring in a proposal form for motor insurance, It is limited to defects in vision which in some degree affect the competence of the assured as a motor driver and have not been corrected by glasses or other means I am therefore of the opinion that the answer in respect was not untrue."

It often happens that replies given in the proposal form or information furnished in a letter seeking insurance cover may not be quite relevant or will not satisfy the purpose for which the question was drafted in the Proposal form .On account of market pressure and sometimes considering the unimportance of the issue insurers ignore the inconsistency. These very often come to light when a claim arises at which point of time a thorough scrutiny of the proposal and policy is made. Is it open to the insurer to rely on the inconsistency and turn down the claim outright on the ground of non-disclosure? In [Keeping vs. Pearl Assurance Co., Ltd.] Bailhache, J explained in the following manner:

"The first answer to which they object is this 'the question is, the date of birth; and the date of birth is given as the 28th November, 1863. The place of birth is given as New Mills, which I understand is correct. Then the age on next birthday is given as 48. Now, of course, it is obvious to any body who does the simplest subtraction sum, that a person born in 1863 would not be 48, but would be 57, in 1920. There was no reason to suppose that time had stood still for Mr. Harry Keeping, and it was obvious, therefore, that there was some mistake about his age, and it turns out that, in fact, 1863 is the wrong date of birth, and that the age next birthday, instead of being 48, ought to be 49. The insurance company had that form before them, and they saw, on the face of it that there was a mistake somewhere about the age. Obviously, it must have hit them in the eye the moment they had the proposal form. Yet,

notwithstanding that, they chose to issue a policy; and if they chose to issue a policy on a proposal form which contained a mistake, obviously, on the face of it, without further enquiry, there is no ground, in my opinion, for vitiating the policy".

Scope of Cover

There are two types of covers available to owners of motor vehicles viz. 'Package cover' 'Act Liability only' cover. Package policies are issued by insurers to cover earthquake, flood, and riot and strike risks and the proposer has no option to delete these risks from the scope of cover; as was done prior to disastrous earthquake of 2001 in Gujarat. The Proposal Form seeks the willingness of the proposer to bear 'voluntary excess', when insurers agree to give discount in premium although insurers are not obliged to allow discount in premium when 'additional excess' is imposed for underwriting reasons. Separate questionnaire is included to ascertain insured's special requirements for additional covers, e.g., owner driver's Personal Accident cover, additional limit for Third Party Property damage which is provided by charging extra premium beside the cover available under standard covers.

Motor Insurance Policy

A policy of insurance is a legal evidence of the concluded contract of insurance and it would be necessary for owners of motor vehicles and/ or their financiers to possess the policy relating to the motor vehicle to understand the terms of their contract, their rights and liabilities vis-à-vis the insurer's rights. In the post nationalisation era, the contents of the Motor Insurance policy have been standardised for each class of vehicle and the variation is only with reference to the endorsements attached to the policy, when the proposer avails additional cover or opts for deletion from the standard cover.

The motor policy has three parts:

- (a) Standard form of printed policy

- (b) Schedule
- (c) Clauses and Endorsements

It is open to the owner of the motor vehicle to decide upon the nature and extent of indemnity he can opt for in insuring a motor vehicle. There are three different types of cover available for selection by owners.

- (1) Act Liability Policy- This is the minimum insurance protection required for every motor vehicle used in a public place. Chapter XI of the Motor Vehicles Act 1988 lays down the limits of the liability for each category of vehicle; towards death or bodily injury to Third parties, for passengers and irrespective of the class of vehicle, in respect of damage to property of Third party up to a limit of Rs.6, 000/-in all, caused by or arising out of the use of a motor vehicle in public place.
- (2) Third Party Liability to Public Risks- The cover under this policy is wider than an 'Act Liability Policy' and extends to cover Third party property damage over and above the limits specified in the Motor Vehicles Act 1988 as amended. Actual amount of legal liability of the insured for loss or damage to any property of Third party property arising out of the use of the vehicle is covered. This type of policy can be extended to include Fire and Theft risk at an additional premium. The policy will carry an endorsement specifying the extent to which Fire and Theft risks are covered. The proposal form in such cases should mention the value of the vehicle, which will be the limit of indemnity. Insurers have not printed a separate motor policy for insurance of vehicles under this category but follow a uniform practice of issuing policies in the Standard Package form by suitable wordings incorporated therein, dealing with Own Damage and in the case of private cars additional Section III dealing with medical expenses. An endorsement to this effect is attached to the policy and insurers take care not to incorporate the value of the vehicle

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in the Schedule as this would mean that damage to the vehicle also gets covered.

- (3) Package Policy (Own Damage Cover) - This policy covers loss or damage to the vehicle due to various risk arising out of the use of the vehicle in a public place, inclusive of cover under a Third party Liability policy.

The comprehensive policy covers the following:

- (1) Own damage to vehicle
- (2) Towing charges
- (3) Towing of disabled vehicles
- (4) Insured's authority to carryout repairs
- (5) Liability to third parties
- (6) Medical expenses- applicable in the case of private cars only
- (7) Avoidance of certain terms and rights of recovery
- (8) Application of limits of indemnity - applicable to motorcycles and commercial vehicles
- (9) Transit cover by road, rail, inland waterways, lift, elevator or air

With regard to payment of premium the preamble to the policy states that the insured "*has paid or agreed to pay the premium as consideration for such insurance*". This will mean that limited credit transactions in the form of a Bank guarantee are acceptable to the insurer for assumption of risk and in all other cases as per provisions of Section 64 V-B of Insurance Act 1938 as amended. Premium is accepted in cash or by cheque depending upon the convenience of the insured. However, no risk can be assumed unless the premium is paid in advance.

The schedule to the policy includes insured's name and address, the persons or classes of persons entitled to drive, Limitations as to use, Limits of Liability and complete identification particulars of the insured vehicle, effective date of commencement of insurance, date of expiry of insurance and schedule of premium.

The policy is stamped in accordance with the provision of the Indian Stamp Act 1882 and is dated and signed by the person authorised by the insurer. The policy conditions describe the duties of the insured, the rights of the insurers, in particular the right to take over defence of legal proceedings in the event of a matter-giving rise to a claim under the policy.

The policy also contains "No Claim Discount" provision and the permissible scales of discount. It may, however, be noted that in India 'No Claim Discount' is allowed only on the net own damage portion of the premium of the Package policy or on own damage portion of fire and or theft risk in respect of each vehicle.

Transfer of Certificate of Insurance

The motor Insurance Policy is a personal Contract and is underwritten on the basis of purpose and manner of use of vehicle besides the physical features, therefore the Policy cannot be transferred without the consent of the insurer insofar as it does not counter the provisions of the Motor Vehicle Act 1988. Section 157 provides for the provisions for the transfer of certificate of insurance as hereunder:

- (1) The Certificate of Insurance automatically gets transferred to the transferee once the ownership is changed.
- (2) The Transferee shall apply within 14 days to the insurer to insert his name in the Certificate of insurance.

The Motor Vehicle (amendment) Act 1994 has added an explanation in Section 157 (1) which states that such deemed transfer, shall

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include transfer of rights and liabilities of the said ‘*certificate of Insurance*’ and ‘*Policy of Insurance*’.

The Supreme Court in [AIR 1996 SC 586] held that such deemed transfer of ‘Certificate of Insurance’ can only be subsisting in respect of third party risks; limiting the fiction of Section 157, thereby, excluding the matters relating to damages caused to vehicle of the insured.

GR 17 of All India Motor Tariff (effective 01/07/2002) gives effect to above provision. Para 2 of the regulation states

“.....in case of Package Policies, transfer of own damage section of the policy in favour of the transferee, shall be made by the insurer only on receipt of a specific request from the transferee along with the consent of transferor”.

However, if no information of transfer of vehicle or for transfer of Policy as required under Section 157 of the M V Act 1988 is given to the insurance company within 14 days, Insurance Company cannot be held liable as decided in (Ram Chander vs. Naresh Kumar) 2000 ACJ 727. Section 146 of the 1988 Act debars an owner from using a vehicle until he has obtained an insurance Policy, but it does not give a right to owner of the vehicle who has failed to comply with the provisions of law to claim indemnification from Insurance company in respect of injury or death caused by his negligence to a third party. It cannot be presumed that liability to indemnify the owner stood transferred from transferor to transferee on transfer of vehicle.

Impact of IMT GR 17

The statutory nature of the contract of insurance is always kept in mind while dealing with the Third Party claim, that it is meant to come to the rescue of the innocent motor accidents victims, is never lost sight of. It is in line with this approach that the Parliament had mandated Sec.157 of MV Act, 1988 granting compulsory transfer of benefits of a contract of Motor Insurance in favour of

the purchaser of the vehicle. This clause has relevance in the context of ‘insurable interest’ as is generally understood by the insurer.

Under GR 17 of the then IMT “all benefits” were contemplated to accrue to the purchaser of the vehicle. Requirement of transfer of the contract of insurance was not a pre requisite for the benefit of indemnity. In MV Act, 1988, under earlier IMT [(Complete Insulations case) {AIR 1996 SC 586}: {1996 ACJ 65 (SC)}], it was held that the benefit of compulsory transfer was available only for Third Party claims and not for OD claims, which was based on a “personal contract”. While so, TAC issued a circular at that point of time instructing insurers not to rely upon ‘*Complete Insulations case supra*’ as it was contrary to GR 17 then in force, but settle OD claims as well. In fact there was an instruction to insurers to reopen repudiated claims and offer a settlement. Now, under changed IMT as of 1/7/2002 GR 17 has come into force, as per this rule, 14 days period is stipulated for the transfer of contract of insurance. Hence, as of 1/7/2002, unless the policy of insurance was transferred in the name of purchaser, the insurer may not be liable for the OD claim.

Grace period for OD claims

Here also, TAC has clarified that during the 14 days period, it can be construed as “grace period” and insurers can consider OD claims, even if the contract of insurance was not transferred as on date of accident. In respect of THIRD PARTY claims, be it under the earlier IMT dispensation or the present one, insurers would be liable vide Sec.157 of MV Act, 1988.

3

Who can claim compensation?

This chapter deals with legal representatives including dependents who can claim compensation under the Motor Vehicle Act 1988 vis-à-vis Fatal Accidents Act 1855 and W.C. Act 1923.

Legal Representatives

The third party liability claims for compensation are made in respect of accidents involving the death of or bodily injury to persons arising out of the use of the vehicles, or damage to property of third party, or both, Section 166 of 1988 Act. Application for such compensation may be made by the person who has sustained injury or by the owner of property or where death has resulted from the accident, by all or any of the legal representatives of the deceased, as the case may be. [Refer Rajasthan State Road Transport Corporation vs. Kistoori Devi 1986 ACJ 960 (Raj.)]

There is a clear departure from the provisions of the Fatal Accidents Act 1855 where, such action or suit could only be brought for the benefit of the wife, husband, parent or children. Obviously, under the Fatal Accidents Act 1855, no other category of persons, except aforementioned, could bring any action, while under Sec 166 of 1988 Act, an action can be instituted by all or any of the legal representatives of the deceased/injured as the case may be.

A recent judgement of the full Bench of Rajasthan High Court in [1986 ACJ 960] held that the 'legal representatives' could be determined by application of the provisions of personal law

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governing each case. The question of brothers and sisters, more so when they are major and independent, has been the cause of great conflict for claiming compensation under Motor Vehicle Act 1988?

Compensation Application by Brother

Ambiguous judgments

The claimants [State Road Transport Corporation vs. Pehlad Bihari 1986 ACJ 781 (M.P.)] sought to argue that even the brothers of the deceased could maintain a claim petition, by citing the decision of the Madras High Court in [1972 ACJ 470 in M.P]. However, the single Judge Bench of the Apex Court refused to follow the judgment and followed the Division Bench judgement of the Madhya Pradesh High Court in [1983 ACJ 221 and 1982 ACJ (Supp.) 185] and held that the brother of the deceased was not entitled to maintain the claim petition. In another case a claim petition for compensation was lodged by the mother and brothers of the deceased boy, aged 15 years [Rukmani Ammal vs. K.G. Harida Kunnathalai 1984 ACJ 492 (Mad.) (D.B.); 97 LW 90; 1984 (i) MLJ 3221]. The brothers of the deceased could not be held competent to maintain the claim petition or be eligible for any compensation under Sec. 110-A of the M. V. Act 1939 (Sec 166 of MV Act 1988) since the brother was not found dependent on the deceased. [Harbans Lal vs. Rattan Singh in 1984 ACJ 529 (P&H)] followed the decisions reported in 1982 ACJ (Supp.) 185 (M.P.) and 1980 ACJ 462 (All.) not holding the brother to be competent to file a suit for claim.

Theory of dependents on the deceased

The Supreme Court in [AIR 1987 SC 1690] held that the brothers too would be entitled to maintain the claim and not necessarily only the wife, husband, parent or child as under Sec 1 –A of the Fatal accidents Act 1855. The Courts have considered whether the claimants were '**dependant on the deceased**', for considering the maintainability of petition for compensation. It is to be

remembered that in an Indian family brother, sister and brother's children and at times foster children live together and are dependent on the breadwinner of the family. If the bread winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the 'Fatal Accidents Act 1855'.

The Supreme Court [in (Nanabhai vs. Gujarat State Road Transport Corporation, Ahmedabad)] categorically held that a brother would be a legal representative within the meaning of relevant Sections of the 1988 Act and would be entitled to maintain a claim. It is observed that it was not merely the widow, parent or child who was entitled to maintain a claim but the brothers too would be entitled to maintain the claim. While doing so, one hopes, the Supreme Court, has brought to finality the position, and served to render the conflicting decisions of the various High Courts to no effect.

Dependents whom the 'deceased was bound in law'

In [N. Lakshmi Vs. Pichaiammal 1987 ACJ 31 (Mad); 99 LW 618; 1986 (ii) MLJ 343] the High Court held that it was not every dependent, who would be entitled to seek payment of compensation but only the dependents to whom the '**deceased was bound in law**' to maintain and support. In the presence of the widow and the son, the sisters couldn't claim to be executors or administrators of the estate of the deceased brother. The point of appreciation is that when legal representatives who are also dependents are directly available, then brothers and sisters who are not dependent would not be entitled to maintain the claim.

In another case where a bachelor died leaving behind a married sister, the maintainability of claim by sister as legal representative was accepted, explaining that the provisions of the 1988 Act were self-contained code of adjudication of claims for compensation on behalf of victims of motor accidents.

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The Supreme Court was constrained to suggest [in (M. K. Kunhimohammad Vs. P.A. Ahmed Kutty) {1987 ACJ 872 (SC)}: {AIR 1987 SC 2158}] the compelling need to amend the statute, suitably to define expression ‘legal representative’ the reference being made to the report of English Royal Commission on civil liberty and Compensation for personal injury.

Definition of Legal representative

The definition of term “legal representative” is found in rule 2 (C) of Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules 1989. ‘Legal representatives’ shall have the meaning assigned to it under clause (ii) of section 2 of Code of Civil Procedure 1908 (Central Act of 1908. Sec 2 (11) of CPC which reads as under

“legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party, sues or is sued in a representative character, the person on whom the estate devolves on the death of the party to suing or sued”.

Thus brothers and sisters of the deceased person, even if not dependent on the deceased, though married, are entitled to compensation.

Where the father is himself an earning member, he is not a dependent. In a claim petition, the widow and the father of the deceased were the claimants, the father passed away, and pending suit for action. The brother of the widow was not allowed to be impleaded as legal heir of Father of her husband.

Dependent under WC Act

Workmen Compensation Act, 1923 is a beneficial legislation. The statute itself contains the list of persons entitled for the claim. Unlike in the case of a MACT claim “dependency” is irrelevant. Mere relationship would suffice under the Act and if named in the

statute as widow, mother, and children or even widowed sister etc, the claimant becomes entitled to the statutory compensation as a matter of right. The statute itself provides for the ‘Factor’ to be adopted for the age of the victim, and as for wages, in the face of proof thereof, that shall be the wages. In its absence or it being lesser than minimum wages for the notified workmen category, the Workmen Compensation Commissioner can and may have to rely upon minimum wages to compute the compensation payable. It would suffice for the claimant to be an identified “dependent” as per the statute to sustain a WC claim.

Liability under WC Act, 1923 is absolute, In the case of a MACT claim, proof of negligence of the tortfeasor is mandatory as held in Maimoon Bi case [1977 ACJ 118 (SC)]. But in the case of a WC claim, it would suffice if the victim was a workman and accident arose in the ‘course of employment’ and the claim arose out of it. Even if the victim was at fault himself, he can sustain the claim. Probably, a difficult defence for the employer/insurer would be that the workman was “wilfully negligent”. A totally impossible defence to sustain and avoid liability, since mere negligent driving or prosecution by the police or even conviction arising from admission of guilt before a criminal court would not be proof of “wilful” conduct. Requirement of ‘burden of proof’ to avoid liability in a WC claim is hard to come by.

Legal representative and Indian ethos

Fundamentally, the expression “legal representative” is wider in amplitude than the expression “legal heir”. There is no doubt that Personal law of the deceased person would be relevant to construe the “legal representative”. Legal heir would only be those who are successors in interest to the deceased, in accordance with the personal law applicable be it Hindu Law, Mohammedan Law, whatever. But Parliament has consciously used the expression “legal representative” in Sec.110-A then and Sec.166 of MV Act 1988 now. The leading judgment in relation to the meaning and import of the expression legal representative is contained in the decision of the Supreme Court in [(GSRTC v Ramanbhai Prabhatbhai)1987 ACJ 561].

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In a case two independent claims were lodged, one case by the widow of the deceased a Muslim and the other by brothers of the deceased. As per Mohammedan law, even if the widow was issueless then she would get 1/4th of the share and the rest would go to the brothers. Though this was recognized as such, the High Court dismissed the claim of the brothers, since they were held to be not dependents of the deceased. It was observed that to sustain a claim under Sec.140 'No Fault Liability' dependency was not a criterion. Adverting to the decisions in [(GSRTC v Ramanbhai Prabhatbhai) AIR 1987 SC 1690:1987 ACJ 561] and [(Manjuri Bera v The Oriental Insurance Co Ltd) 2007 (4) MLJ 906: 2007 (II) ACC 365 (SC),] the matter was remitted to the High Court for fresh disposal on merits: [(United India Insurance Co Ltd v Mohd. Hasan) 2007 (3) T A C 799 (All)]. [(Hafizun Begum V Md.Ikram Heque) 2007 (4) CTC 335 (SC): 2007 (2) TN MAC 143:2007 (6) MLJ 76:2007 (4) LW 793.2004 (4) TAC 1.

The question arose whether brothers were entitled to claim compensation. The Supreme Court extensively dealt with the legal position and concluded that in the absence of immediate legal heirs such as mother, widow, children etc, then the surviving brothers or sisters or even foster children could sue on behalf of the estate of the deceased. The apex court adverted to the peculiar Indian social conditions and ethos and joint family system and said persons cannot be eschewed from the zone of consideration merely because they were not "legal heirs" under the personal law in question.

The brother prosecuted the claim without disclosing the existence of his sisters. In appeal, it was ruled that by virtue of a will the appellant alone was entitled and claimed before the Tribunal, and as such the claim of the sisters cannot be excluded. [(Ruben Borah v Anju Borah 2007 (II) ACC 222 (Gau)]. In another case it was held that non-impleading of the sister of the deceased to the appeal; already a party to the claim petition rendered the appeal not maintainable. [(Rajammal v T.C.T.Bus) 2007 (2) TN MAC 455 (Mad)].

It is no longer, therefore, a matter of doubt that legal representative could be any one other than legal heir as well, but in the presence of legal heirs the other persons may not have a right to pursue the claim. That is all there is to it.

Legal representative and dependency

It is true that the legal representative, shall be construed to be wider in amplitude than legal heir as is commonly understood. But while arriving at Just compensation, the court has to necessarily arrive at the ‘dependency’ of the claimants. It is the settled law for the purpose of “dependency”. It is the proof of actual reliance on the deceased for upkeep and survival that would matter and not mere relationship. Of course, for the widow, children and parents, such consideration of “dependency” is in – built and accepted as given. But if the claimants were brothers or sisters or even married children living separately, “dependency” becomes a criteria. In the recent pronouncements in Manju Bera, Hafizun Beguma cases the Supreme Court has adverted to the concept of “legal representative” and “dependency” in tandem and held that Courts had a duty to consider the nature of dependency and assess Just compensation accordingly. There cannot be a uniform rule for assessment for all legal representatives and dependency has to be gleaned from individual facts and assessments made in accordance thereof.

In case all the legal heirs of the deceased are in active service, they are entitled to make a claim under the act. Their claim cannot be rejected on the ground that they are not dependents on the deceased. Such an approach is opposed to the purpose of legislation and the beneficiary will be tort-feasor [Chandan Singh & Anors. vs. S.E.W. Construction Co. Ltd & ors. 2003 ACJ 1382 (MP)].

Adoption of the minor

In a case the claim was by the natural father along with second wife claiming adoption of the child from the natural mother. It was

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found that the natural mother was financing the child and in fact seeking to get back custody. The claim for death of boy was held maintainable at the instance of natural mother only. [(The Oriental Insurance Co Ltd v Lalitha Sharma) 2007 ACJ 1033 (HP)]. In this case it has been held that where the Tribunal come to note that there were other legal representatives also in the case but were not impleaded still, it had a duty to award their shares from and out of the compensation.

In another case the adoption of a minor daughter was held not acceptable in the absence of authentic evidence to this effect. Further, the claim of the parents for the death of their daughter was held sustainable on proof of dependency, and the non-impleading of the husband, who was alive but living separately in illegal intimacy with another woman was held to not affect the claim by parents. [(Minor Shyamala v A.Madheswaran) 2007 (2) TN MAC 478 (Mad)].

Claim on the basis of a Will

In [(Ramu (since dead) v H.Ramachandran) 2007 (3) TAC 976 (Mad)]: [2007 (3) LW 1062] it has been held that an appeal by an injured claimant, seeking enhancement, would not lie after the death of the injured pending such appeal. The claim on the basis of a Will was negated. It was ruled that such a person cannot invoke the benefit when the finding was that she was not a legal heir or dependent of the deceased. She could work out her remedies by proving the will before a Civil Court. [(Jillelamudi Nagamani v Sarvepalli Vijayalakshmi) 2007 (3) ACC 35 (AP)].

It can, therefore, be safely inferred that when persons such as widow, husband, children or parents are available, ‘brothers and sisters’ cannot claim to be legal representatives. But in the absence of first mentioned persons, brothers and sisters can claim compensation under the **‘held legal representatives’** within the meaning of relevant sections under MV Act 1988

Dependency under WC Act 1923

Whether dependency would be a major factor, as in Workmen's Compensation Act, 1923, in considering maintainability is a question that has been a bone of contention for long. A workman is entitled to move either the, Workmen Compensation Commissioner or the MACT but not both under the MV Act 1988, although the position of the law enunciated in two decisions by Madras High Court is highly doubtful where the bench held that even where a claimant had received compensation from Workmen Compensation Commissioner, he may maintain the claim before the Claims Tribunal and the amount so received will be deducted from the compensation assessed by the claims Tribunal. [Oriental Fire and General Insurance Co. Ltd. vs. Valliammal (1982) ACJ (Supp) 176 (DB) 94 LW 503]

The position taken in [Vasantha vs. Venugopal Achari 1988 ACJ 196; 100 LW 563 1987 (II) MLJ 35 (Mad)] contravenes the accepted position that the claimant could move either of the forum but not both. In fact, in the claim petition drafted under Claims Tribunal Rules, verification column requires the claimant to solemnly affirm that he had not received any compensation under the provisions of the Workman's Compensation Act 1923.

A similar position has been restated in case of ESI Act where if an employee could sustain a claim under sec 53 of ESI Act for compensation but he could not file a claim petition under MV Act.

Where a claimant happens to be a workman they need not prove negligence for receiving compensation payable to them under the provisions of Workman's Compensation Act 1923 as incorporated in Sec 95 of the MV Act 1939.

Workman remains a claimant even where he was himself negligent e.g., a driver or where workman is unable to establish negligence against the driver, then also he can maintain a claim before the Claims Tribunal in view of the application of the procedural law applicable to MV Act. (Refer liability treatment of Co-owner as paid driver under W.C. Act 1923 in Chapter 7.2.1 & 7.2.2)

Option to move WC Tribunal or MACT

As per Sec.167 of MV Act, 1988 it is open to the workman to exercise an option to move MACT or go before the Commissioner. But on the exercise of “option” there are differing views. If the claimant moves the Commissioner and the employer admits liability and deposits compensation, then the workman can be said to have “exercised” his option.

Employer, complies with the mandate

If, however, the employer, complies with the mandate of Sec.10-A of WC Act, 1923 and on his own admits liability and deposits the compensation, which the workman chooses to withdraw, then he cannot be said to have “exercised” his option. He may still be entitled to seek the remedy before MACT. There are decisions to this effect, but technically, they may not pass muster if the language of Sec.167 is read properly. For each claim, there can only be one remedy. That is too fundamental and if so, in the name of beneficial legislation to construe “exercise” of option, by hair-splitting may not be right, and insurers may be justified to resist any claim arising before MACT after the workman had “received” compensation under WC Act,1923 or was covered under ESI Act, of which Sec.53 is a bar for any further claim.

Workman to sue in MACT in No Negligence cases

In the context of WC claim, where “negligence” is not a pre requisite and not a bar to sustain the claim of a workman, there has been development in the legal position enabling the workman/driver to sue before MACT also. In [(Rita Devi) - 2001 ACJ 801 (SC)] the Supreme Court upheld a MACT claim for the death of an auto rickshaw driver who was found “murdered for gain” which was held to be an “accidental murder” . Thereafter, all other courts have also ruled so. And one of the more lucid judgments in this aspect is found in [(Oriental Insurance Co Ltd v Mani) 2004 ACJ 1790 (Mad (DB))], wherein it was held adverting to Rita Devi supra

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and another decision in 2003 ACJ 1021 (Mad) that in such cases where the victim was a workman under WC Act, 1923, he could legally enforce a claim before MACT also, but his entitlement would be restricted to such sum payable under WC Act, 1923. In Prembhai Shukla the Supreme Court would also appear to have concurred with this view as well.

NFL limit for Workman at fault

One ticklish question may remain in cases where the workman/driver was himself at fault and would appear to have admitted his guilt and been convicted thereupon. If so, as per [(Nandakumar's case) 1996 ACJ 555 (SC)] the liability of insurer may be restricted only up to NFL. However, that decision may now have to be read in line with the march of law that if he was a workman then such liability may be as per WC Act, 1923 and not as per NFL alone. For such drivers alone NFL limit may apply.

Jurisdiction of Civil Courts

This chapter deals with jurisdiction of Motor Accident Claims Tribunal and its powers as a Civil Court including who can file claim in MACT, where the claim can be filed and to what extent law of evidence is applicable in determining liability caused due to use of motor vehicle & damage to third party property. It further covers when and where an appeal can be preferred. The chapter also deals with the question who has the duty to satisfy judgement including extent of Insurers' duty to pay and recover under Motor Vehicle Act 1988.

Beneficial Legislation

Chapters X to XII of MV Act, 1988 were incorporated for the benefit for the innocent motor accident victims. There has been a sea change in the purport and impact of the march of law from the dispensation under MV Act, 1939 to MV Act, 1988 and subsequent amendments down all these years. The Parliament in its wisdom has gone about securing and protecting the interests of the affected victims. The Courts are duty bound to keep in mind the beneficial intent behind this legislation. The construction of the statutory provisions is itself in consonance with this intendment. [(British India General Insurance Co. Ltd., Vs. Capt. Itbar Singh) 1958-65 ACJ 1 (SC): AIR 1959 SC 1331; (Skandia Insurance Co. Ltd., Vs. Kokilaben Chandrawadan) 1987 ACJ 411: 100 LW 790: 1987 (2) SCC 654; AIR 1987 SC 1184: 1987 (1) ACC 413; (Sohan Lal Passi Vs. P. Sesh Reddy) 1996 ACJ 1044: AIR 1996 SC 2627: 1996 (2) ACC 617; (National Insurance Co. Ltd., Vs. Swaran Singh) 2004 ACJ 1: AIR 2004 SC 1531: 2004 (3) SCC 297: 2004 (1) Supreme 243: 2004 (1) ACC 1]

Creation of Claims Tribunal

It was felt that the ordinary Civil Courts could not deal with Third Party Claims and expeditiously grant relief to the victims. As it is, the judicial process is very slow and time-consuming in the Indian context. There is an apocryphal tale associated with that eminent jurist, the late, Nani Palkhivala, who is said to have related this in the context of the long-winding ways of the judicial process in India. "Father files a claim, son obtains a decree, grandson files the petition for execution, and great grandson realizes the futility of the exercise." He had also recounted that if all the cases pending before various fora in India were frozen, as on date, even then it would take a good 300 years for disposal to take place. So, it would appear that time had come to cry for Judgment not Justice. Bearing this in mind, Parliament had directed the constitution of Claims Tribunals as specialised forums to deal with these claims in the hope that they would handle and deliver justice in time, in these cases. The expectation, to be fair, has been belied. The exponential increase in the motor accidents, the failure to increase the number of Claims Tribunals and the procedural wrangles indulged in by the lawmen in their genius has meant that lots of the victims has only been pitiable. The need then was felt to introduce 'No Fault Liability' under Sec.140 of the MV Act 1988 and then came Sec.163-A by which a speedier dispensation was also thought of. It appears that too has not served the purpose.

Hence creation of Claims Tribunals by itself has not been the final solution. It is time to expand on Sec.163-A to make a provision for structured Schedule Compensation for all categories. In all cases of death, based on proof of age and income, there could be a Table of computation of compensation, to fix the compensation payable instantly. Similarly, for injury claims too there could be a Table of Computation of compensation. With regard to the vexed question of assessment of disability which is now within the whims and fancy of stock witnesses appearing before Tribunals, there could be constitution of Medical Boards in all Districts, which shall have the final say in the assessment based on the guidelines issued by the Ministry of Social Justice Women Empowerment dated 1st June 2001. Then alone, it may be possible to see quicker

dispensation of justice. Even then, do not rule out the genius of the lawmen to quibble on legalese to keep the victims at bay.

Jurisdiction of Claims Tribunal

The Claims Tribunal no doubt had come into being. But in [(Minu B. Mehta vs. Balakrishna Ramachandra Nayar) 1977 ACJ 118 (SC) : AIR 1977 SC 1248], the Supreme Court had ruled that creation of the Claims Tribunal was only a forum creation. The law relating to liability would still be in the realm of torts and common law. To sustain a claim based on torts, the claimants would have to establish fault on the part of the tort-feasor. The Claims Tribunal was vested with exclusive jurisdiction to decide such claims. Under the earlier dispensation there was a restriction for claims relating to damage to third party property up to Rs.2, 000/- before a Claims Tribunal and beyond which the claims had to go before an ordinary civil court alone. This gave raise to quibbling over whether "revenue loss" would come within the ambit of "damage to property" and legion of case law on it as well, and conflicting too. Thankfully, we are rid of this distinction and it now appears that one has settled down to a regime where the jurisdiction of the claims Tribunal is now a matter of clarity, what with the Supreme Court upholding its right to deal with claims involving trains too on level crossings. [Union of India Vs. Bhagwati Prasad – 2002 ACJ 721 : AIR 2002 SC 1301 : 2002 (3) SCC 661 : 2002 (2) Supreme 272]

The State Government may, by notification in official Gazette, constitute one or more Motor Accidents Claims Tribunals (MACT), for such area as may be specified in the notification, for the purpose of adjudicating upon claims for compensation in respect of accidents involving death of, or bodily injury to, persons 'arising out of use of motor vehicles, or damages to any property of a third party so arising or both'. There is no mention of the term 'public place' therein, which infers that even with regard to claims occurring in private place, claims could be lodged before the MACT. Nevertheless, so far as insurers are concerned, the policy of insurance is required to cover only accidents occurring in '**public places**' within the meaning of Section 2(24) of the Motor Vehicles Act 1988.

Power of Civil Court

The creation of Claims Tribunal has only altered substantive law. However, to maintain a claim for compensation, it continued to be the Law of Torts [In refer 1977 ACJ 118 (SC)]. Precisely speaking, Claims Tribunal is vested with the power of Civil Court, for the purpose of taking ‘evidence’ and compelling the ‘discovery and production of documents and material objects’ and for other purposes in disposal of claim brought before it. The MACT Rules have not made applicable in specific terms, all provisions of Civil Procedure Code e.g., Order 1, Rule 10 (2) of CPC refers to the owner to allow parties to be impleaded during the conduct of proceedings. [1980 ACJ 298 (SC)] it was held that the powers under CPC can be invoked as ‘*ancillary powers*’ required for the valid and proper adjudication of claim by a MACT.

Exercise of Powers

Transferring of petition

Similarly in the case of applicability of provisions of CPC for transferring petitions by High Courts from one area to another, where a Claims Tribunal is constituted, due to various circumstances, the High Courts could invoke powers available under Art.227 of the ‘Constitution of India’ with regard to supervisory jurisdiction. The power of superintendence is both judicial and administrative and no legislative enactment can take away or circumscribe or nullify the powers conferred by the Article 227 of Constitution of India. The Supreme Court in [1983 ACJ 123 (SC)] has categorically stated that High Court ought to treat the Tribunals as ‘Courts’ for the purpose of transferring claims petitions from one Tribunal to another [1988 (2) LW 231: 1988 TLNJ 310] Supreme Court has transferred claims petitions from one state to another when sufficient cause was shown.

It is now a settled principle that once the matter reaches the High Court, all provisions of CPC would be applicable as it hears the appeals as an original appellate court.

Letters Patent Appeal

The same analogy when applied to '*Letters Patent Appeal*', may be substantive in law. The '*Letters Patent Appeal*' challenging the order passed by a single Judge of the High Court under Sec. 140 of MV Act 1988 was found maintainable in [Chandra Kant Sinha vs. OIC co. Ltd & Anors. 2002 ACJ 210 (SC)]. But the power of Latent Patent Appeal has been taken away consequent to insertion of Sec 100-A of the Code of Civil Procedure by amendment Act 922 of 2002) in respect of matters arising under special enactment or other instruments having the force of law as discussed in [Gandla Pannala Bhulaxmi vs. Mg. Director AP SRTC and others [2003 ACJ 2004] (full bench of Andhra High Court)].

Modification of award

The High Court will include the Order 41 Rule 33 of CPC to modify the award, even where no cross objections are filed on any aspect [refer UIIC vs. R. Sathyanarayanan etc 2005 – 1-LW 358 (D.B)]

Limitation on Jurisdiction

An owner travelling in the vehicle made a claim against the State Government against the action of a policeman. The policeman apprehended that the lorry was transporting some contraband material, threw a plank of wood with nails on it against the tyre of running lorry, causing overturning of the vehicle. The claims Tribunal was found bereft of jurisdiction to entertain such claim petition having been constituted under Section 110 of MV Act 1939 as the respondents were neither driver, nor owner nor insurer of the lorry.

The jurisdiction depends on whether there had been any use of Motor vehicle and it can not be ousted on a finding at a later point of time that it was the negligence of a Train and not the Motor Vehicle in question [Union of India vs. Bhagwathi Prasad & Ors. 2002 ACJ 721 (SC 3j)]

MACT is empowered to pass two different awards under Section 163-A and Section 166 arising out of the same accident filed by different claimants. [2003 ACJ 2053 (P& H)]. However the claims Tribunal can not inquire into compensation that can be claimed and awarded under Workman's Compensation Act 1923 on the basis of statutorily imposed strict liability under the said Act [2003 ACJ 203 (AP)].

Place to sue

Under sub section (2) of Section 166 (amended by Act 54 of 1994) the claimant has the option of filing the claim petition before the Claims Tribunal within whose jurisdiction

- The claimant resides, or
- Carries on business or within whose jurisdiction the defaulter resides or
- Where the accident occurred &/or
- Where the policy issuing office is situated.

The term carrying on business can be taken as 'occupation' implying a student studying at Mumbai becoming entitled to have the claim petition transferred from MACT Thane to MACT Mumbai.

The claimant has a choice of forum. At the instance of claimants claim filed at Sivakasi as per Ration Card was held to be in order. [(Sradha v Marappan) 2008 (3) MLJ 208.] As long as the claimants were not guilty of forum shopping, there was no justification to reject the claim at the fag end of trial of the case [(P.Pandiammal v Anand) 2008 (7) MLJ 996.] A workmen's' compensation claim was filed at Tezpur where the parents of the deceased claimed that they were residing and eking their livelihood at Tejpur. The employer on the premise that accident had occurred at Nalgaon contested it. The Supreme Court upheld the claim filed at Tezpur on the ground that the claim was filed where the claimants were '*ordinarily residing*' and which was permissible under the beneficial legislation. The

contention of the employer that oral claim of the parents on their residence was not supported by documentary proof was rejected in the absence of cross-examination of the testimony of the claimants, on their residential status. [(Morgina Begum v Hanuma Plantation Ltd) 2007 (2) TN MAC 416 (SC)].

Parties to the claim petition

It is to be noted that as per Sec 2(30), owner means ‘a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor and in relation to a motor vehicle which is the subject matter of hire purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of vehicle under agreement’. Therefore, hire purchaser is the owner of the vehicle under Section 147 read with sec 2(30) of MV Act 1988].

The husband of the deceased had settled the claim with the owner of the vehicle for a sum of Rs.15,000/- and entered into an agreement accepting the sum in full quietly and agreeing not to prosecute any further claim. Notwithstanding such agreement, a claim was pursued and the claims Tribunal dismissed the same as not sustainable. However, on appeal, the High Court ruled that such a settlement for a sum lesser than even statutory no fault liability was not binding on the claimants. The claimants were entitled to Rs.1, 76,000/- as just compensation and having received Rs.15,000/- from the owner already, they would be entitled to the balance of Rs.1,61,000/- as compensation with 6% p.a. as interest. [(Timmanna v Channabasappa enappa Banadal) 2007 ACJ 2475 (Kant)] In another case it was held that the settlement between husband of deceased and owner not valid and binding. [2007 4 ACC 426 (Kant) (DB)].

Under Section 140, the injured, or in case of death of heirs, his legal representative can file a claim petition in Form I under Rule 4(1), where the respondents are the owners or Insurers of the offending vehicle. An interim compensation may be passed against any one owner of the vehicle involved in the accident, without impleading owner of the other vehicle.

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Under Sec 166 the injured or in case of death of his heirs the legal representatives can file a claim petition in Form II under Rule 4(1) and (2) where respondents are owner of the vehicle, Insurer and Driver of the offending vehicle, as there is no provision in the Act on this aspect. The Financier of the motor vehicle under Hire Purchase agreement is not a necessary party in proceedings, as question of breach of terms of hire purchase is beyond the scope of adjudication before the tribunal.

Damage to third party property

The Claims Tribunal as constituted under Sec 110 -A of MV Act can entertain the claim for damage to property as long as there is a physical connotation to it. In case the claim amount is higher than Rs. 6000/-, the claimant has the option to move the Claims Tribunal or Civil Court as he chooses.

But claim for loss of income due to inability to use the vehicle, can be laid only before a Civil Court.

Condoning delay to file claim

The Claims Tribunal was initially vested with the jurisdiction to condone delay in filing claim petition on sufficient cause being shown within the meaning of Section 110 A (3) of MV Act 1939. Later sub section 3 of Sec. 166 of MV Act 1988 provided that claim petition had to be filed within six months of occurrence of the accident with a proviso to condone the delay for sufficient cause provided the application is filed within 12 months from the date of occurrence. However this sub section 3 of sec 166 had been omitted by legislature w.e.f. 14-11-1994 under amended Act 54 of 1994. Therefore, effective position as on date is that, there is no period of limitation under the MV Act 1988 currently in force for filing a claim. The Claims Tribunal is required to entertain claim petition regardless of date on which accident took place.

Evidence without formal proof

Certified copies of FIR, inspection map, site inspection memo, panchnama, injury report or post mortem report and other relevant documents prepared by Police or Physician while discharging official duty, are admissible as evidence without any formal proof. A true copy of Insurance Policy is admissible in evidence under sec 74 read with sec 77 of the Evidence Act without any formal proof when the petition did not contain particulars of offending vehicle when the owner failed to produce the original Policy even after notice under the 1988 ACT.

Appeal Provision under Motor Vehicle Act 1988

Section 173 provides for provision of filing Appeal for a person aggrieved by an award of a MACT. However, there is a bar on filing appeal for an award of a Claims Tribunal if the amount in dispute is less than ten thousand rupees, but there is no bar an amount in excess of if awarded by the Claims Tribunal. Further an appeal cannot be admitted for consideration or maintained without deposit of Rs. 25000/- or fifty percent of the amount awarded, whichever is less, by the person required to pay the award. Any subsequent deposit of half of the amount is not considered compliance of the mandatory requirement and is liable to be rejected at the admission stage. Under Order 41 Rule 22 of C.P.C read with Section 173 of the 1988 Act, cross is objection tantamount to appeal. Therefore, without mandatory deposit the appeal provision under Section 173 is not maintainable.

The Insurance Company can not question the compensation awarded by the Claims Tribunal by filing a joint appeal, as it would result in a mockery of Sec 149 (2) where insurance company is not entitled to seek relief directly, it can not be allowed to seek relief indirectly allowing joint appeal. The benign principle that justice shall not suffer because of hyper technicalities is clearly understood and though a joint appeal is not maintainable, the appeal by the

owner deleting the insurer is maintainable [Asha & ors vs. United India Insurance Company Ltd & Anors. 2004 ACJ 448 (SC)].

Duty to Satisfy Judgements

Third party risk in the background of a vehicle which is the subject matter of insurance is dealt in Chapter XI & XII of the Motor Vehicle Act 1988.

Proviso to Section 147 of the 1988 Act reads as hereunder:

“... a policy shall not be required (i) to cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to, any such employee –

- (a) Engaged in driving the vehicle or
- (b) If it is a public service vehicle engaged as Conductor of the vehicle or in examining Tickets on the vehicles, or
- (c) If it is a goods carriage, being carried in the vehicle.”

It has been held in [2008 ACJ 1111] in the case of a cheque having been dishonoured; the insurer under Section 147 of 1988 Act, having issued the Motor Insurance Policy is required to ‘pay & recover’, as the contractual liability has become void *ab initio* for want of consideration, which failed due to dishonour of premium cheque”.

In [(Oriental Insurance Co. Ltd. vs. Shri Nanjappan and ors). {Appeal (civil) 1012 of 2004} date of judgment: 13/02/2004] liability was held to be that of the insured alone consequent to dishonour of cheque, and the insurer was exonerated from the liability. The Supreme Court held that the decision of this Court in [New India Assurance Company vs. Satpal Singh and Ors. (2000 (1) SCC 237] has been

overruled in [New India Assurance Co. Ltd. vs. Asha Rani (2003 (2) SCC 223] and [Oriental Insurance Co. Ltd. VS. Devi Reddy Konda Reddy (2003 (2) SCC 339].

It has been clarified that direction to insurer to pay and recover from the insured cannot be carried so far as to issue such directions, where there was no contract of insurance in force on the date of accident. [(National Insurance Co Ltd v Ram Chandra Gope) 2007 (3) TAC 573 (Jhar)].

Insurer to Pay and recover from owner

The Supreme Court [in (National Insurance Co. Ltd. vs. Baljit Kaur and Ors). 2004 (1) SCALE 124] observed that “it would be equitable if the insurance company pays the amount of Compensation to the claimant and recovers it from the insured”. Where the driver did not hold a valid endorsement, the insurer was directed to pay and seek recovery from the insured. [(Oriental Insurance Co Ltd v Yudhishter Joshi) 2007 (3) TAC 440 (Uttara)].

The interest of justice will be sub-served if the appellant insurance company herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied and recover the same from the owner of the vehicle. [(Oriental Insurance Co. Ltd. vs. Shri Nanjappan and Ors) – {Appeal (civil) 1012 of 2004} date of judgment: 13/02/2004]

The insurer was called upon to pay the claim and seek recovery from the insured on the ground that the insured's driver held a fake driving licence. The insurer had gone up to the apex court and lost their case. When, however, they sought to recover from the insured under Sec.174, the insured contested and took the matter on revision contending that the finding of the MACT on breach by insured was not proper. Agreeing with the contention, the direction to recover was set aside and matter remitted for fresh disposal on this issue. [(Sukhbir Singh v National Insurance Co Lt) 2007 ACJ 923 (HP)]. In another case seeking restoration of MCOP, it was held that the court should be generous in its approach – [(Lakshmi v N A Nasia) 2008 (3) LW 1128].

No need to file a suit for recovery

Therefore, [in (Oriental Insurance Co. Ltd. vs. Shri Nanjappan and Ors.) {Appeal (civil) 1012 of 2004} date of judgment: 13/02/2004] as stated in a recent decision [in (National Insurance Co. Ltd. vs. Baljit Kaur and Ors). 2004 (1) SCALE 124] it has been held that it would be equitable if the insurance company pays the amount of compensation to the claimant and recovers it from the insured.

For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but the Insurer may initiate a proceeding before the executing court, as if the dispute between the insurer and the owner was the subject matter of determination before the Claims Tribunal, and the issue was decided against the owner and in favour of the insurer.

Before release of the amount to the claimant, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

Tribunals to hear claims for damage to property and revenue loss

Fundamentally, the creation of the claims tribunal was a creation of the statute. In [1977 ACJ 118 (SC)] the Supreme Court had held that it was by virtue of MV Act, 1939 that the Tribunals were specially constituted to deal with specific claims. It was held that these claims tribunal shall have exclusive jurisdiction to handle all Motor accidents claims and on and from such date of constitution of

Claims Tribunal, there would be ouster of jurisdiction of civil courts. Under MV Act, 1939, of course, in relation to Third Party Property Damage claims, there was a limit imposed of Rs.2,000/- and then enhanced to Rs.6,000/- by which the claimant was given the option to seek award from the Tribunal or a Civil Court. Hence, decisions were rendered to the effect that in respect of Third Party Property Damage claims only "physical damages" could be claimed as "damage to property" before the Tribunal, and losses such as "revenue loss" from non-running of the vehicle, may have to be relegated to a Civil Court for pursuance. That position would have to be accepted as having changed after the ushering in of MV Act, 1988. Under MV Act, 1988, such limitation for a TPPD claim has been removed. If so, even a claim under the head "revenue loss" has to be laid before the Tribunal only, as there is total ouster of jurisdiction of the civil court from entertaining any claim in relation to a motor accident claim. One important development in this arena is the decision of the Apex court that in case of Motor accident on unmanned railway crossing involving trains, if the claims were against the owners and drivers of Motor vehicles too, then such claims would be tenable before the Tribunal. There was no necessity for the victims to sue before a Civil Court or elsewhere.

Tribunals possess powers and trappings of Civil Court

Coming to the powers of the Tribunals, it is now well settled that the Tribunals have all the "powers and trappings" of a Civil Court. It is not a Civil Court per se, is true. It is a Tribunal and is created by a statute. Nevertheless, it has now arisen from a series of judgments from the Supreme Court downwards that such Tribunals would have all powers required and necessary for invocation of Civil Procedure Code for this purpose. They have repeatedly ruled that to render justice between the parties, the Tribunals can invoke such powers and the name of the game is "inherent power". As early as in 1979 the Supreme Court had ruled that claimants could invoke the provision to sue as *informa pauperis* under Or.33 CPC. and in the context of powers of High Court and Supreme Court to transfer such claim petitions from one District of a State to another

or from one State to another, it has come to be accepted that the provisions of Civil Procedure Code are applicable. Further, a look at the Motor Accidents Claims tribunals Rules of various States, specific provisions of CPC have been made applicable. But the legal position is wider than that, in that even if the relevant provision was not made applicable, the Tribunals rely upon it, to render “justice”. Hence the relief of Impleading parties, or amendment of claim petitions to enhance the claim or change the pleadings or record legal representatives on deaths of claimants, or restoration of claim petition dismissed for default or set aside an ex parte decree against a respondent are all now mechanically accepted as applicable. Every single provision of CPC was applicable before Tribunals, irrespective of whether MV Act or the relevant rules had held them applicable before it. That is the irrefutable legal position as on date.

Power of review

One important adjunct of the power of a Civil Court being available to the MACT is the power in relation to review or recall of an award against the insurer. Power of review is a specific power and the legal position is that unless such power was vested with a Tribunal, it cannot invoke the right.

In fact, in criminal jurisprudence, there is a bar on Magistrates invoke any such power of review. It was for the first time [in (United India Insurance Co. Ltd v Rajendra Singh) 2000 ACJ 1032] and [in (Oriental Insurance Co Ltd v R. Mani) 2000 ACJ 247 (Mad)] that such power of review was recognized and vested with the MACT. It was in the context of proceedings initiated by the insurers that the claims were tainted and fraudulent and, therefore, there was an abuse of process of law. In that context, the relief sought by the insurer to review/recall the award already passed against them, was upheld by the Supreme Court and reliance was placed on Secs.151 and 152 CPC for this purpose (residual powers). Fraud and justice can never dwell together and if so, the Tribunal, which had rendered the award, could in appropriate cases, invoke the inherent powers read with Secs. 151 and 152 of CPC and review/recall the awards already passed. In the context of the obvious

existence of fabricated motor accidents claims, all over India, this power is very significant one for the entire insurance industry to protect itself. It needs to be understood in this context that such power of review may have no power of limitation also. Normally, such power of review shall be invoked within 30 days of the order. But [in (United India Insurance Co. Ltd Vs. Rajendra Singh) 2000 ACJ 1032], insurer became aware of the fraud after 4 months of the award. Still the relief was upheld as available. Further such power of review is traced to "inherent power" of a Tribunal and Secs.151 and 152 CPC and not Or.47 R.1 CPC or Sec.114 CPC, for which alone a period of limitation is prescribed under Limitation Act, 1963. Hence, the insurers can legitimately seek the power of review in appropriate cases where they "became aware of the fraud subsequently" and they had not already 'contested claim as being fabricated and adduced no evidence to this effect also', without fear of the relief being time-barred. (See for details Chapter 22.9)

Limitations to File appeal

As for the Power of the High Court, it is not a Special Tribunal, under MV Act,1988 but it is a constitutional Court. Hence, it has all the powers and trappings of such court, without a glitch. Limitation to file appeals is of course prescribed under the MV Act 1988. In case of delay, an application has to be moved before High Court for condonation of delay. It would make sense to lodge appeals within the stipulated period of 90 days in case of MACT claims and 60 days in case of WC claims. For, if there is a delay in filing such appeal, then as per Or.41 R. 3 (3A) of CPC, there shall be a bar on the High Court from granting interim, pending disposal of the application for delay. Only after condonation of delay any stay can be sought for. Insurers cannot seek any other alternate remedy of injunction against execution, as law does not permit another remedy if the basic remedy is barred and circumvention of the legal process is not permissible. Coming to the powers of the High Court, it is for the individual High Court to frame rules for hearing the appeals by a Single Judge or Division Bench, depending on the stakes. The insurers have a statutory right to file an appeal under Sec.173 of

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MV Act, 1988. But it would be subject to the High Court “entertaining” it. That is, it is open to the High Court to dismiss the appeal at the stage of admission itself, if it did not see merit in the case. That power is vested with the High Court. So far as an appeal heard by a Single Judge are concerned, prior to the amendment to Sec.100 of CPC by Parliament, Letters Patent Appeal was permissible under Clause 15 of it. Now, after the amendment such LPAs are not permissible before the High Courts. But the legal position is as yet not fully settled, in the absence of a verdict of the Supreme Court and there is divergence of opinion.

Power of execution, appeal and revision petition

All the powers of a Civil Court are, therefore, available to both Tribunals and the High Court. Powers of execution to MACT, as of a Civil Court under Or.21, are available to the Motor Accident Claims Tribunal. The High Court can exercise the power of transferring claim petitions within the State from one District to another under Sec. 24 of CPC. It would also have the powers under Art.227 of Constitution of India to entertain revision petitions against interim orders passed in the course of MCOPs such as against an order to amend the claim petition, or seek to implead a necessary party. Under Sec.173 no appeal is provided for if the ‘amount in dispute’ is less than Rs.10,000/- . But in cases such as no insurance, no coverage for a pillion rider, or unauthorized occupant in a goods vehicle etc, even if the “amount in dispute” is less than Rs10000/- insurers can invoke the remedy of a revision petition or writ petition under Art.227 of Constitution of India. It is true that Supreme Court has ruled that when an appeal remedy was available, the insurer cannot file such a revision petition. But that is distinguishable in this case, where an appeal remedy is not otherwise available. Such appeals have to be filed within 90 days of the award, excluding the time taken to obtain the award copy and in case of revision petition as above; there is no period of limitation prescribed.

Period of limitation and territorial jurisdiction

As per amended MV Act, 1988 as of 14/11/94 there is no period of

limitation envisaged for filing Motor accident claims. In respect of claims, which have not been lodged already or not dismissed by any Court of law, any claimant can sue today safely. That is, to say, even a claim as old as 30 or 40 years can be filed today, since limitation petition is not at all applicable as held by Supreme Court in [Dhannalal's case]. So far as appeals are concerned, there is a time limit of 90 days and if not filed in time, application can be taken out for condonation of delay. As for SLP to Supreme Court under Art.136 of Constitution of Indian, if no leave was sought for or obtained before High Court, it would be 90 days and if sought for before the High Court and if it was granted or rejected, it would be 60 days of the order of High Court. As for the territorial jurisdiction, claimants can now file the claims at a place they reside and not necessarily where the accident had taken place as it used to be. But courts deprecate the practice of "forum shopping", that is the claimants picking and choosing a court of their choice, by producing a false address. Some courts in the States insist upon proof of residence to accept the place of "ordinary residence" to entertain the claims.

Vigilance by Insurers - key to protect fraudulent claims

In the context of this aspect of period of limitation and territorial jurisdiction, insurers have a lot to worry. The key is to centralize the claim module so that any claim generated anywhere in India is notified by the policy issuing office to the office handling the claim, lest there was duplication of claims. It is possible also that in case of involvement of 2 vehicles, the same claimant may cleverly lodge a WC claim against his employer/insured/insurer in a given Court and then go ahead and lodge a Motor accident claim against the colliding vehicle/other insurer in another place in MACT. Insurers verify such aspects. The 2 claims may be against 2 different insurers and unless investigated and verified, may escape the eye of both insurers. Further, there may be claims lodged by rival claimants in two different States, and unless collated and correlated, may be independently contested as well. Further, in the absence of any period of limitation, vigilance is the key. If the insurer was liable to a

limited number of claims, they must take this defence and ensure that future claims are suitably avoided.

Pay and recover – Supreme Courts discretion and does not amount to binding decision

One important development of noteworthy significance is the repeated directions to insurers to pay and recover from the insured. It all began with the decision of the Supreme Court in [Satpal Singh in 2000 ACJ 1 (SC)]. In that decision the Supreme Court had wrongly held that insurer was liable to “gratuitous occupants carried in class or type of vehicle”. Then this decision came to be reversed by Supreme Court in [(Asha Rani case in 2003 ACJ 1 (SC))]. In the interregnum, courts below including the High Courts were bound to follow Satpal Singh case supra and hold insurers liable for such persons too. Upon reversal of the decision in Satpal Singh, in Baljit kaur, Supreme Court held that in respect of those decisions rendered when Satpal Singh was in force, insurers may be directed to pay and recover. This was in the context of unauthorized occupants carried in goods vehicles. Further in the context of ‘absence of driving licence’ or ‘absence of endorsement to drive the vehicle’, in [Swaran Singh in 2004 ACJ 1 (SC)] Supreme Court chose to hold that insurers cannot avoid liability, unless the breach by the insured was “deliberate, wilful and intentional and the cause of accident also was traceable to the absence of such driving licence”, the remedy for insurers would be to pay and recover. This judgment came to be replicated in a multiplicity of cases. In cases where the driving licences were fake or fabricated as in Lehru, Kamla cases etc. There were also decisions, which were rendered by the Supreme Court by invoking the discretion available to them under Art.136 and 142 of Constitution of India to permit the victims to receive the compensation from insurers and insurers being given the right to recover from the insured. The Courts below came to follow this proposition as a rule, whatever be the defence of insurer. The Supreme Court has now clarified and ruled that such ‘discretionary’ power was vested with them alone and the courts below should only look at the decision and not the discretion exercise. If the insurer was held not liable, the court below should

exonerate them and cannot follow the example of the Supreme Court in directing payment and recovery power which only the Supreme Court had, as now held in [2008 (2) LW 19 (SC)].

Pay and recover for victims on the road only

Such direction to pay and recover must be confined to applicable circumstances only. In fact, in further decisions recently as in [(Koushalya Devi, Zaharulnisha, Geetha Bhat, Sardari Lal)], the Supreme Court has clarified that in the absence of driving licence per se, the insurer cannot be asked to pay and recover. If the insurer had done his homework and checked the competency of the driver that the driving licence turned out to be fake, cannot be held to be a breach by him. The insurer was liable to indemnify the insured owner, following the verdict of the apex court in Lalchand's case in 2006 (III) ACC 731 (SC) in [National Insurance Co Ltd v Nan Bai 2007 (II) ACC 46 (Jhar): [(New India Assurance Co Ltd v Ram Kali) 2007 (II) ACC 59 (P&H)] : Prahlad Rai v Shashi Kori 2007 ACJ 2575 (MP)] or if the victim was a passenger on the insured vehicle, then too they cannot be asked to pay.

Only if the victim was third party, namely a person on the road and outside the vehicle, such direction to pay and recover can be applied. Further, it is also now accepted that such right of recovery, whenever granted, can be executed before the Tribunal and there is no need for the insurer to pursue a separate civil suit for recovery as held in Lehru, Kamla, and Kusum ai and so on. But, in a case where the insurer had failed to plead no insurance, and adduce evidence and was held liable to meet the claim, in the absence of pleading and evidence, they can always obtain the right to pursue the remedy of recovery from the insured, for which only a Civil suit can be laid and it cannot be before the Tribunal itself. There have to be independent proceedings, since the insurer failed to prove their case before the Tribunal. But for such exceptions, the right of recovery can be executed, before the Tribunal by the insurer. In fact apart from the power to execute before the Tribunal, in (Anjana Shyam case) the Supreme Court has even granted the right to insurers, to seek the remedy of attachment, before the judgment

as per Order 38 Rule 5 of CPC in appropriate cases, to protect their interest in pending claims and before the award itself.

Where the insurer sought to stall the disbursement of the award sum to claimant pending security to be furnished by the owner of the vehicle - writ petition also filed – Insurer cannot stall payment to claimant for inter se dispute between insurer and insured. [2007 (4) ACC 77 (Kant)]

Limitation

It appears that on the issue of Limitation there is now no controversy with the Supreme Court conclusively ruling that there was no period of limitation for lodging such claims [(Dhannalal Vs. D.P.Vijay Vargiya) 1996 ACJ 1013 : AIR 1996 SC 2155 : 1996 (4) SCC 652 : 1996 (1) ACC 603 : 1997 (1) LW 190 (SC)]. Under MV Act, 1939, it started off with a period of 6 months from date of accident. There was a proviso enabling condonation of delay for any length of time subject to claimants showing sufficient cause for it (Sec. 110-A and proviso thereto under 1939 Act). Thereafter, there was a restriction at the discretion of the Claims Tribunal to condone delay beyond a further period of 6 months over the initial period of 6 months provided for filing claims under Sec.166 of MV Act, 1988 as of 1/7/89. It was ruled by the Supreme Court that during this period claims which were beyond one year from the date of accident would be barred and cannot be instituted, thereafter [(Vinod Gurudas Raikar Vs. National Insurance Co. Ltd.,) 1991 ACJ 1060: AIR 1991 SC 2156 : 1991 (2) ACC 449].

However, as of 14/11/1994 there was a further change and the proviso (3) to Sec.166 was deleted. It meant that there was no period of limitation for such Motor accident claims. Being a procedural law it would apply to all the claims that may be lodged after this date. Even pending claims would have the benefit of the change. It was only those claims that had already been instituted and come to culmination that would lose out. It is now an accepted norm and practice that there shall be no period of limitation for such claims. Such claims, irrespective of the date of cause of

action, can be instituted now without let or hindrance. [(Vinod Gurudas Raikar Vs. National Insurance Co. Ltd.,) 1991 ACJ 1060 : AIR 1991 SC 2156 : 1991 (2) ACC 449] is no longer applicable.

Implications of Art 137 of Limitation Act 1963

While change may have to come in with respect to claims already barred by 14/11/94, it is true that as on date there is no period of limitation for such claims. It would also be impermissible to introduce Art.137 of Limitation Act 1963 merely because the special enactment is silent on it. But as on 14/11/94, when the change was introduced, there were claims, which may have or had become time barred by that date.

If so those claim, which had already become time-barred by 14/11/94 would also now get a fresh lease of life. This appears to be incorrect from the legal perspective. In [(National Insurance Co. Ltd., Vs. Singaram S. Abdul Jabher) 1997 (1) LW 209] there was occasion for the High Court, Madras to deal with this aspect. The insurer urged before the Madras High Court that claims, which had become time-barred by 14/11/94, ought to be treated as not “revived” by the removal of the proviso. In effect, the benefit of fresh lease of life or limitless period of limitation ought to be made available only to claims, which as on 1/11/94 were in time under the law, as it stood as on that date. This ought to be so because there was no clause in the amending Act 54 of 1994 to revive time-barred claims. When Parliament, by legislation had not granted the relief, could a Court of law judicially do it? It appeared that it could not do so. This question was not argued before the Supreme Court and continues to elude a clear pronouncement. The Madras High Court ruled that it was an “interesting possibility” but with the Supreme Court having given a categorical ruling [in (Dhannalal Vs. D.P.Vijay Vargiya) – 1996 ACJ 1013 : AIR 1996 SC 2155: 1996 (4) SCC 652 : 1996 (1) ACC 603 : 1997 (1) LW 190 (SC)], it may be for apex Court alone to examine it again, and not for the High Court to dissent, what with Art.141 discipline. Hence the issue remains undecided.

Revival of old claims

Their needs to be a rider to the well accepted proposition that there was no period of limitation for such claims. The rider shall be that it shall be so except in respect of those cases which had become time-barred by 14/11/1994. This ought to be so since the amending Act 1994 has not provided for “revival” of cause of action even for time-barred ones. The decisions adverted to [in (National Insurance Co. Ltd., Vs. Singaram S. Abdul Jabher) — 1997 (1) LW 209] do disclose a need for such a revival clause. Except for this caveat, a limitless period of limitation has been a veritable boon for redressal of grievances of victims.

It is true that the insurers may be defenceless in relation to claims which may be a decade old or more. Records may not be available at all. In case the “revival” aspect is taken care of, even this minor grievance would be taken care of. Since as of 14/11/94, there is no ambiguity about the removal of period of limitation, in respect of accidents occurring thereafter, and hence no insurer or transport corporation can complain, about any delay, as they are required to organize themselves in conformity with the changed legal position.

Territorial Jurisdiction

Under MV Act, 1939, (Sec.110-A) the claims had to be necessarily lodged before the Tribunal, which had jurisdiction over the place of accident. The claimants were put to a lot of inconvenience, since even if they met with an accident during travel, at a different place, than they were compelled to institute proceedings at the place of accident. The disposal of claims also naturally consumed further time. Apart from this aspect of delay and inconvenience, it also led to docket explosion before High Courts and Supreme Court seeking transfer of claim petitions to a place of choice of the victims. Arguments galore emanated that High Courts had no power to order transfers under Sec. 24 CPC as the Motor Accident Claims Tribunals were specialised Tribunals and not Civil Courts [(Varalakshmi Sundar Vs. Meeran) – 1981 ACJ 50 (Mad): 93 (LW) 540 – 1980 (2) MLJ 106; Annamalai Vs. R. Doraisamy Mudaliar –

1982 ACJ (Supp.) 371]. This resulted in an equally apt response from the Judicial pulpit that even if CPC did not apply, the High Court had the power to order transfer under Art.227 of Constitution of India [(Rajeswari Vs. United India Insurance Co. Ltd.), 1984 ACJ 273 (Mad) : AIR 1984 (Mad) 170 : 1996 (LW) 643 : 1994 (1) MLJ 19]. The plethora of case-law continued until Supreme Court ruled that even if the Tribunals were a creation of the statute they had all the trappings of a Civil Court [(State of Haryana Vs. Darshana Devi) – 1979 ACJ 205 : AIR 1979 SC 855; Anand Kumar Jain Vs. Union of India – 1986 ACJ 774 (SC) : AIR 1986 SC 1125 : 1986 (2) ACC 275; Bhagwat Devi Vs. I.S. Goel – 1983 ACJ 123 (SC)]. Of course, now it appears to be a well-accepted position of law.

Forum Shopping

In view of this clouded state of affairs and prejudice to the cause of victims, Parliament deemed it appropriate to introduce a change by which the claimants could institute the claims at their place of residence too, under Sec.166 of MV Act 1988; This welfare measure is within a beneficial legislation, akin to Sec.60 of Copyright Act. There is a regretful practice now of '**forum shopping**' based on convenience of, not necessarily victims but of lawyers too. It is an undeniable reality that this arena is infested with the vice like grip of ambulance chasers. From the moment an accident occurs until the time compensation is disbursed, the grip that these lawmen and its ilk exercise is undeniable. When the Bhopal Gas tragedy occurred, a host of lawyers descended from the US. They came calling on the victims, not to console or enquire their well-being but to make hay when the chips were down for the victims. They wished to make claims on their behalf with champertous agreements in tow. Though champerty is illegal in India, it is a matter of concern that it is widely in vogue in this jurisdiction.

The men in black truly control the affairs in the lives of these victims. With Policemen in the ring, serving as feeders, the claimants have little scope to decide on the venue. It is an accepted fact and judicially recorded too, that it is poorer among the citizens who suffered the brunt of the accident in numbers too. Their illiteracy

does not help either [(Concord of India Insurance Co. Ltd., Vs. Nirmala Devi) – 1980 ACJ 55]. In such circumstances, one is a witness to the fact of claim petitions being instituted on the basis of ‘*forum shopping*’ at the convenience of the counsel on record with ‘assumed addresses’ euphemistically portrayed as “**now residing at**”. The ordinary residence of the claimant is shifted for the convenience of every one.

Duplication of Claims

This choice of forum has caused untold hardships to the community of respondents. In cases where 2 vehicles are involved, there have been instances of 2 claims being lodged in 2 different places against 2 different owners and insurer, without either of them smelling a rat. There is no cross verification possible to weed out this menace. Further, the insurers also face claims by ‘*rival legal heirs*’ before different forums impleading different offices of their choice. With no centralized communication set up available, the insurers have been seen to be paying up from both ends for different sets of claimants. And if they discover, by chance the fact, it may be too late as well on some occasions. Transport Corporations may not face such hurdles as the conduct of the cases is from a centralized set up. As for private insurers, as late entrants, they are fully networked and claims arising under one policy are all capable of being monitored for duplication. But they too face the prospect of claims, which are duplication of claims filed against a transport corporation or another owner and insurer.

This has also led to claims arising out of one accident being laid before various Courts in the land, leading to conflicting decisions and multiplicity of proceedings. The need for transfer petitions before High Courts and Supreme Court has also arisen in its wake of it. A process of the respondents being cautious and vigilant on their side can arrest the duplication of claims. In every case where another vehicle was involved or where a claim under WC Act, 1923 could arise, the respondents would do well to verify if another claim was lodged. A statutory solution cannot be seen on the horizon, as the abuse of the provision cannot lead to deprivation of the claimants’ interest.

Suggestion for checking the menace of forum shopping

As for transfer of such claims petitions, there could be a provision introduced to vest the Tribunals themselves with such power much like those under WC Act, 1923 even for inter-state transfers, leave alone transfers within a State, ridding the appellate forums of the need to address these problems. It is always possible that a provision can be provided in the MACT Rules of each State insisting upon production of proof of ordinary residence to maintain the claim before the concerned Tribunal to place a premium on assumed addresses leading to forum shopping.

Legal Provisions

This chapter deals with important provisions of Motor Vehicles Act 1988 as amended and also proposed Motor VEHICLE amendment Bill of 2007. The chapter also deals with some evasive questions like expense barrier; cap on the insurer's liability, TPL to be de-linked from the vehicle, treatment of uninsured vehicles and role of facilitators.

Sections of Motor Vehicle Act for TP Claims

The Motor Vehicle Act 1988 deals with a number of provisions relating to the operation of motor vehicles in India. The provisions range from registration of vehicle, issue of permit, driving license, fitness, penalties third part liability under the 1988 Act. The provisions, which have relevance to liability, are given below :

Section 2 (28) Definition of Motor Vehicle :

“Motor vehicle” or “Vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external source and includes a chassis to which body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or in any other premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres.

Section 2 (34) : defines ‘Public place’ to mean a road, street, way or other place, whether a thoroughfare or not, to which public have

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a right of access, and includes any place or stand at which passengers are picked up or get down by a stage carriage.

An accident occurred within the premises of a Cement Factory at lorry stand, a place provided by the Cement Factory for stationary lorries where public has a right to access, for purchasing cement and for loading and unloading of the cement stocks. United India Insurance Company Ltd. vs. Raheemunnisa and others : [2002 ACJ 60 (Hyderabad Court)] The Court held that

“..... driver(s) should be mindful of the person (using or) walking on the road provided in the private property. If the public have a right of access to the premises, it comes within the purview of Section 2 (34) of 1988 Act for the purpose of Chapter XI” .

The Bombay High Court in Pandurang Chimaji Agale's [1986 ACJ 674] held that

“...the expression ‘public place’ will cover all places including those under private ownership where members of public have an access whether free or controlled in any manner whatsoever.” PUBLIC PLACE

In a case where a truck had hit a ferryboat on the riverbank on a kachha road, the denial of the claim that it was not a public place was negatived. [(District Insurance Officer vs. Moosakutty) 2007 ACJ 1336 (Ker)] : [2007 AIHC 2402]: [2007 (2) TN MAC 131 (Ker)]: [(Ramchandra vs. Shivnarayan) 2007 ACJ 1661 (MP)]. [(Hira Bai vs. Pratap Singh) 2007 AIHC 2405].

Section 2 (47) Definition of a Transport vehicle means a Public service vehicle, Goods carriage, an Educational institution Bus or a Private service vehicle.

Section 3 : Necessity for driving licence

Section 10 : Emphasises that form and contents of driving licence have to be read concurrently for deciding whether the person is entitled to drive a particular class of vehicle.

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Section 39 : No person shall drive any motor vehicle & no owner of the motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with chapter end.

Section 56 : If vehicle shall not be deemed to be registered if the fitness of the vehicle had expired before the date of accident.

Section 133 : Duty of owner to give details of driver in case of accident.

Section 134 : Duty of a driver/person in-charge of the vehicle in case of accident and /or injury to a person to inform Police

It is obligatory on the part of the driver of motor vehicle to convey the accident victim to the nearest Medical Practitioner or Hospital and it shall be the duty of the registered Medical Practitioner or Doctor on duty to attend to the injured person and render medical treatment without waiting for any procedural formalities.

Section 134(c) : A duty is cast on driver to inform the concerned insurer in writing regarding: Insurance Policy No. and period of validity, date, time and place of accident, name of the driver and driving licence particulars and particulars of the persons killed or injured in the accident.

Section 136 : Inspection of vehicle involved in the accident by RTO and removal of the vehicle for inspection.

Section 140 : Payment of compensation in certain cases on the Principle of No Fault liability.

Section 140(2) No fault Liability amount :

Death - Rs. 50,000

Permanent Disability - Rs. 25,000

Section 141 : Claim under (Solatium Fund) Section 161 A and Claim under Structured Compensation formula (Section 163 A) is

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independent of No Fault Liability Claim. It shall not be an additional benefit along with Section 140 (2). This infers that either the claim under No Fault Liability or under Structured formula is maintainable along with the main claim under principle of fault

Section 143 : No Fault Liability Claim u/s 140 is a part of claim under W. C. Act 1923

Section 146 : Makes it a necessity to have insurance against third party risk and also requires Mandatory Insurance Policy for vehicles carrying or meant to carry dangerous or hazardous goods shall have under Public Liability Insurance Act 1991.

Section 146(2) Section 146 (1) shall not apply to any vehicle owned by the Central or State Government and use for non-commercial purpose.

Section 147 : It lays down the requirement of the policy and provides for payment of compensation by the insurer to the extent of actual liability to the victim of motor accident irrespective of the class of vehicles.

Under this Section, the liability of the Insurance Company is unlimited in respect of the death or bodily injury to any passenger of a public and TP property damage is Rs. 6,000/-

The owner of goods or his authorised representative carried in the vehicle is covered as third party..

Section 147 (1) : In order to comply with the requirements of this chapter, a policy of insurance must be a policy which

- (a) is issued by a person who is an authorised insurer; and
- (b) insures, the person or class of persons specified in the policy to the extent specified in Sub Section(2) of Section 147 against death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place subject to exclusions.

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Section 147 (3) : Defines “*certificate of Insurance*” : Means a certificate issued by an ‘authorised insurer’ and includes a “cover note” complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy.

Section 149 (1) : Duty is cast on the insurance company to satisfy judgement or awards to claimants under various provisions of the Act including Section 163 A i.e., Structured Compensation table.

Section 150 : Insolvency of the insured - rights of third parties against insurers

The act provides for the rights of third parties in the event of the insolvency of the insured or in the event of winding up when the insured is a company. The provision provides that if, either before or after that event, any third party liability is incurred by the insured, and his right against the insurer under the policy are transferred to the third party to whom the liability was insured.

Under sub-section (4) of Section 150, when such transfer takes place, the insurer will be under the same liability to the third party as he would have been to the insured person, but

- (a) If the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, the insured person’s rights against the insurer in respect of the excess are not affected.
- (b) If the liability of the insurer to the insured person is less than the liability of the insured person to the third party, the rights of the third party against the insured person in respect of the balance are not affected.

In the event of an insured becoming insolvent, or making arrangements with his creditors or if a company, being wound up, the rights of the insured under the policy will be transferred to and vest in the injured third party. Thus the third party is able to recover

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compensation direct from the insurers. In the absence of this provision, any sum recovered by the insolvent insured from his insurance company would lay a claim in proportion to his debts.

Section 151 : Duty to furnish information.

The Act casts a duty on a person who has incurred a liability to a third party to disclose all particulars of his insurance if demanded by the third party. The duty also applies to the insurer who is expected to give an inspection of the policy and other documents to the injured party.

Section 152 : Settlement between Insurers and Insured persons.

The proviso provides that no settlement made by the insurer in respect of third party liability is valid unless the third party concerned is a party to the settlement. Further, when the insured becomes insolvent, or if the insured is a company is wound up, no agreement thereafter, made between the insurer and the insured person after liability has been incurred shall be effective to defeat the rights transferred to the third parties.

Section 153 : States that for the purposes of Sections 150, 151 and 152 a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

Further, this Section provides that the provisions of Sections 150, 151 and 152 shall not apply where company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

Section 155 : Effect of death of Insured person on cause of action: The section provides that if the insured person dies after incurring third party liability, then the cause of action survives against the insured's estate, or legal heirs or against the insurer. If this provision is not made, then the third party's right of action against the negligent owner of the vehicle would die with the death of the owner.

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Section 156 (8) Obligation on MACT to deliver copies of the award to the concerned parties within 15 days from the date of award and consequently the parties are required to pay compensation within 30 days from the date of giving copies of the award under Section 156(8) of the Motor Vehicle Act 1988.

As per Sec.158 (6) of the Act read with Rule 150 and Form 54 of CMV Rules, 1989, the Police authorities are required to send a report of the accident to the concerned claims Tribunals. The General Insurance Council representing the interest of all insurers moved the Apex Court seeking strict compliance with the said provisions and also copies thereof to be sent to owners of the vehicles and insurance companies, which may avoid false claims and make it easier for the Claims Tribunals to detect one. The Central Government had also sent a circular seeking compliance. In accordance with the statutory provisions directions were given to all the State Governments for strict compliance and periodic review and follow up on compliance also. [General Insurance Council vs. State of Andhra Pradesh 2007 (2) TN MAC 62 (SC) 2007 ACJ 2006 (SC) : 2007 (4) TAC 24].

Section 157 : Automatic transfers of Insurance Certificate & Policy :

- (1) The Certificate of Insurance automatically gets transferred to the transferee once the ownership is changed.
- (2) The Transferee shall apply within 14 days to the insurer to insert his name in the Certificate of insurance.

Section 158(6) : Statutory obligation of Police to inform the owner and insurer about the happening of the accident within 30 days. Copy of FIR / Form 54 to be sent by Police within 30 days to owner/insurer/claims tribunal : As soon as an accident involving death or bodily injury to any person is reported, the Police Officer/ Investigating Officer of the Police Station shall forward 'copy of the accident report' within thirty days from the date of recording of information to the concerned MACT and Insurer(s). In addition to this where a copy is made available to owner, he should forward

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the same within thirty days to MACT and Insurance Company. The Police Report will be in Form 54 under Rule -150 of Central Motor Vehicle Rules, 1989 read with Section 160, Motor Vehicle Act 1988.

Section 161 : Special Provision as to compensation in case of Hit and Run Motor Accidents: GIC and Four Subsidiaries to administer the Solatium Fund Scheme on flag company basis.

Section 161(3) : In case of Death Compensation would be Rs. 25,000/- and in case of Grievous injury Rs.12,500/-.

Section 163A : Special Provision as to payment of compensation on a structured formula basis before deciding the compensation.

A schedule of compensation as per pre-determined formula has been devised. [2nd Schedule of 1988 Act] The minimum compensation guaranteed in respect of death is Rs. 50,000/- and income for non-earning person has been prescribed as Rs.15,000/- per annum. The scheme is optional and based on principle of No Fault Liability. The schedule can be revised as and when depending on the cost of living. (Refer UPSRTC Vs Trilok Chand – The Supreme Court observed that due to several discrepancies in computation, the Structured Compensation Table can be taken as guide.)

Section 163 B : Option to File Claim in certain cases.

Where a person is entitled to file a claim for Compensation u/s 140 and u/s 163-A he shall file the claim under one of the Sections and not under both.

Section 166(2) : Jurisdiction of filing Claims enlarged.

Application for compensation can be filed before any of the following MACT'S :

1. Where the accident has taken place

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2. Where the claimants reside
3. Where the vehicle owner resides.
4. Where the policy issuing office is situated

Application for compensation may be made by a person who has sustained injury or owner of the property or where it is death, legal representative of any agent duly authorized by a person injured.

Section 166 (3) : No time limit for filing claim envisaged due to omission of the wordings from the Section. However, Limitation act is applicable, which stipulates three years for filing of suit from cause action. The insurer must take the plea of limitation act as applicability of general law over substantive law has been adjudicated elsewhere by apex court.

Section 166(4) : Police report filed u/s 158(6) can be treated as an application for claim if necessary.

Section 168 : Award of the Claims Tribunal:

The Tribunal will serve a notice to the parties and after giving opportunity of being heard hold an enquiry into the claim and pass award.

Section 169 : Power of discovery and production of documents.

Section 169 (1) : The MACT can in the exercise of own decision grant adjournment.

Section 169 (2) : The MACT shall have all the powers of a Civil Court for the purpose of taking evidence, enforcing attendance of witnesses, and compelling the discovery and production of documents etc. The Claims Tribunal is deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973.

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Section 169 (2) : Tribunal can recall and re-examine the witness

In the absence of rules providing for the applicability or ORDER 18 of the Civil Procedure Code to acclaimed application, the MACT can adopt circumstance of a case, its own procedure to attain the end of justice and pass orders for re examination of fitness of both parties. (AIR 1977)

Section 169 (3) : Minor claimant: Compromise

When any compromise is made on behalf of the minor in a claim, the safe guard provided in ORDER 323, Rule 7, CPC will apply, (AIR 1975)

Section 170 : Impleading insurers in certain cases

Where the Tribunal is satisfied that there is collusion between the person making the claim and the persons and against whom claim is made has failed to contest the claim; the insurers have right to contest the claim in all or any of the grounds in addition to the grounds given in Sec. 149(2). The effect of the Section is if the insured remains absent at Trial Court or if he colludes with the claimant, the Company has the right to contest the case on all the grounds available to the insured in addition to the grounds given in Sec. 149(2).

Section 171 : Award of Interest

Where any claim is allowed the Tribunal may direct that in addition to the compensation, simple interest shall also be paid at a particular rate from a date not earlier to the date of petition.

Section 173 : Appeals

Any person aggrieved by an award may prefer an appeal within 90 days from the date of award.

- (a) Rs. 25,000/- or 50% of the award shall be deposited for filing an appeal

- (b) No appeal shall lie against any award of a claim Tribunal if the amount in dispute is less than Rs.10,000.00.

Provisions of CPC 1973

Under Sec. 169 (2) of the MV Act 1988, the MACT shall have all the powers of a Civil Court for the purpose of taking evidence, enforcing attendance of witnesses, and compelling the discovery and production of documents etc. The Claims Tribunal is deemed to be a Civil Court for all the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure 1973. Therefore, one should be familiar with some of the important provisions of Code of Civil Procedure 1908, which governs the powers of the Civil Courts.

Important provision of Civil Procedure Code 1908

Which has relevance to the proceedings of MACT/ Court are given below :

SECTION 28 : Service of summon where defendant resides in another state — The Court may issue summons to another state where the defendant resides.

SECTION 30 : Power to order discovery and the like - Court may on application of any party make orders, delivery, answering, admission, of documents and facts, return of documents, inspection, discovery, issue of summons, order any fact to be proved by affidavit.

SECTION 32 : Penalty for default – Court may compel the attendance of any person, can issue warrants, attach or sell property, impose fine not exceeding Rs.500/- to furnish security and in default commit him to civil prison.

SECTION 35 A : Compensatory cost in respect of false or vexations claims or defence excluding appeal or a revision. The compensatory

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cost shall not exceed Rs. 3,000/- or exceeding the limit of its pecuniary jurisdiction, whichever amount is less.

SECTION 51 : Execution decree — The Court may on the application of the decree holder order execution of the decree.

- (a) By delivery of any property specifically decreed; and
- (b) By attachment and sale or by sale without attachment etc.

SECTION 75 : Power of Courts to issue commission – To examine any person, local investigation, to examine or adjust a/c, to make partition, old technical or expert investigation, sale of property subject to natural decay, any ministerial act.

SECTION 76 C : Omissions to another Court – Where the person is a resident beyond the local limit of its jurisdiction, the Court may issue commission.

SECTION 77 : Letter of request – In lieu of commission the Court may issue **letter of request** to examine the witness residing at any place not within India.

SECTION 94 : Supplemental proceedings – In order to prevent the end of justice from being defeated the Court may issue warrant to arrest, direct defendant to furnish security, grant a temporary injunction, appoint a receiver, make such other inter locutory orders.

SECTION 95 : Compensation for obtaining arrest, attachment or injunction on insufficient grounds — such amount not exceeding Rs. 1,000/- or subject to the limit of pecuniary jurisdiction of the Court.

SECTION 102 : Provides the Power to Police officer, to seize certain property when any offence is committed and provide a seizure memo to be produced before the competent Court.

SECTION 132 : Exemption of certain women from personal appearance — where according to custom of the country not to be compelled for personal appearance.

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SECTION 133 : Exemption of time- President of India, Vice-President of India

SECTION 148 : Extension of time – The Court may in its own discretion extend the time fixed by it for doing any act under this code (CPC), even though the period originally fixed by the Court may have expired.

SECTION 148A : Right to lodge caveat – Here an application is made or appear before the Court: On the hearing of such application Court may lodge a caveat in respect thereof – caveat shall not remain in force after 90 day from the date of filing.

SECTION 151 : Inherent power of Court – the Court may make such orders for the end of justice.

SECTION 153 : General power to amend – The Court for any purpose of determining the real question or issue, may amend any defect or error in any proceeding.

SECTION 156 : Provides that an officer in-charge of a Police Station may, without the order of Magistrate investigate any cognizable case, which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Ch. XIII.

ORDER 13 : Production, impounding and return of documents.

ORDER 16 : Summoning and attendance of witness.

A caveat is an application to a Court requesting the Court to give the notice of any proceedings against the applicant before deciding the matter. It makes it mandatory to the Court to serve notice to a caveator before passing any order.

ORDER 18 : Hearing of the suit and examination of the witness.

ORDER 21 : Execution of decrees and orders.

ORDER 41 – Appeals from original decrees.

PROCEDURES AND POWERS OF CLAIMS TRIBUNALS (FOR GENRAL INFORMATION)

Proposed Motor Vehicles (Amendment) Bill, 2007

The proposed amendments have taken a comprehensive approach to handling of motor vehicles from the point of view of all stake holders including potential beneficiaries whose interest is prejudiced due to the carelessness and negligence of owners, drivers, and other employees of persons engaged in the use of motor vehicles in any form.

The law has mooted provisions to take care of experience of persons in driving before allowing them to possess, Learner licence for transport vehicle. Section 7 (1) and 7 (2) envisages extension of period from one year to two years after which a holder of driving licence of Light Motor Vehicle may be eligible to get a learner's licence for transport vehicle.

The new innovations in auto markets have been recognised by expanding the definition of Motor Cycle under Section 7(2), "Motor Cycle with Engine Capacity not exceeding 50 CC or Battery-operated Motor Cycle",

Automobile Associations have been recognised to issue an applicant a 'driving certificate' under Section 9 (3) after assessing his competence to drive in respect of non-transport vehicle before he is granted driving licence by licencing authority. The author feels that this public Private partnership is bound to improve the driving climate. Insurance companies can recognize advanced certificates given by such Automobile Associations for giving discount in premium over long run say five years after which the person will have to reappear for testing of his driving skills.

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Section 21(5) empowers the authority to suspend the driving licence on the spot for a period not exceeding three months if the authority is satisfied after breath analyzer test or any other test that the driver is under the influence of alcohol. This must be followed with the endorsement on the Driving licence for future record.

Section 50 (7) promulgates registering authority to communicate the transfer of ownership to the transferor, and to the original registering authority or to the last registering authority, as the case may be.

Section 93 now stipulates a Registration Certificate before any person engages himself as an agent, canvasser or Common Carrier, etc., and imposes certain conditions on him.

Section 110 (1) enforces rules for design of the bodies for goods carriage and medium or heavy passenger vehicles and material to be used for such bodies, cabin design on a bare chassis, the conditions for the purpose of licensing and regulating the establishments for fabrication of bus or truck bodies on bare chassis, placement of audio-visual device in transport vehicles, seating arrangement in public service vehicles and the protection of passenger against the weather and any other matter relating to construction equipment, maintenance of motor vehicle and trailer, and fitness of all categories of motor vehicle.

Section 113 (5) bestows an obligation making ‘consignor’ and ‘common carrier’ responsible for overloading of motor vehicle. In order to make this provision more onerous insurers should be allowed to contest on the ground of overloading and defaulting party must bear the consequences of any liability emanating due to such overloading say 20-25% of ultimate liability to ensure strict compliance. The courts fastening total liability on Insurers have led to greater degree of carelessness on the part of owners/ users of motor vehicles contributing to morale hazard and consequent claims cost. Section 114 (1) empowers the authorized functionary to direct the driver of vehicle to offload the excess weight at his own risk and amend sub-section (1) in Section 130 of the Act and insert sub-section (5) to prescribe the format of the

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receipt to be given to the person concerned for seizing the driving licence by any officer or authority. The authorized officer or authority shall be required to display identity card before seizing a document from the driver or the owner of the motor vehicle.

The amendment seeks to omit Chapter X containing Sections 140 to 144 relating to “liability without fault in certain cases” in view of the changes proposed in the Bill for payment of compensation.

Section 145 (a) recognises ‘authorized insurer’ IRDA for the purpose of authorizing an entity for carrying out general insurance business in India. Section 145 (c) The definition of ‘liability’ is being modified to reflect the changes made in subsequent Sections, i.e., Section 163A and 163B Section 145 (h) of the Act. Definition of ‘permanent disablement’ has been proposed to be included sub-section (2) in Section 147 to provide for liability of Insurance Company in terms of Section 163A, or for the Court’s award in terms of Section 163B.

“Permanent disability Section 145 (h) have the meaning assigned to such expression and the extent as in the Workmen’s Compensation Act, 1923; in any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. The Central Government may, keeping in view the cost of living, by notification in the Official Gazette, from time to time revise the amount or the multiplier specified in the Second Schedule.”

Section 149 has been modified relating to a policy becoming void on the grounds of non-disclosure or misrepresentation or non-receipt of premium as required under Section 64 VB of the Insurance Act, 1938. It also provides to relieve the insurer from the liability in case the vehicle is driven by a person not having an appropriate driving licence or in case of non-receipt of premium.

Section 149 (2) (c) the insurer may contest the claim on any relevant ground including the quantum. Section 149 (8) imposes

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duty on the owner of the motor vehicle involved in accident to disclose full facts to Motor Accident Claims Tribunal or Civil Court. Section 151 (5) casts obligation on owners of the transport vehicle to keep a photocopy of driving licence of the driver employed and deliver an attested copy of the same along with an attested copy each of the registration certification and permit to the insurers on demand applying for transfer of certificate of insurance. Section 157(2) to increase the time period from 14 days to 30 days for applying for transfer of certificate of insurance in the event of transfer of ownership of motor vehicle.

Section 161A has given definition of certain expressions, namely, 'grievous hurt', 'hit-and-run' motor accident, scheme and 'solatium fund'.

The Solatium fund shall be established by the Central Government and used for payment of compensation for hit-and-run motor accident and the fund shall be managed by IRDA or any other agency specified by the Central Government. Insurance Companies shall make such contribution to the Fund as may be specified by order by the Central Government, from time to time. Further, the amount of compensation is also proposed to be increased from Rs. 25,000/- to Rs. 50,000/- in case to Rs. 50,000/- in case of death of a person from hit-and-run accident, and in case of grievous hurt, the amount of compensation is proposed to be increased from Rs. 12,500/- to Rs. 25,000/-.

Section 161A inserted to provide for structured compensation formula on 'no fault principle' basis and Section 163B substituted to provide for compensation in cases where claimant has not opted for structured compensation formula under Section 163A and desires to file the claim before the MACT or Civil Court. Section 163C also inserted to restrict a person to claim compensation either under Section 163A or under Section 163B and option once exercised shall be final subject to the statutory protection provided to him as regards the compensation.

MACT or Civil Court shall endeavour to dispose of a case within two years from the date of its filing. Further, Section 166, (5) and

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(6) inserted to enable provisions for pending compensation cases filed under Motor Vehicles Act, 1939 and time limit of 3 years is being prescribed for filling application from the occurrence of an accident subject to general principles provided in the Limitations Act, 1963.

Settlement by mutual consent inserted vide Section 167A to enable the insurer to make an endeavour to settle the claims out of a Tribunal or Civil Court directly with the claimant by mutual consent. Section 168 (3) of the Act, provides the time limit of depositing the amount of award as per the direction of Claims Tribunal has been increased from thirty days to sixty days.

Certainty & uniformity of interest

Section 171 interest to be linked to 200 basis points above the bank rate as notified by the Reserve Bank of India to introduce certainty and uniformity regarding the interest on amount payable as compensation.

Interim compensation Section 171A to the victim within three months from the date of filing of an application, which shall not exceed Rs. 1,00,000/- in case of death or permanent total disablement, and Rs. 50,000/- in case of permanent partial disablement, resulting from loss of a limb or sight of either eye or grievous hurt leading to such disablement.

General provision for punishment of offences

Section 177 is to be substituted to provide for cases where no penalty has been provided for the offence(s) in the Act and to enhance the quantum of penalties for contravening any provision of the Act or any rule, regulation or notification made there under with the penalty of Rs. 500/- for first offence and of minimum of Rs. 1,000/- for second or subsequent offence, subject to a maximum of Rs. 1,500/-.

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Section 180 “allowing unauthorized person to drive vehicles” with a minimum fine of Rs. 1,000/- subject to maximum of Rs. 2,000/-. This proviso needs to be made stricter penalising the owner of the vehicle who has so allowed the unauthorised person to drive causing third party liability as insurers should not be fastened with the liability caused by unauthorised persons driving vehicles.

Section 181 “driving vehicles in violation of Section 3 or Section 4 of the Act” with a minimum fine of Rs. 500/- and maximum of Rs. 2,000/-.

Section 183 (1) “driving at excessive speed, etc.”, with a minimum fine of Rs. 500/- for first offence, and of Rs. 2,000/- subject to maximum of Rs. 5,000/- for subsequent offence(s).

Section 183 (2) causing his employee to drive at excessive speed” with a minimum fine of Rs. 500/- for first offence, and a minimum fine of Rs. 1,500/- subject to maximum of Rs. 3,000/- for subsequent offence(s). ”

Section 184 “driving dangerously” with a fine of Rs. 1000/- for first offence and a minimum fine of Rs. 2,000/-, subject to maximum of Rs. 5,000/- for the subsequent offence(s).

Section 185 “driving by a drunken person or a person under the influence of drugs” with a minimum fine of Rs. 2,000/- for the first offence and of Rs. 3,000/- for subsequent offence(s).

Section 186 “driving when mentally or physically unfit to drive” with a fine of Rs. 500/- for first offence, and Rs. 1,000/- for second or subsequent offence.

Civil liability of a driver

Insert Section 187A providing for civil liability of a driver penalty up to Rs. 5,000/- if one drives a motor vehicle in rash or negligent manner, causing injury to a person or damages to any property. The amount so realized shall be credited to the Solatium Fund

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established under section 161A in such manner as may be prescribed by providing penalty up to Rs. 5,000/- if one drives a motor vehicle in rash or negligent manner, causing injury to a person or damages to any property. The amount so realized shall be credited to the Solatium Fund established under section 161A in such manner as may be prescribed.

Section 192 (1) “using vehicle without registration” so as to enhance penalties to Rs. 4,000/- with a maximum of Rs. 10,000/- for the first offence and for subsequent offence (s) to a minimum of Rs. 10,000/- and maximum of Rs. 20,000/-. Section 192A (1) “using vehicles without permit” so as to enhance penalties to Rs. 4,000/- with maximum of Rs. 10,000/- for first offence and for subsequent offence to minimum of Rs. 10,000/- and maximum of Rs. 20,000/-.

Section 198 “unauthorized interference with vehicle” so as to enhance penalties to Rs. 500/- with a maximum of Rs. 1,000/- in case of tampering with brake or any other part of the mechanism of the motor vehicle, and to a minimum of Rs. 1,000/- with a maximum of Rs. 2,500/- in case of tampering with emission control device fitted by the manufacturers.

Section 200 “composition of certain offences” section 194 relating to penalty for overloading is being deleted from this section,

Section 192A use of vehicle without permit is being inserted in this section.

Insert Section 213A State Governments to appoint officers for auditing the ‘authorized testing stations’ set up under sub-section (2) in section 56 of the Act which provides for regulation and control of such stations or garages, and to make rules to regulate qualifications, powers and functions of the officers notified for such auditing.

Insert Section 217B to provide that in respect of pending claims, the right of a person injured in road accident upon his death, be available to the legal representative.

SUBSTITUTE SECOND SCHEDULE TO THE ACT UNDER SECTION 163A

Clause 65 providing for revised structured compensation formula to decide the amount of compensation to be given to the road accident victims.

THE SECOND SCHEDULE (see Section 163A)

- “The multiplier applicable for different age groups:—
 - Age Group (in years) Multiplier
 - Above 15 years but not exceeding 16 15
 - Above 16 years but not exceeding 20 16
 - Above 20 years but not exceeding 25 17
 - Above 25 years but not exceeding 30 18
 - Above 30 years but not exceeding 35 17
 - Above 35 years but not exceeding 40 16
 - Above 40 years but not exceeding 45 15
 - Above 45 years but not exceeding 50 13
 - Above 50 years but not exceeding 55 11
 - Above 55 years but not exceeding 60 8
 - Above 60 years 5

Evasive Solution to Third-party Liability

Expense Barrier

Any claim filed before the Tribunal, regardless of compensation

claimed, the stamp duty is just Rs 10, which needs to be made applicable up to a fixed limit (say, Rs 5 lakh), and beyond that amount stamp duty should be fixed as a percentage of the claim amount to curtail frivolous exaggerated claims.

"We would have to be careful though, to ensure that we do not create an "expense" barrier for people in the lower income group to approach the Courts for a solution." "Besides, the litigants will in anyway have the insurance companies compensate them for the stamp duty as well," therefore, this issue must be looked as an issue of ultimate economic cost to society.

Cap on the insurer's liability

Bringing a cap on the insurer's liability is another important aspect of third party claims management, as it will contain undue rise in cost of claims and finally the price of insurance. The political perception that it might be seen as an abridgement of individual rights has hampered the path to such amendment. Similar liability caps exist for claims in the cases of death in a plane or train accident somehow does not seem to cut ice. Moreover in Advanced countries limited liability covers are given and motorists are required to take adequate covers by paying extra premium to protect their financial impact.

TPL should be de-linked from the vehicle

TPL should be de-linked from the vehicle Insurance and linked to the individual to inculcate more sense in the users and other beneficiaries. The insurance company should cover the vehicle-damage and third-party claims up to a limit only. Beyond the stipulated limit, the driver should be made personally liable to pay up or face penalty. The threat of penalty/imprisonment would force individuals to be more cautious drivers and buy separate insurance protection for them against the liability, which they wish to share. This would lead to growth of the Insurance industry on sound principles of rating commensurate with hazards and without unwanted discrimination among the more balanced drivers vis-à-

vis reckless drivers and also cause Courts to invoke 'deep pocket theory' and 'pay and recover' provisions of law which ultimately leave the cost to be born by insurers and finally the insuring public who comes forward for insurance.

Uninsured Vehicles

On the other hand, if insurance companies are bleeding, whom is it going to help? The companies were so far surviving because other profitable portfolios were subsidizing third-party claims. With the tariffs lifted, the cross subsidizing is no more sustainable. India has over 70% uninsured vehicles despite section 147 prohibiting vehicle to be used in public place without insurance. Uninsured vehicles, liability is indirectly being passed on by the Government under the hit and run liabilities to be borne by insurers through a solatium fund. The hit and run cases indirectly add to the liability of insurance companies through the contributions of insuring public.

How to ensure that all those who know driving, buy a cover for themselves? Will a truck driver or a cleaner willingly pay money and buy insurance? If an offending driver does not have such a cover, who will pay the victim's family? Insurance company should be given marshal powers to check the insurance cover and impose penalty for failure to keep insurance alive. The longer the gap the higher should be the penalty on being caught.

Role of facilitators

The role of facilitators like Advocates, Doctors certifying disability, Courts adjudicating amounts have to be seen in the context of these agencies having no direct personal interest in the Third party claims. Such facilitator's role should be curtailed by introducing 'Structured Compensation', based on age of the deceased person and his earnings. It should be made mandatory for insurers to deposit the amount as per the multiplier method of computation within three months, based on their investigations on the economic status of injured / deceased, to reduce unwanted interest burden stretching from 3 to 5 years, for no fault of either the insured or

Legal Provisions

the insurer, as the Courts take unduly long time to pronounce their judgments and the cost of delay in such circumstances is borne by the Insurance Company in the garb of providing just and adequate compensation. The payability of interest on compensation given in lump sum for future expenses in itself is point, which needs more in-depth discussion. The future value of compensation is not being taken into consideration, which causes incalculable liability on insurers. The insurer may be mandated to make deposits to provide monthly payments to beneficiaries. This will stop undue wealth creation in the hands of legal representatives and consequent repercussions in the society. This will reduce the cost of claims and also allow the money being put to greater use for society through financial institutions. The author is of the considered view that the Government can create some ***interest bearing long-term Third party Claims bonds***, which may be used for power, infrastructure development etc.

As an “interim solution” it is possible to reduce third-party claims by managing the claims properly. After all, it is common knowledge that ambulance-chasing lawyers and universal graft inflate claims, and finally what goes to the victim’s family is only a fraction of what the insurance companies pay.

6

Internal Audit

This chapter deals with common processing defects during processing of Third party suit claims, various related internal audit issues, treatment of provisioning in orphan claims and treatment of tax deduction for interest awarded by the courts in third party claims.

Introduction

The insurers make all out efforts towards continuous improvement of quality in the operations of Third Party Claims Department. Besides Internal Audit, Insurers have also initiated quality assurance exercise on a regular basis to review the existing claims and make adequate provision. Due to prevailing state of affairs the work load in the operating offices has enormously increased. The pressure to handle claims is to the tune of over 1000 cases per officer, which leaves a lot of gaps in efficient working of the department.

The audit teams are required to test that outstanding provision made for third party claims are adequate. Further the teams have to look into the aspect of timely completion of files. Whether Policy copy and 64 VB confirmations were received immediately. Whether vehicle-related documents are verified routinely. Whether investigators used are giving quality reports and whether they obtain statements on affidavit and make themselves available for evidence in Court of law to protect the company's interest. In order to look into various audit issues it is necessary to study common processing defects in third party claims settlement.

Common Processing Defects

The service of summons along with the copy of the plaint to insurance company is the first step in the processing of third party claims. The copy of the plaint must be thoroughly studied since it gives a fair idea not only of the applicant's and the claimant's and/or victim's e.g., age, occupation, income, family background etc., but also the circumstances of the accident. There may be several claims where cases filed may not have resulted out of vehicular accidents.

Investigation is the second important step to be instituted immediately on receipt of plaint. The Investigator should invariably collect facts, documents, statements as here under :

1. Certified copy of police papers viz. F.I.R. Panchnama, Station Diary entry form 54, Charge sheet as well as statements recorded by the police.
2. Driving Licence with the certificate of concerned RTO (Xerox copy to be avoided)
3. Insurance particulars of vehicle, R. C. Book, Fitness Certificate and Permit (if applicable), Load Challan.
4. Facts about claimant and/or victim, e.g., age, proof of income, Financial Status & information from neighbours and other relevant details like previous illness, injury, hospitalisation and related medical accounts/record including Bed Side Ticket, test reports, prescriptions etc.
5. Injury, disability certificate, Confirmation from treating hospital/ Doctor.
6. The insured could also be informed by investigator to cooperate as per the provision of the Section 134 (C) of 1988 Act.

Motor Third Party Claims Management

As such many a time the spot statements given to police and facts mentioned in the plaint vary due to an after thought by the claimants, e.g., the vehicle responsible for accident being uninsured, blame is shifted to another vehicle, FIR is lodged late, the name of the driver is changed, the Driving Licence does not authorise the holder of licence to drive that type of vehicle, the copy of Driving Licence submitted in OD claim is different.

The investigator must also look into and verify classification of vehicle to ascertain whether the vehicle was being used for the purpose it was insured, in reference to Notification # SO 451 (E) dated 19-06-1992 (Annexure1) specifying Transport or Non Transport vehicles and Notification # G.S.R. 400 (E) dated 11-05-2002 categorising motor vehicles as per their seating & luggage carrying capacity.

The statements with regard to injury must be crosschecked with police papers to rule out any exaggeration of facts. The Advocate may be instructed to scrutinise the 'Disability Certificate' for the purpose of getting interim compensation u/s 140.

If necessary, the Advocate should be asked to request the Court to summon the Doctor as a witness and an affidavit of Insurance Company's Orthopaedic Surgeon may also be filed highlighting the discrepancies in the Certificate submitted by the applicant. The advocate may also ask Claims Tribunal to seek affidavit from the attending Doctor to bring out the truth.

Some times it so happens that more than one vehicle is involved and one insurance company may pay their share of No Fault Liability compensation u/s 140. Later it may happen that the insurer who had paid the NFL is exonerated of their liability at the stage of final award. In such a situation the attention of the other insurer must be asked to deduct the amount paid by the other insurer and reimburse the same to them so as to make sure that the applicant does not receive more than the actual award.

Processing stage

Receipt of summons

The common processing defect at the time of service of summons to the insurer is that no date stamp is affixed by the Insurers office on the face of summons received, which can be a vital evidence of late service of summons. The summons are neither filed with file number, case number and claim number on the same day, nor entered in TP claims register or Genysis same day, resulting in misplaced summons. Further the summons are not handed over to the advocate immediately, delaying the timely filing of proper written statement; improper written statement on general denial basis is filed in the Claims Tribunal hurriedly. The Underwriting Office is not requested immediately for Certified Policy copy and advance premium payment compliance certificate under Section 64 VB of Insurance Act 1938, resulting in lack of updated data when required.

Receipt of response from underwriting office

The Advocate is not informed immediately about the policy & premium details causing the liability of the company being wrongly denied or admitted in the written statement.

First hearing

No application is submitted immediately on receipt of summons by the panel Advocate in the Claims Tribunal for filing of police records, PM report etc. This leads to pleading of the case with defective arguments / defective defences being raised in regard to gratuitous passenger, invalid driving licence, extent of disability, proof of income, age etc culled out from the investigation report. Further, application under Section 170 is not filed despite non-representation/ collusion by the insured. This results in the insurer losing the rights under section 149(2) to use all grounds for defence, which are otherwise available to the insured.

Receipt of investigation report

The case is not handed over for investigation with proper brief immediately to the investigator resulting in first or subsequent hearing dates being missed. Further, it results in the insured's Advocate filing improper pleadings in written statement and putting forth improper arguments both on liability and quantum fixation.

Hearing stage

A regular interaction with the advocate is essential to ensure correct defences being taken. Lack of regular interaction with the advocate during the hearing stage leads to defects in defence, and no timely correction is possible later.

After the tribunal's judgement

The advocates do not notify immediately about the final order pronounced by the MACT. A Certified copy of the award is not obtained immediately entailing unnecessary interest liability. At times awards are not satisfied in time either due to collusion with claimants, when the market interests are low as compared to interest awarded by courts or due to sheer carelessness resulting in accumulation of avoidable interest and legal costs and possibility of default in payment. This causes execution petitions with arrest warrants or seizure of Insurer's accounts and custody of money by the courts. Sometimes the decision on whether the award is satisfactory or if there is need to go in for appeal against it is not taken within the limitation period. This results in avoidable petitions for condoning delay and even rejection of the same.

Appellate court

At times, unnecessary appeals are pursued e.g., application under Section 170 has neither been filed nor permission taken from the Claims Tribunal to contest on all the grounds. Similarly appeals made on quantum are not tenable and at times lower amounts to be defended are offset by legal and likely interest costs. Sometimes

hurriedly drafted appeals on improper grounds weaken the defences resulting in failure in appeal with enhancement in interest liability and legal costs to insurers.

Scope and purport of tribunal

As regards the scope and purport of Section 168 of the Motor Vehicles Act, 1988, the Claims Tribunal is not only “entitled to determine the amount of claim” from the insurer, owner or driver of the vehicle jointly or severally, but also adjudicate on the dispute between the insurer and the owner or driver of the vehicle involved in the accident, in so far as it can be resolved by the Claims Tribunal in such proceedings.

Internal Audit Issues in Third Party Claims Settlement

Some important issues in third party claims settlement are listed below:

1. Whether the method of computing out standing provision is incorrect.
2. Why some of the files are incomplete (pertaining, for example, to the following aspects) :
 - 64 VB Confirmation not received from outstation Policy issuing offices
 - Vehicular documents not verified
 - Investigators not available to verify outstation addresses
 - Driver is no longer in service of transporters to avail verification of DL
 - Record keeping in settling office is unsystematic.

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- Xerox copies of Cover notes do not bear office rubber stamp
 - Revised address list of offices with present and old office code not available
 - Neglecting orphan claims
3. Claims paid through inter office accounts are not reflected in TP claims paid / intimation register in the year of payment affecting correctness of incentive payments to development officers due to paid claims being shown as inadequate outstanding provisions.
 4. Attachment orders need be examined as to the causes which led to the serious situation. System deficiency should be identified and panel advocate should be asked to explain.
 5. Number of TP claims registered is too large vis-à-vis personnel earmarked to handle claims effectively.
 6. Quality assurance teams must examine large claims and claims outstanding for over three years to initiate appropriate action in order to expedite settlement.

Treatment of Orphan Claims

These are third party claims where no policy details are available. Sometimes, Claims Tribunals serve notice only on the Insurance Company and no claim petition is received, then such cases are registered as 'Orphan Claims' and a separate list is kept of such claims. Suitable standing provision is made in the claim register immediately. However, these provisions do not form a part of the Division's out standing claim provision. Efforts are made by Insurers to trace the Policy details through investigator, panel advocate, and petitioners etc. In some cases they may belong to a series of cases pertaining to a single accident. If the details are received then suitable entry is to be made in the Claims Register, Policy particulars including Section 64 VB of Insurance Act 1938,

compliance is procured through the concerned underwriting office and sent to panel advocate. It is absolutely necessary that an advocate is appointed immediately on receipt of notice without for the policy details as otherwise the case may be decided ex-parte.

Sometimes the underwriting office receives summons without a petitions copy. In that case the first thing to be checked is whether such a case was already registered. This could happen because sometimes the Claims Tribunal sends one copy of the summons by registered post and another by hand delivery. If a case already exists, then one must make sure that it has been entrusted to an advocate already. If no particulars are available, then the case is registered as an *orphan claim*. [Orphan claims are those claims where policy particulars are not available despite all efforts by Insurance Company who has been served the summons]. This gives rise to doubt that the policy may have been issued by some other office or Insurer. It may also happen that there is no insurance at all for the vehicle causing accident and the insurance company is made respondent just for the sake of getting the case admitted in a Claims Tribunal.

The panel advocate in such a case is asked to move Claims Tribunal to seek all available particulars, in relation to this case. The Advocate is required to initially move an application to obtain comprehensive *search report* having details with documents filed by petitioner. On submission of “search report” by the Advocate and on the basis of confirmation of the Insurance and coverage for insured vehicle in the said accident, the panel Advocate submits a ‘*Say Report*’ to the Court Registrar. In case insurance is not accepted or not confirmed ‘*No Say Report*’ is submitted.

The available details are given to the investigator for obtaining further details of the accident and related documents.

If policy details remain unknown even after investigation, the claim would remain as an orphan claim in our books. O/s provision will be made for such claims and the statutory auditors will also examine it. However, one third (1/3rd) of the provision are added to the

figure of outstanding provision of motor claims in our final accounts towards such orphan claims.

Tax on Interest Portion of Compensation

The insurers maintained that interest was paid on the amount awarded as Compensation because of delayed payment and ordered by the Claims Tribunal, and if TDS was applied, it was the beneficiaries who would be put to great loss, and in view of that, companies were not deducting tax so far. The High Court of Madras has ruled that insurers engaged in Motor Insurance business are bound to deduct income tax at source (TDS) on interest paid on compensation awarded by MACT in respect of claims under Section 194-A of Income-tax Act.

Was their non-deduction of TDS for the past period wrong and were they liable to pay the said amount?

The petitioner, National Insurance Co. Ltd., a Government of India undertaking, contended that Section 194-A had since been amended with effect from June 1, 2003; and they were deducting TDS on interest payable on the compensation.

Referring to non-deduction of income tax on compensation for the earlier period, the petitioner submitted that the Central Board of Direct Taxes, through their circular dated September 5, 2003 clarified that no deduction of tax at source need be made in cases where the interest awarded on compensation did not exceed Rs. 50,000/- Mr. Justice K. Chandru, who heard the petition, said there was no escape from liability for deducting tax on interest on compensation. The Income-tax Department had said that if the petitioner sent any representation in this matter, it would always be received and will be given due attention.

Legal Aspects of Third Party Claims

This chapter deals with essential components of negligence, legal liability caused by negligence and defence against negligence. The chapter also deals with doctrine of res ipsa loquitur, vicarious liability and effect of contributory and composite negligence in third party liability.

The legal position as on date is that for a claim under Sec.166 a claimant can invoke the benefit of Sec.140 for an interim award. As for the further prosecution of the claim, he can seek further compensation on proof of fault. In proving his case, it would suffice if he establishes a preponderance of probabilities and the burden would be on the Respondent to rebut the presumption of negligence. The proceedings being summary in nature and strict rules of evidence not being applicable, the rigour on the claimant, by march of law, has drastically been reduced, making it easy to breathe comfortably even while being lashed by the cruel fate in the form of an accident. As for a claim under Sec.163-A, no negligence needs to be established and the scheduled compensation within the limits provided can be obtained. The legal liability to pay motor third party claim depends on whether the insured is legally liable to the third party and that the insurance company is liable to indemnify him under the Motor Policy contract issued in compliance to Motor Vehicle Act 1988. The insured's legal liability to the third party, out of the use of motor vehicle in public place is based on law of negligence, and to a certain extent law of nuisance. On the other hand the insurance company's liability to indemnify depends upon the terms and conditions of the policy contract besides the

mandatory provisions of Motor Vehicle Act 1988 as amended from time to time.

Negligence is a '**specific Tort**' and in any given circumstances, it is the failure to exercise that degree of care, which the circumstances demand. Negligence may consist in omitting to do something, which ought to be done in either a different manner or not at all. Whereas, there is a duty to exercise care, **reasonable care** must be taken to avoid acts or omissions, which can be reasonably foreseen to be likely to cause physical injury to other persons or their property. The degree of care required in a particular case depends on the surrounding circumstances and may vary according to the amount of risk to be encountered and to the magnitude of the prospective injury.

Chamber's 20th Century Dictionary defines negligence as "*want of proper care; an act of carelessness-omission of duty especially care for the interests of others as the law may require.*"

Negligence

In [Minu B. Mehta Vs. Balakrishna Ramachandra Nayar — 1977 ACJ 118 (SC) : AIR 1977 SC 1248], the Supreme Court had ruled that though Claims Tribunal was created by a statute, the law relating to liability and compensation would still be under common law of torts and not under MV Act. The claimants were, therefore, required to plead and prove negligence to sustain a claim. This led to manifold problems as the claimants were handicapped by their inability to adduce eyewitness accounts or organize a witness to be examined in a far flung place. The prejudice caused by such imposition of a burden was significantly reduced in [Pushpabai Parshottam Udeshi Vs. Ranjit Ginning & Pressing Co. Pvt. Ltd. – 1977 ACJ 343: AIR 1977 SC 1735: 1977 (2) SC 745], when the Supreme Court ruled that the maxim res ipsa loquitur viz., accident speaks for itself would apply to arrive at the culpability of tortfeasors and the burden would, thereon, shift to the claimants to rebut the presumption arising there from. Thereafter, came the decision of the Supreme Court in [(N.K.V.Bros. (P) Ltd., Vs. M. Karumai Ammal) – {1980 ACJ 435} : {AIR 1980 SC 1354} : { 93

LW 28 SN: 1980 (2) MLJ 33 : 1980 TAC 204] wherein it was held that Courts should not succumb to niceties, technicalities and mystic maybes and allow culpable drivers escape liability. It was held that the initial burden was squarely on the claimants to establish negligence, without proof no compensation could be awarded. [(The Oriental Insurance Co. Ltd. Vs. Meena Variyal) 2007 (2) TN MAC 9 (SC)]. The preponderance of probabilities to fix negligence would suffice and technical niceties would need to be eschewed. In a case where the victim, while getting down from a bus, suffered amputation, it was ruled that lack of coordination between the driver and conductor was the cause and, therefore, negligence on the transport corporation was evident. [(TNSTC Ltd. Vs. N. Balachandran) 2007 (4) LW 312 (Mad)]. The rigour and rigmarole of need to plead and prove negligence was significantly lessened by these decisions.

While adverting to the prejudices of the claimants, the Courts in the land noticed that delay was caused and the motor victims faced difficulties. It was suggested by a series of judgments that it was time for Parliament to introduce a regime of No Fault Liability for payment of compensation to victims [(State of Haryana Vs. Darshana Devi) - 1979 ACJ 205: AIR 1979 SC 855: Concord of India Insurance Co. Ltd. Vs. Nirmala Devi 1980 ACJ 55 (SC)]. Mere occurrence of accident ought to suffice to fix liability. Thanks to such calls on and from 1/10/82 under Sec. 92-A of MV Act, 1939, a No fault Liability regime was introduced. It has now been transformed into Sec.140 under MV Act, 1988. But it remained for the purpose of interim award and payment of a minuscule proportion of the compensation. It was felt that this also did not provide necessary succour and relief to redress the grievances of the affected lot. Act 54 of 1994 as of 14/11/94 Sec introduced 163-A and attendant Schedule introduced as a short cut for claimants to obtain compensation without proof of fault. Though akin to 'No Fault liability' position, it was distinct in that an award under this provision would be a final award unlike an award under Sec.140. [(Deepal Girishbai Soni Vs. United India Insurance Co. Ltd.), – 2004 ACJ 934]

Thus the rigour of negligence as the fulcrum for sustaining a claim has been considerably reduced. Absence of driving licence for the claimant will not be proof of negligence or contributory negligence on his part. [(Sudhir Kumar Rana Vs. Surinder Singh) 2008 (2) TLNJ 341 (SC): 2008 (5) MLJ 1386 (SC)]. The claimants can now breathe easy. One can safely say that it is only if the claimant was blatantly seen to be at fault that the claim petition can be expected to be dismissed. In a particular case the driver of the bus had taken the bus on a bridge overflowing with water and the bus was washed away in the floods. The insurer was exonerated of liability as the mishap was due to floods, an Act of God, but the said finding was reversed in appeal on grounds of the ‘negligence of driver writ large’ in the circumstances. [(R.J. Foujdar Bus Service Vs. Ganpat Singh) 2007 ACJ 1591 (MP)].

No fault liability and negligence

But sometimes, a claim under No fault Liability under Sec.140 may survive for some relief [(K. Nandakumar Vs. Thandai Periyar Transport Corpn) – 1996 ACJ 555 (SC)]. The claimant victim was himself prosecuted, but was found to have been acquitted. It was held that acquittal by the Criminal Court could be for several reasons and the degree of proof required was also different. If so, the proceedings before Criminal Court were not to be taken into consideration. The claimant himself was held responsible for the accident but was declared entitled to the statutory sum under no fault liability. [(Rajan Kuttill Nayar Vs. TNSTC Ltd.) 2007 (3) TLNJ 472 (Civil) (Mad)]: [2007 (2) TN MAC 387].

Section 163 A and negligence

Coming to an award under Sec.163-A, which would be a short route to a final award, no negligence needs to be proved to sustain a claim. Any party to a claim under Sec.163-A can seek the compensation provided for by the Schedule and it would suffice for the claimants to prove the occurrence of accident and the injuries sustained and disability suffered or death and proof of age and income and be awarded the compensation contemplated by

the Second Schedule. The benefit of this Second Schedule would be available only to those whose income is less than Rs.40,000/- p.a. [(Deepal Girishbai Soni Vs. United India Insurance Co. Ltd.), – 2004 ACJ 934]. Those of the claimants who are unwilling to wait in the regular claim queue to establish fault and seek a remedy, can seek this shorter and alternate route if they are satisfied with the Schedule fixed compensation. It being a remedy meant for such segment of victims, it can be invoked by only such classes of victims who have income within the specified bracket and not above it.

But then again, there is further queering of the pitch as to whether a claim under Sec.163-A would hold even where the victim was himself at fault. It would suffice to say that the language of the relevant provisions would suggest that a claim under Sec.163-A can be defeated or reduced for fault on the part of the victim or contributory negligence of the victim, unlike a claim under ‘No fault Liability’ under Sec.140. [(Appaji (since deceased) Vs. M. Krishna) – 2004 ACJ 1289 (Kant.)]

Theory of Absolute Fault

There is also the application of ‘theory of Absolute Fault’ arising out of the doctrine in [Rylands Vs. Fletcher]. The Supreme Court pronounced in [(Kaushamma Begum Vs. New India Assurance Co. Ltd.,) 2001 ACJ 428] that mere occurrence of accident would suffice to support a claim and there was no need or compulsion for the claimants to prove fault. It was, however, recorded that the sixth exception to the Rule in [Rylands Vs. Fletcher Supra] would apply, one of which was that when the Plaintiff himself was at fault, a claim can be effectively dismissed or reduced, if the Respondent proved that the claimant was himself at fault.

Liability towards Parked Vehicle

Parked Vehicle, need not be at fault all the time [1992 (1) LW 149]. Parked vehicle can be at fault [2007 (3) TLNJ 662], but a vehicle coming from behind has last opportunity [2006 (4) TLNJ

152]. Apportionment of liability on a parked vehicle is also proper. [2007 4 ACC 370 Uttara) (DB)]. But in a case where a Jeep had dashed against a parked truck, adverting to Sec.122 of MV Act, 1988, it was held that the accident arose due to the dangerous parking of the stationary truck and hence the said driver alone was liable for the loss of lives/limb of victims on the Jeep, though it hit from behind. [(National Insurance Co. Ltd. Vs. Abhay Singh Yadav) 2007 ACJ 2175 (Raj)].

Liability when more than two vehicles involved in an accident

A person hit by one vehicle fell down and was then run over by another vehicle. Both vehicles were found liable at 40:60 in {[2008 (2) TLNJ 81 (Civil)]: [2008 (1) TN MAC 386]}. In another case a 2 wheeler hit a taxi, and fell down and the driver was crushed by a Transport Corporation Bus-negligence was apportioned at 60:40 between bus and 2-wheeler rider. [(R. Pramanathan Vs. MTC) 2008 (1) TN MAC 300 (Mad)}.

Overloading

The insurer cannot avoid liability on the ground that three persons were carried on a 2 wheeler unless it was shown that such overloading itself led to the occurrence of the accident. [(New India Assurance Co. Ltd. Vs. Nagarajan 2007 (2) TN MAC 274 (Mad)]. Useful reference can be made to [(Kattabomman Transport Corporation Ltd. Vs. Vellai Duraichi) 2004 ACJ 1510 (Mad)] and [(TNSTC Ltd. Vs. Abdul Salam) 2004 ACJ 1827(Mad)] where contra views were expressed. In another case, it was held that persons carried on a 2 wheeler is not a valid defence. [2008 (1) MLJ 430]. In connected claim 50% liability was imposed, similar orders were passed in other claims also. [2007 (4) TLNJ 473 (Civil)]. Principle of res judicata in such claims was discussed. **Applicability of res ipsa loquitur in such claims- [2008 (3) TLNJ 267 (Civil)]** Finding has to be common and consistent in all connected claims. [2007 4 ACC 161 (Guj)].

Other cases on evidence of negligence

1. The claim of the driver of a transport corporation was disputed on the ground that he was already held liable in connected claims. Though he was not a party in those claims, he appeared as a witness and deposed on behalf of the corporation. Hence such a finding would operate as estoppel in his own claim, when the finding against him had gone uncontested and became final. [(Machindranth Kernath Kasar Vs. D.S. Mylarappa) 2007 ACJ 1323 (Kant)].
2. The claim was against the driver, owner and insurer of a van. The FIR was to the effect that the truck vs. and the van had collided but the fault was on the part of the truck driver. The transport corporation had examined only their conductor. It was held that driver of the bus was the best witness and his non-examination shall lead to adverse inference against him. The finding that bus driver alone was to blame for the accident was upheld in the appeal. [(TNSTC Ltd. vs. Ismail) 2007 (3) TLNJ 457 (Civil)]

Delay / discrepancy / mistake in FIR

1. Delay in FIR was held not fatal to the maintainability of the claim. [(Rajasthan State Road Transport Corporation Vs. Lekhraj Bansal) 2007 ACJ 2270 (Raj)].
2. Delay of 53 days in registering FIR irrelevant. [2004 (2) MLJ 202]. When driver pleaded guilty it is binding before MACT. [2008 (1) CTC 142].
3. The name was shown differently as Arun in FIR/Charge-sheet and as Arunachalam in the hospital records; the mere fact of such name difference would not affect the identity of the injured claimant. [2007 (2) TN MAC 493]
4. Where the owner of the vehicle did not dispute the accident but only contested negligence and apart from the injured an independent eyewitness had also deposed about the

involvement of the vehicle, the finding of the Tribunal that since the FIR did not carry the registration, the claim was not tenable was set aside as improper. [(Sudesh Kumar Kapoor Vs. Anil Anand) 2007 ACJ 1130 (Uttara)].

5. The insurer cannot at all avoid liability merely on the basis of mistaken alphabet in the FIR as to the vehicle involved in the accident, in the face of proof of involvement of the vehicle, prosecution of driver etc. [(Dewakar Shukla Vs. Ashok Thakur) 2007 (II) ACC 833 (MP)].

Conviction of driver before the Criminal Court

1. Mere conviction of driver before the criminal court would not be relevant except as a fact and trial before Claims Tribunal being summary in nature, strict rules of evidence were not necessary. In the absence of rebuttal evidence, adverse inference has to be drawn to fix negligence. [(National Insurance Co. Ltd. Vs. Krishnammal) 2007 (5) MLJ 1038 (Mad)]: [2008 (1) TN MAC 88 (Mad)].
2. Merely because of the criminal case against bus driver, it cannot be contended that the car driver was not at all liable. 2008 1 TN MAC 177 (Mad).
3. Acquittal of driver by criminal case not relevant in claim before MACT. 1980 ACJ 435 (SC) and 2007 4 ACC 484 (MP).
4. Driver being convicted is a valid piece of evidence as in 1975 ACJ 215, 1998 (3) LW 521, it has been so held [in (TNSTC Vs. Muthu Maheswari) 2008 (7) MLJ 344].

Other cases

1. In Summary procedure, strict rules of evidence are not applicable, document marked without author can be looked into. [2008 (1) TN MAC40 (Jhar)].
2. The son of the deceased was examined as the only eyewitness and his evidence was found acceptable by the High Court;

mere interestedness was no ground to reject his testimony. [(Aparna Vs. Bacchubhai Karsanbhai Rathod) 2007 (II) ACC 208 (Bom)].

3. For 60% disability due to fracture of both bones of right leg, an award for Rs.1,00,000/- was passed by the High Court. 2007 (2) TN MAC 497.

Degree of Care

Though there is no statutory definition in common parlance, ‘negligence’ is categorised as either composite or contributory. According to Baron Alderson in [Blyth Vs. Birmingham Waterworks Co. (1856)] “*Negligence is omission of duty caused either by omission to do something, which a reasonable man guided upon those considerations, which ordinarily by reason of conduct of human affairs would do or be obligated to do, or by doing something which a prudent or reasonable man would not do*” .

Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance, which the circumstances justly demand, whereby such other person suffers injury.

What is Negligence?

‘Negligence’ and ‘duty’ are strictly complementary. Negligence means either subjectively a careless state of mind, or objectively a careless conduct. Negligence is neither an absolute term nor a relative but it is a comparative one. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case.

It is absence of care according to circumstances that constitutes negligence and varies under different conditions. In determining whether negligence exists in a particular case, or whether a mere

act or conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act, would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law, would equally and per se constitute negligence on the part of such person and would constitute a negligent act. Where a passenger was alighting, it was held that the duty was on the part of the driver and conductor to ensure safety. Accordingly, the finding of the Tribunal that the passenger was not in fault was upheld. [(Metropolitan Transport Corpn Vs. N.Kaliaperuma) 2007 ACJ 1960 (Mad)]. In another case where the passenger of a transport corporation bus had his arm on the window sill and suffered injuries from a moving vehicle, it was ruled that the obligation was on the driver of the vehicle to give allowance for such conduct of passengers and drive accordingly. Failure to do so would constitute negligence on his part. [(TNSTC Ltd Vs. Dr.S.Rajendran) 2007 (4) LW 290 (Mad)].

Damnum sine injuria

It is held that not all actions or failure to take action give the right to a claim in a tort e.g., it is not one's duty to save a person from drowning even if one knows how to swim well. Similarly it is not one's duty to refrain from setting up a business just because competition can cause loss to other. These actions are known as 'harm done without the commissioning of a legal wrong' or ***Damnum sine injuria***.

Test of negligence

Negligence can be assessed by a two-fold test:

- (a) The likelihood of causing injury or damage must be reasonably foreseeable.

- (b) The person injured or whose property is damaged must be in close proximity to the action or conduct called into question

A third dimension, which is being considered of late, is

- (c) It was just and reasonable to impose liability in that situation'. Charles worth has defined negligence as "*a tort, which is the breach of a duty to take care imposed by common or statute law, resulting in damage to the complainant.*"

Liability for negligence

The liability for negligence is no doubt based upon a general public sentiment for moral wrongdoing for which the offender must pay. The rule that you are to love your neighbour becomes in law: "you must not injure your neighbour. You must take reasonable care to avoid acts or omissions, which you can reasonably foresee, would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are closely or directly affected by my act, that I ought reasonably to have them in contemplation as being so affected, when I am directing my mind to the acts or omissions, which are called in questions.

Breach of General Duty

Negligence is a breach of general duty, which every one in the society owes to every other person, of not causing bodily injury or damage to property of the other person. In the case of [M.B. Mehta and B.R. Nayan] the Supreme Court of India observed "*the liability of the owner of the car to compensate the victim in car accident due to negligent driving of his servant is based on Law of Tort*".

The negligence of the driver of the insured vehicle can be ascertained from the sketch of the scene of accident, panchnama, FIR in criminal case. The contributory negligence is also ascertained from the aforementioned documents to find out if the injured or

deceased had contributed in any manner by their negligence towards causing the accident.

Duty of care

Area of Foreseeable danger

The duty of care is owed only to those person who are in the area of foreseeable danger, the fact that the act of the defendant violated his duty to care to a third party, does not enable the plaintiff who is also injured by the same act to claim, unless he is also within the area of foreseeable danger. The same act or omission may in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care, which is on the part of the defendant owed to the plaintiff in the circumstances of the case, and damages suffered by the plaintiff together with a demonstrable relation of cause and effect between the two. Thus for sustaining a claim for compensation the claimant ought to establish negligence on the person against whom the claim is laid.

The concept of owner's liability without any negligence is in contravention of the basic principles of law. It may be that a person being bent upon committing suicide may jump before the vehicle and get him self killed. In such cases owner of the vehicle cannot be fastened any liability. Therefore, proof of negligence remains the prime factor to recover compensation.

Essential Components of Negligence

The essential components of negligence as narrated in [Poonam Verma Vs. Ashwin Patel, 1999 ACJ 721 (S.C.)] are:

- (a) The existence of duty to take care which is owed by the defendant to the complainant
- (b) Failure to attain that standard of care prescribed by the law thereby committing a breach of such duty

- (c) Damage, which is both casually connected with such breach and recognized by the law, has been occasioned to the complainant.

From the reading of Section 140 and Section 144 of the 1998 Act and Bihar Motor Vehicles Rules 226 and 246, it is clear that Chapter XI of the Act prescribes independent provision for grant of interim compensation, notwithstanding, the pendency of any application for grant of interim compensation under Chapter XII of the said Act. Chapter XI is clearly a departure from the usual common law principle that a claimant should establish negligence before claiming any compensation. [Oriental Insurance Co. Ltd Vs. Sarju Ram & ors. 2002 ACJ 177 (Pat.) Gujarat State RTC Vs. Ramanbhai Prabhatbhai, 1987 ACJ 501(S.C)]

Own Negligence

A person cannot be compensated for his own negligence in MACT. When the accident occurred due to the negligence of the deceased driver himself [1984 ACJ p 882 (Karnataka); 1987 ACJ p 588], no claim by his legal heirs can be entertained by the MACT.

W.C. Liability under WC Act 1923

In case of the death of a driver of a truck when it skidded from the road and fell into a river due to the negligence of the driver [2002 ACJ p 706 (Mad HC)], it was held that the case was not maintainable in MACT. However, the insurer is liable with reference to contract of insurance but the liability is limited to the Workmen's Compensation Schedule only.

Burden of proof with claimant

The burden of proof on an action for damages for negligence rests primarily on the plaintiff who, must show that he was injured by a negligent act or omission for which the defendant is in law responsible. This involves the proof of some duty owed by the

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defendant to the plaintiff; some breach of that duty and an injury to the plaintiff, a casual connection must be established. Therefore, it is insufficient for the plaintiff to prove a breach of duty to a third person, or a breach of duty without proving injury, or to prove injury without proving a breach of duty, or injury, which may not be caused by a breach of duty. However, if the plaintiff proves injury resulting from conduct which may be reasonably explained only by attributing to the defendant a breach of duty, or which points *prima facie* to a breach of duty on the defendant's part, the burden of proof is shifted, and it is then for the defendant to show that he has taken all reasonable precautions to avoid the act complained of.

The general law applicable is only **common law** and **law of torts**. If under the law a person becomes legally liable then the person suffering injuries is entitled to be compensated and the Motor Accident Claims Tribunal is authorized to determine the amount of compensation, which appears to be 'just compensation'. The Supreme Court in [1977 ACJ 118] questioned the rights of Claims Tribunal awarding just compensation on its satisfaction, on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence. There is no doubt that it is for the claimant to prove negligence against the person from whom compensation is claimed. The Supreme Court has given the opinion that "*.....Motor Accident Claims Tribunals must take special care to see that innocent victims do not escape liability merely because of some doubt here or some obscurity there. The culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes*".

The transport operators generally get away due to judicial laxity [1980 ACJ 435 SC], despite the fact that they do not exercise disciplinary control over the drivers in the matter of careful driving. Each motor accident claim is defined by a particular set of circumstances and each case would govern the verdict on the question of negligence.

Liability through Negligence

The liability for accidents through negligence in the use of motor vehicles usually arises in the following circumstances :

1. Dangerous and reckless driving without proper regard to safety of the pedestrians.
2. Non observance of traffic rules and regulations
3. Drunken driving
4. Leaving a motor vehicle unattended on the road or highway without taking proper precaution for its safety
5. Using defective vehicle. However, latent defects of the vehicle of which owner was not aware do not constitute negligence. The onus is on defendant to prove that the vehicle was defective or unfit.
6. The employer is liable for the negligence of his servant if the relationship of master-servant exist and the servant was found acting within the scope of his employment at the time of accident. In case of vehicles whether commercial or private cars driven by the owner's own employees, the driver alone or the employer or both may be proceeded against.

Dangerous and reckless driving

Materiality of speed

"The speed at which a vehicle is driven is material to the question of liability. As to when a certain speed will be considered dangerous varies with the nature, conditions and use of a particular highway and the amount of traffic which actually is, or may be expressed to be, on it. The driver of a vehicle should, usually drive at a speed that will permit him to stop well within the distance he can see is clear, although exceeding that speed is not conclusive evidence of negligence.

The question is always one of fact, but, if the driver strikes a person or object without seeing that person or object, there is the dilemma as to whether he was not keeping a sufficient look out, or that he was driving too fast having regard to the speed limit that could be observed, e.g., at night or during foggy conditions. A driver is not bound to foresee that a vehicle travelling in front of him may stop suddenly without warning or apparent cause, and it will usually be negligence so to stop unless urgent cause requires.”

Pollock. C.B. said that “*Road crossing should be approached with care by the drivers. It is the duty of persons, who are driving over a crossing for foot passengers who are at the entrance of a street, to drive slowly, consciously, and carefully, but it is also the duty of a foot passenger to use crossing at the entrance of a street so as not to get among the carriages, and thus receive injury. The Highway Code provides when coming to a Zebra crossing one should be ready to slow down or stop to let people pass. You must give way once pedestrians have stepped onto the crossing. Signal to other drivers that you mean to slow down or stop and at pedestrian crossings controlled by lights or by a Police Officer or traffic warden, give way to pedestrians who are still crossing when the signal is given for vehicles to move.*”

Obligation of Drivers & Duty of pedestrians while crossing roads

There is an obligation to take special care at cross roads. The driver of a vehicle which approaches a major road from a side road ought to give way to traffic on the major road, but the driver of a vehicle on the major road is not absolved from the duty of taking care to avoid collision at cross roads of equal status, there is a guiding rule that the vehicle which has the other on its side must give way.

The driver in general owes no duty towards traffic regulated through a light controlled crossing. However, the driver cannot claim absolute right to enter a road junction merely because the lights became green; he is still bound to observe safety while doing so.

Duty of pedestrians while crossing roads

Similarly a person on foot has a right to be on the highway and is entitled to the exercise of reasonable care on the part of persons driving vehicles on it, but they must take reasonable care of themselves, and may be answerable if they occasion accident to vehicle. The amount of care reasonably to be required of them depends on the usual and actual state of the traffic and on the question whether or not the foot passenger is at an approved and indicated pedestrian crossing. A driver owes no special duty to inform persons on the highway unless he knows or should have known of their infirmity.

Non observance of traffic rules and regulations

Taking *Suo motu* notice of the traffic problem and increase in number of accidents and unsafe driving practices, in the interest of general public and good administration directions were issued by the High Court in the light of the mandate of the Supreme Court in [(M.C.Mehta vs. Union of India) - 1997 (8) SCC 770]. [(Court on its Own Motion vs. Union of India) 2007 (II) ACC 1 (Del)]. The Gujarat High Court has also issued various directions for maintenance of the traffic discipline, taking *suo motu* notice of the statutory provisions of MV Act, 1988 and Rules on maintenance of Traffic discipline and Traffic Signals, provision of adequate machinery, etc. for the safety of road users, including the necessity of wearing a helmet. It was specifically observed that compliance with the directions was mandatory and any failure may invite contempt proceedings. [*Suo Motu Petition vs. State of Gujarat* 2007 (II) ACC 638 (Guj)]. There lies a challenge to the Government Order stipulating that riders of two wheelers should wear helmets compulsorily. The High Court ruled that the stipulation was a reasonable restriction and as such the same was valid and enforceable. In fact it was observed that public safety was a concern of the State, though not a fundamental duty, and the measure was welcome. [(R.Muthukrishnan vs. Government of Tamil Nadu) 2007 (5) MLJ 1351 (Mad)]. While holding that violation of the rules of

traffic discipline would suffice to fix negligence on the **culpable driver** of the vehicle, the court lamented that Traffic discipline was complied with more in breach. The tragic occurrence of too many accidents was the result of laxity on the part of traffic authorities in imposing discipline and ensuring compliance. The High Court adverted to the severe social and economic loss arising from lax compliance with statutory provisions and directed strict compliance for the betterment of society at large. [(United India Insurance Co. Ltd. Vs. Sundaram) 2007 (3) TLNJ 662 (Civil) (Mad)]: [2007 (5) MLJ 952:2007 (4) LW 157].

Duty to follow traffic rules

Drivers of the vehicles or riders should keep well to the left side of the highway unless road signs or markings indicate otherwise or they are about to overtake, or turn right or have to pass a stationary vehicle or pedestrians on the road. If two motor vehicles collide in the centre of the road, the inference is, in the absence of evidence enabling the Court to draw any other conclusion, that the drivers of both were **equally to blame**, and it is not a proper decision to hold the other, when no sufficient case, has been established against either.

Traffic lights

Crossing a road in disobedience to a traffic light is negligence. A driver crossing when the lights are in his favour is under no duty to look out for traffic crossing in obedience to the lights, but 'if he sees such traffic he must use reasonable care to avoid collision.' On the other hand, as regards traffic, which was already lawfully on the junction prior to the change of lights could reasonably be foreseen might still be crossing over, he was under a duty not to enter it until it was safe for him to do so.

Signals

The driver or rider of a vehicle should give the proper signal before he moves out or overtakes before he stops, slows down or

changes his direction, and all signals should be given clearly, and in good time to give an indication of the intention to other users of the highway. He must watch out for the signals of other drivers and act promptly. Further, he must make sure certain that the direction indicator if it be used must give the signal intended and that it is cancelled immediately after use.

Lights

In the hours of darkness it is necessary for the driver or rider of a vehicle to carry light so as to indicate his position on the road and the direction in which he is going or intending to go. Accordingly, failure to carry the usual lights, which misleads the driver of another vehicle and causes a collision, is negligence. It is negligence to drive a vehicle with inadequate lights so that the driver cannot see an obstruction or traffic on the road in front of him in time to stop or avoid it.

Sounding horns

Sounding a horn or bell may be useful to warn other traffic of the approach of a vehicle, but it does not absolve the driver or rider of his duty to take care or give him the right of way. The omission to sound a horn or a bell is a collateral fact only and not an independent act of negligence : by itself it is not evidence of negligence, but it may be taken into account with other circumstances in determining whether the driver or rider was negligent.

Vehicle unattended on the road or highway

Law of the highway

As Lord du Pacq has pointed out “an underlying principle of the law of the highway is that all those lawfully using the highway must show mutual respect and forbearance. Hence the duty of a person who drives or rides vehicle on the highway is to use

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reasonable care to avoid causing damage to person, vehicles or property of any kind on or adjoining the highway. Reasonable care in this connection means the care which an ordinary skilful driver or rider would have exercised under all circumstances and connotes an “avoidance of excessive speed, keeping a good lookout observing traffic rules and signal and so on.”

When two persons on the highway are so moving in relation to one another as to involve risk of collision, each, owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. The public has a right to proceed by vehicular traffic on the highway, and, if persons or property on or near it are injured by that traffic, the injured person must bear his own loss unless he can establish a breach of duty on the part of some other person. The duty is to use such care as is reasonable, and where a driver is faced with sudden emergency he can only be expected to do that which ordinarily a reasonable man would do. The duty is owed only to such persons as are within the area of potential danger and to whom the defendant could reasonably foresee the risk of injury if he or his employee failed to exercise care.

The High Court took serious note of the use of public highways for agricultural operations such as thrashing and directed the authorities to take serious note of such Traffic hazards so that accidents did not arise and lives were snapped or limbs maimed from it. [(TNSTC Ltd Vs. Poomalai) 2007 (4) LW 614 (Mad)]: [2007 (4) TLNJ 352 (Civil) : [2007 (5) CTC 802]. The Supreme Court took serious note of the rising number of accidents and the recklessness in the use of Highways and the economic impact that befall on the community at large and the need for authorities to do some serious thinking and conduct research in trying to prevent the occurrence of such mishaps in such large numbers. The context was for upholding of conviction arising out of rash and negligent driving of a motor vehicle, and it was observed that maximum permissible punishment of 2 years conviction as of now was too low compared to the consequences arising from it. [(Prabhakaran v State of Kerala) 2007 ACJ 2178 (SC)].

Duty while driving defective and unattended vehicles

Halsbury's Laws of England, 4th Edition, Vol.34 "*Driving a defective vehicle where the defect might reasonably have been discovered is a negligent act. It is negligent to leave a vehicle unattended either on a slope where it runs of itself or in such special circumstances that the mischievous intervention of a stranger to restart it should have been foreseen. To leave a horse and a cart unattended on highway may be evidence of negligence*".

Duty of drivers while driving

On a Public Interest Litigation it was held that vehicles while carrying school children has to comply with the Provisions of the MV Act and CMV Rules and also guidelines laid down by the Supreme Court in [(M.C.Mehta Vs. Union of India) 1997 (8) SCC 770] by a Division Bench of the High Court. [(M.Chandrasekar Vs. Union of India) 2007 (2) TN MAC 446 (Mad)].

Duty while overtaking and being overtaken

Overtaking must be done on the right hand or offside of the vehicle overtaken except where the driver in front has signalled that he is going to turn right, but this rule does not necessarily apply to roundabouts or on one-way roads. Nevertheless, when on a motorway, since the right hand lanes are free from slow moving as well as right turning vehicles, overtaking on the left must never take place. The driver or rider of the overtaking vehicle, before attempting to overtake, should see that it is safe to do so, and should be especially careful at dusk or in fog or mist when it is more difficult to judge speed and distance. A driver should not overtake at or when coming to a corner or bend, a road junction, a pedestrian crossing, the brow of a hill, a level crossing, and a hump backed bridge, or where the road narrows, when to do so would force another vehicle to swerve or to reduce speed. In all cases it is the duty of the person overtaking to allow an adequate

margin of safety between his vehicle and the vehicle overtaken, and overtake only when he can do so without causing danger to other traffic.

Parallel parking on roads

The driver of a vehicle following another should allow sufficient space between the vehicles, to deal with the ordinary exigencies of running traffic but if he keeps too close to the rear of the vehicle-ahead and so fails to pull up in time, should the other vehicle come to a sudden halt, he may be found liable in negligence.

On the other hand, to say that a bus driver for example must always keep a gap in front of his vehicle, sufficient to enable him to break at leisure was a counsel for perfection, which is ignored in modern traffic conditions. Whether the leading vehicle will be liable depends on whether the sudden stop was due to the driver's negligence or in some other's cause." US have a rule to keep 20 seconds distance among the following vehicles.

Duty to lookout

It is the duty of the driver or rider of a vehicle to keep a good look-out. He must look-out for other traffic which is or may be expected to be on the road, whether in front of him or behind him, or alongside of him, especially at cross-roads, junctions and bends, and for traffic light signals and traffic signs including lines marked on the highway. Disregard of traffic signals and failure to keep a proper look-out is evidence of negligence. When there are pedestrians about, the driver or rider must be ready in case they step from a street refuge or a footpath or from behind a vehicle or other obstruction and also be prepared for children, knowing that they may be expected to run suddenly onto the road. When passing a standing vehicle or other obstruction, which prevents a clear view of oncoming traffic or pedestrians, care should be taken and a good lookout kept.

Duty of driver while reversing

A motorist, before reversing or tuning round on the highway should satisfy himself that it is safe to do so. The Highway Code provides "Before you reverse make sure that there are no pedestrians particularly children or obstructions in the road behind you." Be especially careful about the 'blind area' behind you that is the part of the road, which you cannot see from the driving seat. If you cannot see clearly behind, get someone to guide you when you reverse, never reverse from a side road into a main road.

Duty of occupants opening doors

Charlesworth on Negligence, 5th edition: "*It is negligence to open the door of a vehicle so as to strike a pedestrian or cyclist on the highway without just taking reasonable care to see that it is safe to open the door. The Highway Code provides, before opening any door of a vehicle make sure there is no one on the road, pavement or footpath close enough to be hit by the door. Be particularly careful about cyclists. Get out on the side nearer the kerb whenever you can and make sure your passengers especially children 'do so, too'.*"

Who can prefer claims?

The following persons can prefer claims for death or disability due to negligence of the driver of a vehicle :

Pedestrians

Pedestrian have a right to use the footpath but also to use the road occasionally and also to cross it.

Fare paying passengers

The passengers carried in a public service vehicle are called fare-paying passenger. The owner of the vehicle is under a legal duty

to provide road worthy vehicles but also to appoint competent drivers having effective valid driving licence. The owner's responsibility commences from the time a passenger enters the vehicle and continues until the passenger alights from the vehicle safely.

Non-fare paying passengers

The duty of owner towards non-fare paying passengers is to exercise reasonable skill and care and to provide reasonably safe mode of conveyance.

Persons travelling in other vehicles

These may be driver, passenger or owner of the other vehicles who expect the other driver to drive safely.

Children

The driver is required to show extra care towards children on the road, as law does not expect a child to exercise the same degree of care as an adult has to exercise.

Doctrine of *res ipsa loquitur*

The fact that an accident has occurred is not considered in law as *prima facie* evidence of negligence. The burden of establishing negligence in a motor vehicle accident claim for compensation lies on the claimant. This burden is considerably lessened by the application of the maxim ***res ipsa loquitur***. The general purport of the word *Res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. The burden will then be on the defendant to establish that the accident has happened due to some cause other than his own negligence.

If a vehicle mounts on a pavement causing bodily injuries to pedestrians walking on the footpath, then the circumstances indicate that there has been *prima facie* negligence and the claimants need not prove negligence. In fact the onus will shift to driver to

prove that he was not negligent. Under the doctrine of res ipsa loquitur, the plaintiff establishes a *prima facie* case of negligence where :

- (i) It is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; and
- (ii) "On the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitute a failure to take proper care of the plaintiff's safety. There must be reasonable evidence of negligence. However, where a thing that causes accident is shown to be under the management of the defendant or his employees and the accident is such as in the ordinary course of things does not happen, if those who have the management use proper care, it offers reasonable evidence, in the absence of explanation by the defendant, that the accident arose for want of care."

Effect of the application of the maxim *res ipsa loquitur*

Halsbury's Law of England 4th edition Vol 34: "*Where the plaintiff successfully alleges res ipsa loquitur, its effect is to furnish evidence of negligence on which a Court is free to find out for the plaintiff. If the defendant shows how the accident happened, and that is consistent with absence of negligence on his part, he will displace the effect of the maxim and will not be liable. Proof that there was no negligence by him or those for whom he is responsible will also absolve him from liability. Where the defendant does not prove either of those matters it is uncertain whether the effect of maxim is to reverse the burden of proof so that the plaintiff is necessarily entitled to succeed or whether the Court must still decide, in the light of the strength of inference of negligence raised*

by the maxim of particular case and the standard of the care called for in the circumstances, whether the defendant has sufficiently rebutted the inference of negligence raised by the plaintiff".

Indian Position

For the application of this maxim, there is no better authority in India than the words of the Apex Court in [(Pushpa Bai Purushottam Udeshi and ors Vs. Ranjit Giinning And Pressing Co. and another) 1977 ACJ 343 (SC)]. "*The normal rule is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true causes of the accident are not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur.*" Vehicle capsizing has been held covered by *res ipsa loquitur*- [2008 (2) LW 1096].

Though the doctrine is a rule of evidence and not a norm of substantive law, it would suffice for a claimant to establish the primordial ingredient of the initial presumption against a driver for establishing negligence. The burden would then shift to the tortfeasor to rebut this presumption to escape liability, e.g., the sketch cannot be the basis to affix negligence or apply the maxim *res ipsa loquitur*. Oral evidence is very important. [(TN STC Vs. Commissioner Aranthangi Municipality) - 2008 (1) TN MAC 361 (Mad)]. The burden of proof for negligence, on claimants, is very heavy; *res ipsa loquitur* can be invoked. [2008 (6) MLJ 214 (Mad)].

Non applicability of doctrine of *res ipsa loquitur*

Res ipsa loquitur is only a means of estimating logical probability from the circumstances of the accident. Where the claimants failed to discharge the initial burden of proving the rash and negligent driving [1982 ACJ (Suppl.) 56 All (DB)], there was no burden on

the insurer on behalf of the owner of truck which hit a cyclist while crossing a bridge, to prove careful driving of the vehicle. Therefore the doctrine *res ipsa loquitur* did not apply. In other words the doctrine *res ipsa loquitur* will apply only when the claimant was unable to prove the nature of occurrence of the accident.

The doctrine of *res ipsa loquitur* would not apply when the cause of accident is known. Similarly where the injured and his witnesses were in full knowledge of the facts and circumstances of the accident and had intentionally withheld the truth from the court [1982 ACJ (Suppl.) 401 (HP)] the doctrine of *res ipsa loquitur* wouldn't be attracted.

It is clear that the doctrine of *res ipsa loquitur* will apply only when there was no evidence to lead the court to the conclusion, with regard to the incident for the purpose of fastening the liability and finding who the defaulting party was. [1986 ACJ 405 (Alld.)]

Act of God Vs. Negligence

A driver attempted to cross a bridge overflowing with knee-deep water, as the river was in spate due to adverse weather condition. [1994 ACJ 116 (Madras)] The bridge collapsed and the bus was washed away causing death of the passenger. It was held to be negligence of driver for not taking due precaution while driving and it could not be accepted as an Act of God.

Defences against Negligence

An allegation of negligence may be rebutted by the following defences:

Volenti Non-fit injuria

This means that if a person voluntarily consents to run the risk, the question of negligence does not arise. This defence may arise in passenger liability claims. When a person has, of his own willingness and consent decided to become a passenger in a

public service vehicle, then he cannot complain of matters ordinarily incidental to traffic to which the vehicle will be exposed.

Inevitable Accident

Inevitable accident is an accident, which occurs despite ordinary care, caution, and skill. The burden to prove inevitable accident rests upon the driver of the vehicle. He must establish the cause of the accident and also that the result of that cause was inevitable.

Act of God

An act of God is a direct, violent, sudden, and irresistible act of nature, which cannot be foreseen with reasonable care e.g., storms, lightning, earthquake, etc.

Emergency

If the injury is caused to a person who has placed himself in a situation of imminent danger to himself, no negligence will be attributed. Sometimes a pedestrian using a road may unexpectedly cause the driver of oncoming vehicle, to take turn to save him, and thereby cause injury to another pedestrian. In such circumstances the driver would be able to raise the *defense of emergency*. He will not be blamed, merely because he does not do the right thing in the circumstances, which are referred to as “an agony of the moment”.

Vicarious Liability

Lord Denning M.R. in [Launchbury vs. Mongray [(1971) 2 QB 245] asked himself the rhetorical question: “what is the basis of this doctrine of vicarious liability?” He proceeded to answer by first replying to “what does ‘vicarious’ mean”? The Shorter Oxford English Dictionary, 3rd Edition 1944, and Vol. 2nd states vicarious means “that takes or supplies the place of another”. ‘Vicarious’

liability, therefore, means that one person takes the place of another so far as liability is concerned.

"The doctrine of vicarious liability has its roots in the early common law but it was not until the time of Sir John Holt (1642-1710) that the development of these rules to meet the requirements of a more modern age began. The judges effectively advanced the task of adaptation of this doctrine during Queen Victoria's regime. Certainly by the turn of this century it was clearly established that the liability of a master was based not on the fiction that he had impliedly commended his servant to do what he had done tortuously, but on the more safe and simple ground, that it had been in the scope or during the course of his employment or authority. Although this relationship of master and servant is by far the most important in which vicarious liability is recognized by the law and it is not confined merely to it. It follows that those for whose negligence a person may be liable must be considered under the following headings" :

- (i) Servants,
- (ii) Agents,
- (iii) His children;
- (iv) Independent contractors.

Master-Servant

A master is liable for the negligence of the servant if committed in the course of his employment, but he is not liable for negligence committed outside the scope of his employment. Lynskey J stated: "*It is well settled that a master is liable even for acts which he has not authorized, provided that they are so connected with the acts which he has authorized, that they may be rightly regarded as modes, although improper modes of doing them. On the other hand if the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be mode of doing it, but is an independent act, the master is not responsible, for, in such a*

case he is not acting in the course of his employment but has gone outside it."

A servant does not cease to act in the course of his employment unless he has plainly gone beyond the bounds. In one sense it may be said that it is never within the scope of servant's employment to commit an act of negligence. In all such cases of negligence it may be said that the master has not authorised the act. It is true, he has not authorised the particular act, but he has put the agent in his place to do that class of acts and he must be answerable for the manner in which the agent has conducted himself in doing the business, which was due to the act of his master who placed him in. If the servant is doing negligently something, which he is employed to do carefully, the negligent act is in the course of his employment and the master is liable. However, in determining whether or not a servant's wrongful act is done in the course of his employment, it is necessary that a broad view of all the surrounding circumstances should be taken as a whole and restricted to a particular act which causes the damage. There is no simple test which can be applied to cover every set of circumstances, so that it remains essentially a '**question of fact**' for decision in each case."

Agent

An agent is one authorised to take on behalf of another, but it is not necessary that there should be a contract with him, as in the case of a servant e.g., friends, spouse or the children of the principal. A principal is liable for the negligence of his agent while acting in the course of his authority. Nevertheless, since a person who either authorizes or procures another to commit a tort is equally responsible for the commission of that wrong every bit, as much as if he had committed it himself. The principal and agent are both jointly and severally liable as joint tort-feasors. A person may be the agent of another so as to make the other liable for his negligence, even if he were a mere volunteer. Indeed, in most of the cases in which the principle has been held liable for the negligence of his agent, the agent has been a volunteer."

Children

A parent as such is not liable for the negligence of his child unless the child is his servant or agent. A parent, however, is liable for his own negligence and he is under a duty to exercise such control over his children as a prudent parent would exercise. The *age of the child is a material factor* to be taken into account.

Independent Contractors

Generally an employer is vicariously liable for the negligence of an independent contractor or his servants in the execution of his contract. Unquestionably no one can be made liable for an act of breach of duty unless it be traceable to himself or his servants, in the course of his or their employment.

Exceptions

Denning, L.J. stated that “I take it to be clear law as well as good sense that, where a person is himself under a duty to use care, he cannot get rid of his responsibility by delegating the performance of it to someone else, no matter whether the delegation is done to a servant under a contract of service or to an independent contractor under a contract for services.” Even so in these cases the employer is not liable for the ‘**casual or collateral negligence**’ of the contractor or his servants. But if he knew or ought to have known of existence of a danger created by his independent contractor an employer would become liable. (Charlesworth on Negligence 5th edition).

Thus it can be seen that ‘vicarious liability’ arises not merely where a master-servant relationship exists, but also where the liability is cast in other circumstances also for the negligence of other than those who are made liable.

Joint tort-feasor in Motor accident

Both the owner and driver are joint tortfeasors. In motor accident the primary liability is that of the driver and once the driver is found negligent, the owner is vicariously liable, and liability of insurance company is an imputed liability contemplated statutorily. In other words, the liability of owner and driver being joint tortfeasors is joint and several and applicant is entitled to recover the compensation from driver too. In a case where the joint tort feasors were held to be at fault, it was held that apportionment need not be made as liability was joint and several. [(The Oriental Insurance Co. Ltd. Vs. Pappu Servai) 2007 (2) TN MAC 73 (Mad)]:

Latent Defect

On the question of negligence it is often pleaded by the tortfeasors that the accident was not caused by their negligence but due to latent defect in the machine. However by a series of decisions it is by now settled that where such a plea is raised the **burden is squarely on the party thus pleading to prove the latent defect.** Not only this, it is incumbent on them to prove that **they had regularly maintained the vehicle** and repaired it and in spite of such reasonable care, latent defect persisted and the accident ensued. Thus the burden is cast and escape route to a tortfeasor is hindered.

Contributory Negligence

Where an accident is caused due to the negligence of both the parties, substantially there would be contributory negligence and both would be blamed. Where two vehicles collide the apportionment at 50:50 would be fair [2008 1 TN MAC 177 (Mad)]. In a case of contributory negligence, the crucial question on which the liability depends relates to whether either party by exercise of reasonable care, has avoided the consequence of other's negligence that would be liable for the accident.

In order to hold that there was contributory negligence, there must be positive and credible evidence adduced by the respondents. [(TNSTC Ltd v M.Ramesh) 2007 (5) MLJ 350 (Mad).]; In a case, vs. the injured was riding TVS 50 and was hit by a Transport Corporation Bus from behind, there was no contributory negligence held in this case. [2008 (1) TN MAC 238].

If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a person who has materially contributed to the damage, the act of omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning.

Travelling On The Ladder Attached

The injured was '*travelling on the ladder attached*' to the bus on the rear. The apportionment was made on negligence at 30:70 between the driver and passenger. Interestingly, the insurer of the bus was held not liable, as the injured was not a passenger. [(Satyawan Vs. Rashid Khan) 2007 ACJ 1396 (P&H)].

Engaged in agricultural operations

The deceased was; engaged *in agricultural operations*', using the public road as thrashing floor, when the accident occurred. It was held that there was an element of contributory negligence in such conduct and hence the award was reduced by 30% for such contribution. [(TNSTC Ltd. Vs. Poomalai) 2007 (4) LW 614 (Mad).]

Head jutting out'

And where the passenger had his '**head jutting out'** and there was an accident with a colliding vehicle, liability was apportioned between the driver and the claimant at 50:50. [(Chandra Devi Vs. Diwan Singh) 2007 ACJ 1412 (Uttara)].

The Tribunal found in the claim for the death of a motorcyclist, who was carrying 2 million riders, that the driver had also contributed to the occurrence; however, the finding was reversed in appeal holding that **without any evidence to show contributory negligence it cannot be inferred** from the absence of driving licence for the rider or from carriage of 2 million riders by itself. [(Manjo Bee Vs. Sajjad Khan) 2007 ACJ 737 (MP)];

Where the victim was a 10-year-old girl, it was held that no contributory negligence could be attributed to her. [(Giata Bai Vs. Himachal Road Transport Corporation) 2007 ACJ 1061 (HP)].

In a very peculiar case, the victim had fallen into a well and suffered injuries. He was rescued and rushed to a hospital and while being taken in a taxi, there was a motor accident and he died on the spot. The claim was dismissed on the ground that the death did not arise from the motor accident. On appeal, the decision was reversed. It was held that the claim was tenable; however, since the victim had already suffered injuries by the fall into the well, the award could be reduced by 50% applying the maxim of contributory negligence. [(Jayamani Vs. B.Radhakrishnan) 2007 (3) TLNJ 553 (Civil) (Mad) p : [2007 (2) TN MAC 243].

In the case of contributory negligence, courts have the power to apportion the loss between the parties as seems 'just and equitable'. Apportionment means reduction to such an extent as the court thinks 'just and equitable' having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise.

Contributory Negligence

1. In a case filed under Sec.163-A the court would not be right in apportioning liability on the basis of contributory negligence. [(Ramkanyabai Vs. Unav Transport Co (P) Ltd) 2007 ACJ 2003 (MP)].

2. The finding that scooterist was to blame for the mishap was set aside in appeal on the ground that the driver of the mini bus did not get into the witness box. [(Oriental Insurance Co Ltd Vs. Narayani Modi) 2007 ACJ 1723 (MP)].
3. Application of notional income for an agriculturist was found to be in order- [(Ponnumany alias Krishnan Vs. V.A.Mohanan) 2008 (7) MLJ 269 (SC)].
4. The finding of the tribunal that the rider of the 2-wheeler and the bus driver were guilty at 50:50, was reversed holding that mere exculpation of the bus driver by the criminal court was not a valid circumstance to hold. The finding on contributory negligence was set aside by the High Court. [(R.Duraisamy vs D.Arumguham) 2007 (4) LW 500 (Mad)].

Composite Negligence

"Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence but a case of injury by composite negligence" as described by Pollock.

Negligence is a careless conduct, although there may not be any duty to take care. Negligence also refers to breach of legal duty to take care [(writ under Art.21 of the Constitution of India about right to life, illegal detention) [(Poonam Sharma vs. Union of India), 2004 ACJ 80].

In [Lochgelly Iron and Coal Co. vs. M. Mullan, 1934 A.C.I.] Lord Wright pointed out "*Negligence means more than needless or careless commission; it properly connotes the complex concepts of duty, breach and damage thereby suffered by the person in whom the duty owed*".

Entire case law has been discussed in [2007 (4) ACC 631 (All) (DB)]. In a case of composite negligence, only Transport Corporation Bus was made party, the other Private Bus was not impleaded. It was held that Transport Corporation cannot complain

about finding on negligence. [2007 (2) TN MAC 563] In another case, it has been held that where, both the vehicles were insured with the same company, each need not be impleaded twice over as both are liable jointly and severally. As the insurer on the insurance policy gave no evidence, hence the insurer was held liable. [2007 (2) TN MAC 510 (Mad).].

In case of head-on collision if one of the drivers does not enter the box, then the finding that only one driver was at fault is correct. [2007 4 ACC 123 (MP)]. In a case of head-on collision the apportionment of liability equally between the drivers was upheld. [(Gujarat State Road Transport Corporation vs. Hargovinddas R. Modi) 2007 ACJ 1198 (Guj)]. In another case it was found that there was a collision between a tractor and a van and in the prosecution launched against the tractor driver he had chosen to admit his guilt. In the said circumstances, the finding that both drivers were to blame was set aside and the tractor driver alone was held to be at fault. [(Oriental Insurance Co Ltd vs. Vijaya) 2007 ACJ 2105 (Mad)]

Principle of apportionment of liability in composite negligence

Apportionment on the type of vehicle

In case of composite negligence two vehicles are involved and the injury/death is sustained by a third person. The negligence is apportioned on the basis of the type of vehicle involved. The proportionate liability in case of two similar vehicles may be 50% on each vehicle.

Apportionment of liability in a case of composite negligence was held to be improper. [(Kusumben Vipinchandra Shah vs. Arvindbhai Narmadashankar Raval) 2007 AIHC 2392 (Guj)]. In a case where the joint tort feasors were held to be at fault, it was held that apportionment need not be made as liability was joint and several. [(The Oriental Insurance Co. Ltd vs. Pappu Servai) 2007 (2) TN MAC 73 (Mad)]: In a case of composite negligence, there is no

question of apportionment of liability at 50:50, as liability is joint and several- [2007 4 ACC 58 (MP) (DB): 2007 4 ACC 117 (MP) (DB)].

In case one of the vehicles is a heavy vehicle and the other is medium transport vehicle, the apportionment may be 60%-40% respectively. In case one of the vehicles is heavy and the other vehicle involved is light motor vehicle, the apportionment may be 70%-30%. It may further reduce to 80%-20% for heavy vehicle vis-à-vis two wheelers. In one case the liability between the drivers was apportioned at 75:25. [(Sumitra Sana vs. Ramsakha Chourasia) 2007 ACJ 1718 (MP)]. There was a collision between a bus and lorry and it was held in appeal that since in the connected claims both drivers were held to be at fault, the finding should be the same in other connected claims too. Liability should be apportioned between the two drivers at 50:50. [(S.Palaniswamy vs. Chinnakali) 2007 (2) TN MAC 147 (Mad)].

Liability was joint and several

When two vehicles collide, that only one driver was prosecuted is not material, the apportionment was made at 50:50 [(NIC vs. P. Murugan) 2008 (1) TN MAC 366 (Mad)]. Where two vehicles were involved in the accident and only one vehicle was impleaded and both drivers were found to be at fault at 50:50, the claimants were held entitled only for 50% since they had failed to implead the other vehicle. [(Kuldeep Singh vs. Indrajeet Singh Kohli) 2007 ACJ 2383 (Uttara)]. Where, the Claims Tribunal had held that both drivers were at fault and had apportioned the liability on appeal by one of the judgment debtors, the High Court had chosen to hold the appellant liable for the entire award, ignoring the fact that the other respondent had acquiesced in the finding. On appeal, the Supreme Court reversed the order of the High Court and restored the finding of the Tribunal. [(Administrator, BSRTC vs. Ranjana Majhi) AIR 2007 SCW 249].

In another case the Claims Tribunal has held that the accident was due to truck and tempo drivers with both equally to blame. But since the '*tempo was not insured*' it directed the truck driver to pay the entire award and seek recovery from the tempo owner for

50%. On appeal, the High Court set aside the order holding that such direction was incorrect as no indemnity was available to the owner of the tempo. [(New India Assurance Co Ltd vs. Ashif Pasha) 2007 ACJ 2151 (Kant)]. However, in another case the deceased was a cleaner on one of the trucks involved. The claim was against one of the trucks only and the other was not impleaded. The tribunal chose to apportion liability at 50:50 and awarded 50% of the award only, since the other truck was not impleaded. The High Court set aside the order ruling that in a case of composite negligence, the choice to sue either or both was with the claimant and as such the claimant was entitled to 100% from the impleaded truck and it was for this truck to seek reimbursement, if any, from the other truck in separate proceedings. [(Mayaram vs. Mehboob) 2007 ACJ 918 (MP)]: [(Nani vs. Soma La) 2007 ACJ 1163 (Raj)].

A Full Bench decision of the Karnataka High Court in [2000 ACJ 1463] was not brought to the notice of the Single Judge at Supreme Court. In that decision it was held that in case of composite negligence, liability being joint and several, notwithstanding such apportionment, it was permissible for the claimants to execute the entire award against either of the tort-feasors. It was held that where the claim was lodged against only one of the tort-feasors, the Tribunal was not bound to apportion liability, as it would be an exercise in futility. [(Uttar Pradesh State Road Transport Corpn vs. Rajani) 2007 ACJ 1771 (All)].

Principle of Apportionment for passenger vehicles

Where a passenger vehicle is found overloaded and the number of claimants exceeds the seating capacity of the vehicle as per R.C. Book, the insurers are required to pay to the extent of permitted seating capacity, by choosing the highest awarded amounts of claims, which is distributed amongst all the cases equally. The method of distribution of compensation among passengers may be prescribed in the policy as propounded by Justice K. Sreedhar Rao Judge High Court Karnataka [*refer Compendium of Medico-Legal Information for easy settlement of Motor Accident Cases in*

Lok Adalat by Justice K. Sreedhar Rao Judge High Court Karnataka, Some tips for Lok Adalat edition 2000].

Liability under Workmen's Compensation Act 1923

Where the injured or deceased is a workman as per definition under Workmen's Compensation Act 1923, the liability of the insurer to pay compensation is limited to the liability as prescribed under Workmen's Compensation Act 1923, unless there is a wider coverage under Package Policy.

In [Pushpabai vs. Ramotibai 2002 (&) ACJ 1341 (MP)] the co-owner died in a tractor accident. He was engaged as driver of the tractor & was getting salary. It was held that the insurance company was not liable, as the co-owner was being employed as driver and as such he does not cease to be co-owner.

Contributory and Composite Negligence

While dealing with aspects of negligence, the Courts have often come up with distinction between 'composite' and 'contributory negligence'. Contributory negligence would arise where the plaintiff himself had contributed to the occurrence of the accident. Where the plaintiff had no involvement in the accident but the accident was caused due to the combined negligence of the other two persons then it would be a case of composite negligence. "If due to the negligence of A and B, Z has been injured, Z can sue both A and B for the whole damage.

There is a clear distinction between 'contributory negligence' and 'composite negligence'. The composite negligence liability is joint and several. [(T O Anthony vs. Karvarnan) 2008 (3) SCC 748]. In [(APSRTC vs K.Hemalatha) 2008 (5) MLJ 1171 (SC)]: [2008 (7) Supreme 243].

But the term contributory negligence applies solely to the conduct of the plaintiff. It means that there has been an act or omission on

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his part, which has materially contributed to the damage. But in case of composite negligence the plaintiff himself has no hand in the occurrence of the accident."

The difference between the two is of great importance in motor accident claims. If it is a case of composite negligence then no reduction in compensation payable to a claimant would occur whereas, in contributory negligence the claimant's compensation would be reduced in proportion to his share in the negligent act.

When it is composite negligence, there is the added question, whether apportionment of compensation needs to be made between the tort-feasors in the ratio 50:50 or in the ratio of their shares in the negligent act. It needs to be emphasized that composite negligence would mean joint and several liability to the tort-feasors. The claimant would be at liberty to sue either of the joint tort-feasors or both of them, if he so chooses. The joint tort-feasor would be liable for the entire compensation.

However, there are umpteen number of cases where even in a case of composite negligence apportionment has been made e.g., in [1982 ACJ (Supp.) 543 (Mad.)(DB)] the compensation payable to claimant was apportioned in the ratio of 60:40 in terms of shares of the joint tort-feasors in the accident. However, one finds no reasoning in this decision as to why such an apportionment ought to be made.

On the other hand, in [1969 ACJ 34 (Mad.)] a Division Bench had dealt with this aspect and held that liability being joint and several, the joint tort-feasors would be liable for the entire claim and it would be for the claimants to choose against whom he would execute the claim. [Refer (Devaki Nandan Bangar vs. State of Haryana), 1995 ACJ 1288(P.H)]; [(Oriental Insurance Co. Ltd, vs. Narendra Kaur and ors).2002 ACJ 1716(P.H); (Narendra Pal Singh vs. Punjab State,) 1989 ACJ 728(P.H)];

As to apportionment of inter se liability refer to [in (Sushilanand & Ors. vs. Rajendra Prasad) 2002 ACJ 167(M.P)] there was collision between a jeep and a truck coming from the opposite direction

resulting in the death of two passengers. It was held that the accident occurred due to the negligence of both the drivers and the quantum of compensation had to be contributed by both offending vehicles, and that as the owner and insurer of truck were not known, owner and insurer of jeep were directed to pay half of the computed amount of compensation [Pagidimari Suvarna and ors. vs. Kota Venkateshwaralu & anor. 2002 ACJ 726 (A.P)].

Another argument is that since the joint tort-feasors have the right to claim indemnity in regard to their share in the negligent act, to avoid multiplicity of proceedings, the Courts could apportion compensation as a general rule. But even this argument suffers from lack of precision for the principle of joint and several liabilities cannot thus be enunciated. In any case the Courts may be inclined to fix the share of the tort-feasors in the negligent act but not actually apportion the compensation. The claimant would be at liberty to sue either of them or both for the entire award and the party paying up the entire amount would then be entitled to claim indemnity from the tort-feasor in proportion to the share of the other in the negligent act.

Though contributory and composite negligence are different as chalk and cheese one finds that they are used without reference to the meaning attached to it. Contributory negligence would arise in a case where the claimant had a hand in the accident by reason of which the claimant would suffer a reduction in the compensation payable in proportion to the contribution. While so, in a case of composite negligence, the claimant would have no hand in the occurrence. As such the liability of the joint tort-feasors would be joint and several and the claimant would be at liberty to proceed against either or both the tort-feasors. This aspect is crucial as one repeatedly observes the defence plea that the claim was bad for non-joinder of the other party. In a case of composite negligence the choice is vested with the claimants to proceed against either of the tort-feasors or both, as they deemed fit and there was no compulsion on them to implead both parties [State of Tamilnadu Vs. P.K. Anandan - 1982 ACJ 358 (Mad)]. This would also help victims involved in an accident where they may not be able to identify one of the vehicles.

The distinction needs to be well understood for the good of the Motor accident victims. In a case of composite negligence the need for apportionment has also contributed to a lot of case-law. While some decisions have chosen to hold that there was no need to apportion liability as in [(K. Gopalakrishnan Vs. Sankaranarayanan) - 1969 ACJ 34] as liability was joint and several, there are others which have held that the Court had a duty to apportion liability because it was enjoined to do so by virtue of (Sec.110-B of 1939 Act) now Sec.168 of MV Act 1988 as the Court had to fix the shares of driver, owner and insurer. Further contention is that such apportionment would dispense with the need for further litigation to fix inter se liability and thus avoid multiplicity of proceedings. Even while apportionment was made, the Courts were duty bound to observe that the claimants could execute 100% against either and there was no compulsion to execute the award only at 50:50 etc. In a given case, if two vehicles were involved and one was not insured, it would mean a lot to the interests of the victims. If the Court were to hold that apportionment was 50:50 and the claimants did not have the right to proceed for 100% against the insured vehicle, then the claimants may be left in the lurch, with no hope to realize 50% of the award. If, on the other hand the Court holds that notwithstanding such apportionment, it was open to the claimants to seek 100% from either of the parties, the interests of the victims would be well guarded. It would be for the party paying up the entire award to seek contribution from the other. The ultimate decision on this point is available in [(Ganesh vs. Syed Munned Ahamed) - 2000 ACJ 1463] wherein the Full Bench of the Karnataka High Court after advertizing to every decision under the sun and had concluded as explained above

Sovereign Immunity

When a motor claim is lodged against a State, the plea of sovereign immunity is being raised rather monotonously. The Supreme Court as well as High Courts in India have almost uniformly deprecated the tendency of the State to raise such a plea, which dates back to the long gone British era, a practice which even the British have

now rendered abandoned. The crux of the reasoning offered by the Courts is that the State would be entitled to raise the defence successfully only where it can prove that the function in which the vehicle was involved was an exclusive sovereign function in which no private individual could have been engaged. If the act, during which the accident ensued, could be accomplished by a private individual, then the plea of the sovereign immunity falls flat. Even where military trucks are involved, the plea is not allowed to be successfully agitated as it must not be.

Effect of Criminal Trial

Apart from these essentials on negligence one also has to consider the effect of the criminal trial before the Claims Tribunal. As the degree of proof required for Criminal trial is higher, the decision of the criminal case would not have direct bearing on the outcome of Claims Tribunal. However if the driver voluntarily pleads guilty, it would be *prima facie* proof of negligence.

Though a plea of guilt rendered before the Criminal Trial, on a similar analogy cannot be of a great significance, it would be relevant while fixing the liability for the accident before a Claims Tribunal. It is a settled law that the proceedings before a Criminal Trial are not binding on the Claims Tribunal as held in [1980 ACJ 435].

Effect of Conviction

Several times one finds that drivers plead guilty before the Criminal Trial and declare later that they were actually not guilty, but they had pleaded guilty only to save time and hassles of attending the Criminal Court they had pleaded guilty. The Courts do not accept such specious explanations. In fact even in cases where the burden is on the insurer to prove that the driver of a vehicle did not have a driving license or was disqualified from holding or obtaining a licence, the Courts have held that the driver's pleading guilty to the charge of non-possession of driving license does not give any chance to the insurer to escape liability. The acquittal of driver will

not exonerate the owner of the statutory liability under MACT and the latter would have to independently arrive at its own conclusion for affixing the liability.

The law on the subject is thus well laid out and the claimant's chances of sustaining a claim for compensation are made relatively easy though the initial burden is on them to plead and prove negligence. The approach of the Claim Tribunals to be oriented against the tort-feasors and evidence construed likewise to enable the accident victims to get the benefit of the benevolent piece of legislation, viz. the enactment of the chapter X & XI of Motor Vehicle Act 1988 itself incorporates compulsory risk insurance cover for third party risks. For a reading of the intended amendment of the legislature, which is vital while dealing with a motor accident claim refer [1987 ACJ 411].

On the inference of negligence from the facts in any given circumstances Halsbury's Law of England 4th edition, Vol. 34 says that: "*the nature of an accident may be such that the mere happening of it is evidence of negligence. Examples are where a motor vehicle without apparent cause leaves the highway or overturns or in fair visibility runs into an obstacle, or is suddenly and violently brought to a stand still, or swerves, or brushes the branches of an overhanging tree. Similarly it is prima facie evidence of negligence that a vehicle should collide with a street refuge or endanger pedestrians on the pavement either by mounting it or overhanging and sweeping across it. A prima facie case of negligence by inference from the circumstances is not displaced merely by proof of skidding unless the skid is shown to have happened without fault on part of the driver.*"

Effect of Acquittal

The plea that criminal case has resulted in the acquittal and that the Tribunal must follow suit, was rejected in [N.K.V.S. Bros (P) Ltd vs. V.S.M. Karumari Ammal 1980 ACJ 435 (SC)]. The requirement of culpable rash and negligent driving is essential for the purpose of awarding compensation by the Tribunal and this right is not prejudiced by the acquittal in criminal case.

Disability in Non-Fatal Cases

This chapter defines disablement, difference between permanent disability and permanent physical impairment. The chapter further gives broadly the methods of evaluation of disability in reference to loss of earning capacity.

Disablement

The two most important inventions of mankind are creation of Fire and invention of the wheel. Unfortunately both are as against all other causes as the two biggest causes of human suffering, loss of life and limb, accounting for more loss of life than that inflicted by the two World Wars together. Among the aforesaid two, later invention of wheel has become the single largest cause of concern to all countries across the world due to increasing road traffic accidents. In India we have over one million deaths and 4 million disabilities every year and Insures are bleeding due to ever increasing liabilities fastened on them by statute. Therefore, it has become vital to determine disablement and its impact on compensation paid to accident victims.

According to Dr. Henry Kessler, the term 'disablement' denotes a physical defect or impairment and the resultant social and economic status of the affected individual. Disability is a negative term, referring to ones inability or incapacity to meet certain standards of physical efficiency &/or social, economic occupational or economic responsibility. The basic feature of the disabled individual is a physical defect or impairment. The defect implies permanent

restriction of activity. A misconception creeps in this context in regard to 'normal' person.

It is usually and incorrectly used as a synonym for the word '*perfect*', though '*normal*' is a wider range. In fact a person who meets all the requirements and who can do all the work that all the jobs would require, would be perfect, but he could be abnormal. Similarly another factor affecting an individual is the '*emotional component*' of the illness, which is difficult to be quantified.

Therefore, while trying to assess the extent of disablement, medical and non-medical criteria need to be considered. It is true that basic component in disability determination is physical examination, but it does not take in account the victim's undisturbed functions.

An important effect of physical impairment while estimating compensation, is the economic loss i.e., *loss of earnings*, which affects future wage earning as a result of impairment. It has been noted that in the case of reduction in work capacity to about 40%, the majority of persons had not suffered loss in earning capacity and even a significant percentage of disabled person with higher degree of incapacity had no loss of earnings whatsoever.

Disability in Non-Fatal Cases

A judicial officer is required to evaluate the non-medical criteria. He has to have personal occupational experience to be able to evaluate the social, economic or vocational result of the physical or mental impairment. He has to weigh the evidence and sober the self-serving declarations of the claimant supplemented by expert information from accredited sources. All India Bar Association has mooted 7 years composite course of medical with legal education to obviate this state of affairs. (TOI 02-10-2008)

The physician's role in cases of accidental disablement is to assess the ***physical impairment*** of specific function of limbs and spine and ***mental impairment*** in case of head injury. It has been found that most head, chest and abdominal injuries (i.e., cavities) rarely

leave behind significant impairment, and in the case of limbs one need to closely scrutinise correctly the economic loss sustained.

Definition of disability

Disability is defined as “state of being disabled; absence of competent physical, intellectual or moral power of fitness or the like.”

Medically disability is considered as physical impairment and inability to perform physical functions normally.

Legal disability is permanent after the effect of injury to the body, for which the person may or may not be compensated.

Temporary total disability is that period in which the injured person is totally unable to work. During this time he receives orthopaedic or other medical treatment.

Temporary partial disability is that period in which recovery has reached the stage of improvement so that the person may begin some kind of gainful occupation.

Permanent disability applies to permanent damage or loss to use of some part of the body, after the stage of maximum improvement has reached from orthopaedic or other medical treatment and the condition is stationary.

Distinction between permanent disability and permanent physical impairment

Permanent disability is not a purely medical condition. A patient is permanently disabled if his actual or presumed ability to engage in gainful activity is reduced or lost because of impairment and no fundamental or marked change in the future can be expected. On the other hand **permanent physical impairment** is a purely medical condition. It is any anatomical or functional abnormality or

loss after maximum medical rehabilitation has been achieved and which loss the physician considers stable or non progressive or irreversible at the time evaluation is made.

Methods of Evaluation of Disability

'Dr Hugh Smith's scale' of values commonly referred to as ***rule of thumb*** is based on anatomical loss. Dr H Kessler's method is an ***objective method*** of assessing physical impairment, and the rule is based on functional loss and evaluation is made in physical units.

Assessment of permanent impairment can be done only after maximum possible recovery has occurred, and no further improvement is possible and the functional loss has become irreversible.

Appropriate time for assessing Permanent Physical impairment

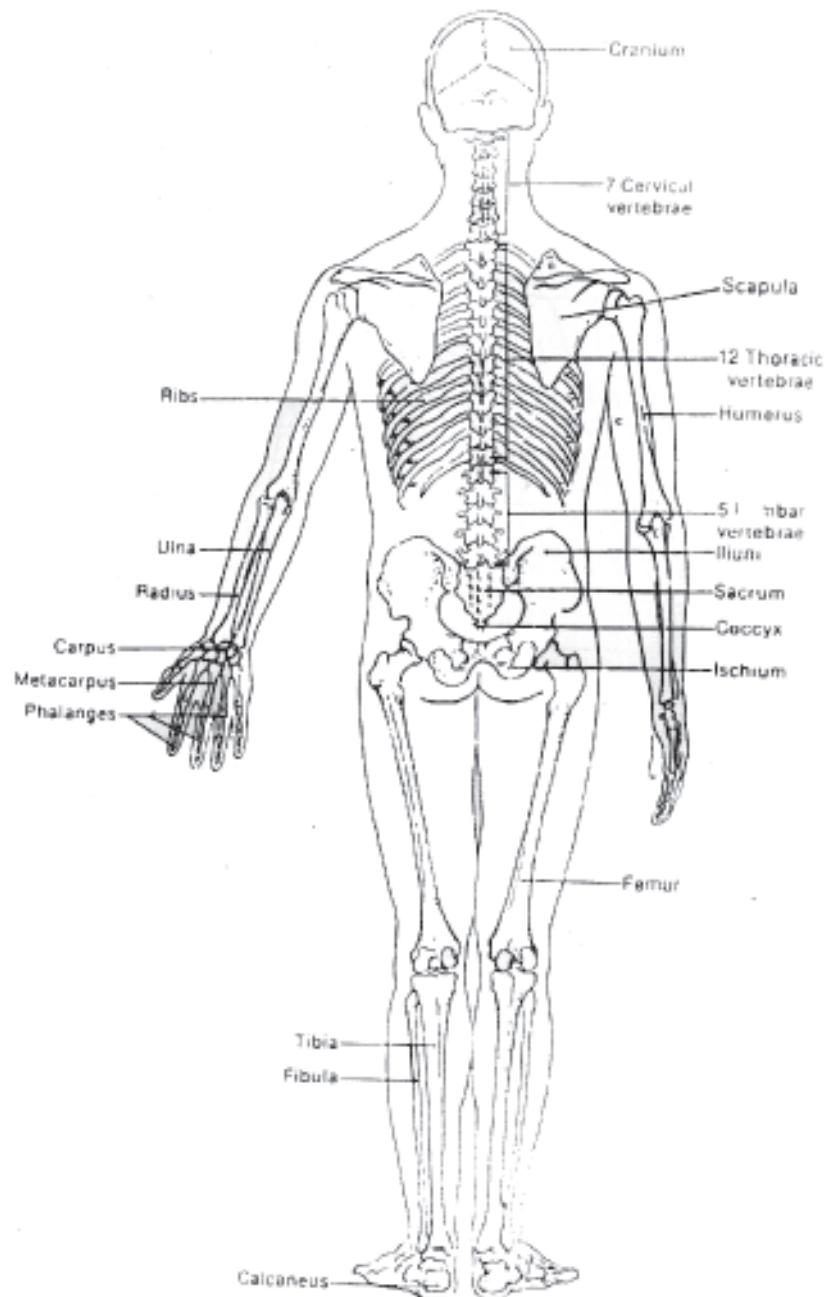
Assessment of Permanent Physical impairment can be carried out only after maximum possible recovery has occurred, while no further improvement is possible, and the functional recovery has occurred while no further improvement is possible and the functional loss, therefore, has become irreversible.

The period varies with different injuries. For most minor fractures this period is around 3 months; for major fractures of the upper limb and the lower leg this is about 6 to 8 months; for fractures of femur this is about 12 to 16 months and for spinal cord injuries and nerve injuries the period is about 18 to 24 months.

Head Injuries

- (a) Injuries to skull resulting in insanity, – 100% impairment paralysis, epileptic attacks, loss of special senses,

Human Body



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- (b) Those resulting in severe headaches – 70% impairment.
with partial paralysis, Loss frequent
epileptic attacks
- (c) Those resulting in vertigo-less severe – 30% impairment.
headaches

Eyes

- (a) Complete loss of vision – 100% impairment
- (b) Loss of vision in one eye – 35% impairment.
- (c) Partial loss of vision in one eye – varies from 0 to 35% impairment.

Ears

- (a) Complete deafness of both ears – 50% impairment.
- (b) Complete deafness of one ear – 10% impairment.

Facial Injuries

- (a) Injuries resulting in functional derangement like:
- (b) Fractures of mandible maxilla causing
- (c) Contraction of mouth opening, partial immobility of lower jaw – 15% impairment.
- (d) Fractures of nasal bone with disfigurement – 7.5% impairment.

Chest Injuries

Reduction in mobility of chest; collapse of lungs,
causing diminished tolerance to exercise, work, etc.

Disability in Non-Fatal Cases

- (a) Mild – 10% impairment
- (b) Moderate – 20% impairment
- (c) Severe – 40% impairment

Genito-urinary organs

Structure of Urethra which often follows :

- (a) Fractures of pelvis either due to infection or ruptured urethra – 15% impairment
- (b) Loss of male organs under the age of 50 years – 30% impairment
- (c) Loss of both testicles at an early age – 50% impairment

Injuries to vertebral column

- (a) Compression fractures of vertebra with resultant painful stiffness but no neural deficit – 50% impairment.
- (b) Acute disc prolapsed with good fusion following surgery – 30% impairment
- (c) Acute disc prolapsed with residual radicular symptoms – 50% impairment
- (d) Complete quadriplegia (paralysis of all limbs) – 100% impairment
- (e) Paraplegia with visceral involvement – 95% impairment
- (f) Partial paraplegia with partial bladder/bowel control – 85% impairment
- (g) Partial paraplegia with good bladder/bowel control – 60% impairment

Upper extremities

The arm and the hand are the two basic anatomical functional units. In order to assess functional impairment of arms, range of motion of shoulders, elbow and wrist joints and strength of muscles acting on these joints are compared with those of the opposite side or with normal values. For the hand apprehension, sensations and grip plus pinch strength are taken into consideration. Values of impairment of arm and hand components are then combined according to Dr. Kessler's combining formula.

A. Amputation in upper Extremities :

(a) Arm Component :

- | | |
|-----------------------------------|-------------------|
| 1. at or above upper third of arm | – 100% impairment |
| 2. At elbow | – 95% |
| 3. At wrist | – 90% |

(b) Hand Component:

- | | |
|-----------|------------------|
| 1. Thumb | – 36% impairment |
| 2. Index | – 22.5% |
| 3. Middle | – 13.5% |
| 4. Ring | – 13.5% |
| 5. Little | – 4.5% |

B. Fractures of Clavicle – Usually not more than 7.5 to 8% impairment

C. Fractures of Scapula – Between 12% to 15% impairment

D. Upper end of Humerus – Between 15% to 20% impairment

E. Shaft of Humerus – Between 18% to 20% impairment

F. Elbow – Between 20% to 30% impairment

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- G. Forearm Bones – Between 18% to 22% impairment
- H. Wrist – Between 15% to 25% impairment

Lower extremities

Function of lower extremities is different from that of upper extremities. In the former case it is ambulation and stability in the latter case it motion and pretension. For evaluating impairment in lower limbs, the range of motion of hip, knee, ankle-muscle, power of muscles acting on those joints and ability of the limb to bear the body weight are taken in to consideration.

- A. Amputations:
 - 1. Ankle – 25%
 - 2. between ankle and 3" below knee – 45%
 - 3. between 3" below knee to 8" below hip – 65%
 - 4. between 8" below hip to 4" below hip – 85%
 - 5. above 4" below hip – 100%
 - 6. Through Fore foot – 15%
- B. Fractures of pelvis – Between 10% to 20%
- C. Upper End of Femur – 100%
- D. Shaft of Femur – Between 20% to 30%
- E. Fractures around Knee – Between 20% to 30%
- F. Shaft of Tibia & Fibula – About 20% to 25%
- G. Around Ankle – 15% to 25%
- H. Foot – 10% to 15%

Values of impairment mentioned above are commonly seen after proper medical treatment of the fractures. Very often, the injuries are complicated by their compound nature, vascular and neural injuries, infection, multiplicity of injuries and are complicated by their compound nature, vascular and neural injuries, infection, multiplicity of injuries, etc. and hence the final values of impairment may be much higher than those mentioned above.

Concept of “Whole Body” & “Extremity”

The popular misconception with respect to the whole body is that any value of impairment obtained has to be halved to obtain value of the whole body. This originates from the fact that Dr. Hugh Thomas in his “Rule of Thumb” has stated that value of impairment obtained for any extremity has to be half of whole body as we have two upper extremities and lower extremities. However, Dr. H. Kessler offer's a non-rational and logical explanation for the same. According to him, each part of the body is equally important and carries a value of 100%. At the same time, the value of the whole body is also 100%. Therefore, if a person has 25% impairment of upper extremity and 50% of lower extremity, then his permanent impairment of whole body would be 62.5% and not 37.5%. This is arrived as per **Rule of summation** as given below:

Body Value	— 100%
Lower extremity impairment	— 50%
Therefore, value of rest of the body	— 50% (100-50)
Hence, 25% impairment of upper extremity is	— 25% of 50% and not 100% i.e.12.5%
Thus total impairment	— = 50%+12.5%=62.5%.
Stated simply, one can combine several such values sequentially by Dr. H. Kessler's formula...	— $a+b/(100-a)$, $a > 100$

The final value would never be > 100%.

However, in courts & elsewhere, the standard practice is to halve the impairment value of the extremities. For other injuries viz. head, chest, spine, etc., the value obtained is taken as the impairment value of whole body.

Upper Limb's Function

The upper limb's function is to carry the hand and place it in the required position i.e. for eating, grooming, protection, aggression and performing work. For this, it depends on length, power and range of motion. The hand has special function – pincer, vise, damp, paddle, mader and pointer. It also acts as a sensory organ.

Paired organs

The lower limbs are paired organs and should be so considered. The functions are to support the body and move it from place to place i.e. it has to support power and locomotion. The terms of reference are: length (equally of both legs), power to hold, lift and move the load, stability of joints, and alignment of limb and range of movement.

The function of the spine is to serve as a central column of support for the trunk and as an ultimate attachment of the upper and the lower limb. It is also a protective housing for the spinal cord. As regards head injuries, the consequences of head injuries with which we are concerned here are :

Glasgow Outcome Scale

Dead

Vegetative state — Sleep/ wake but not s—

Severely disabled — Conscious but not dependant

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Moderately disabled — Independent but disabled

Good recovery — May have minor sequelae

Moderate disability covers handicaps like persisting dysphasia, cranial nerve pulse or epilepsy while good recovery indicates the capacity to resume previous work and leisure activities, but there may be mild residual sequelae.

Severity of injury happens to have a lot of bearing on the ultimate outcome and this is decided by factors viz. conscious state, fracture, focal neurological signs, epilepsy, Haemotoma, meningitis, coma and post-traumatic amnesia. Good recovery after several injuries is too well known. As a rule, most head injuries are mild and whatever is done, the patients make a good recovery. Altered consciousness (i.e. coma, etc) indicates diffused brain damage.

Focal neurological science indicating local damage, are found in only a minority of cases. Many patients with a skull fracture have no clinical evidence of brain damage and an X-Ray of the skull is a useful triage tool for admission, further investigation or a neurological consultation. Over 90% of patients coming to the hospitals after head injury ultimately recover to be able to walk and talk in a normal manner. Many do not need ever to come to the hospital if the risks have been more realistically assessed.

It has been observed that only 2% of Head injury patients have skull fracture and almost all the complications occur in these patients only. Scalp lacerations are a feature in half the cases, and if there is no under line fracture, stitching them up, is all that is required. Even in patients admitted to the hospital, full recovery occurs after mild injuries in 3 or 4 weeks. Concussion is only termed so, if there is at least a period of loss of consciousness, and the symptoms that follow are labelled as post concussional syndrome.

Lawyers press their clients to recall in detail all their complaints, many of which the doctor is trying to minimise, thus reducing their self-suggestion. It has been a wide experience that symptoms vanish once a settlement is completed.

As regards the trunk (i.e. the thorax and abdomen), rib fracture if not causing flail segment, does not cause any significant disablement. A flail segment is caused when there are more than 3 to 4 ribs involved in multiple fractures and a part of the chest was moved paradoxically. Solitary rib fractures are clinical diagnosis and tend to resolve completely. Suture lines or scars on abdominal walls are cosmetically important for those who need to show their abdominal contours unclothed. The biological safety factors allow a person to live without any problem, on a single kidney, about half the length of intestines, a part of their stomach and after attaining adulthood, even without the spleen with little risk of any adverse effect. Except for the extremely rare cases, which develop severe abrasions after a stormy recovery from an infected laparotomy, few laparotomies leave behind significant disabilities. Liver tears once repaired, and haemoperitoneum, once ravaged, can be all but forgotten.

In the case of the spine, neurological residue defect is of significance. Neurological defect may range from numbness or slight weakness to paralysis. However, this occurs only when vertebral bodies and their posterior elements have suffered significant damage. Less than 25% compression of the body of the vertebra does not leave behind any disablement. Similarly, where transfer process alone is involved without the involvement of body or posterior elements, no disablement results.

There are certain basic rules i.e., all fractures do not result in disablement; ribs and transverse processes of vertebra are the most outstanding examples of this rule. As against this, very rarely, disablement may result even in the absence of fractures, if the soft tissue damage is very grave. In the absence of damage to bones, muscles, tendons, nerves, contractures and adhesives, disablement cannot result i.e. CLWs and abrasions alone cannot, as a rule cause disablement.

Rule of summation

The limbs have each a value of 50% of the body as a whole i.e., one half of the value is taken. Anatomical loss due to shortening is

nil for first $\frac{1}{2}$ inch and 2-1/2% for $\frac{1}{4}$ inch. In anatomical losses for different segments or limbs, rule of summation is applied. It is essential to have a common frame of reference when combining these values. The rule of $a + b - ab/100$ makes sure that the total value of all disablement can never exceed 100%.

To convert these and other less exact data to %, it is always pertinent to ask. How much better is the loss compared to an arthrodesis? (an existing disabled limb, as a rule, is better than an amputation).

Assessing for the upper limb

For assessing the upper limb, range of movement, strength of muscles and coordination control are considered. The arm component is only auxiliary to the hand component, an amputation resulting in loss of the whole hand (i.e., at a level above the wrist) would result in 90% loss of that upper limb. Where the amputation affects the dominant extremity, 5% is added as '**factor of dominance**'. The thumb represents 40% of the hand. The disability left behind after various fractures in the upper extremities approximately is as given in the table below :

Clavicle	0-10%	Scapula	15-20%
Humerus – surgical neck	10-33%	Around elbow	10-40%
Humerus – anatomical neck	10-40%	Forearm	10-30%
Humerus – tuberosities neck	20-40%	Wrist (in most cases)	5-33%
Humerus – shaft	10-15%	Carpal bones	12-40%
Metacarpals	0-5%	Phalanges	variable

In cases of dislocations, 80% of the cases result in complete recovery or mild limitation of motion.

Evaluation of Impairment of lower extremities

In evaluation of Impairment of lower extremities, mobility, range of

Disability in Non-Fatal Cases

motion of joint, muscular strength and coordination are assessed. For amputation prostheses compensate very well for below knee cases. The disablement varies from 100% proximal third of femur to less than 1% for each of the four smaller toes. Ankle causes 25% loss of extremity, between ankle and knee 45% and below knee to above knee 65%. The usual figures for disabilities following fractures are :

Pelvis	5-15%
Femur-neck	10-25%
Femur interchanteric	5-25%
Femur greater trochanter	5-20%
Femur lesser trochanter (rare)	10%
Shafts	5% onwards
Lower leg –tibia alone	10-30%
Lower leg –fibula alone	5-30%
Lower leg –tibia and fibula	10-45%
Acetabulum	
Dislocation of hip (uncomplicated)	NIL
Knee (except tibial spine)	15%
Patella	0-5%
Ankle	5-40%
Talus	20-40%
Tarsus	5% onwards
Metatarsus	Less than for tarsus

Phalanges fractures alone leave behind very little impairment. As regards the faculties of hearing and vision, total deafness is 50% and loss of hearing in one ear is 10% impairment. For vision, it is 100% for complete blindness and 30-35% for blindness of one eye.

Loss of Earning Capacity

Loss of earning capacity is not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In one case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity.

Interest is payable under Section 4-A(3) if there is default in paying the compensation due under W.C. Act 1923 within one month from the date it fell due. The question of liability under Section 4-A was dealt with in [Maghar Singh vs. Jashwant Singh (1998 (9) SCC 134)]. By amending Act, 14 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest being simple interest @ 12%.

The starting point is on completion of one month from the date on which it falls due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, the question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A of W.C. Act 1923. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due." Significantly, legislature has not used the expression "from the date of accident." Unless there is adjudication, the question of an amount falling due does not arise.

Principles of Damages

This chapter explains principles governing determination of compensation, general damages and special damages, disability determination in non fatal cases and death cases and insurer's liability to pay interest.

Principles Governing Determination of Compensation

A man is not compensated for the physical injury. He is compensated for the loss, which he suffers as a result of that injury. There is no compensation available for sentimental agony, no damages for heart's anguish, and no financial assistance for mental tribulations. The compensation amount should be commensurate with the injuries sustained and the sufferings undergone by the injured claimant. Bodily injury is to be treated as deprivation, which entitles a claimant to damages and the amounts of damages vary according to the gravity of the injury and degree and duration of deprivation.

The Court of Appeal in [Ward vs. James (1965) ALL ER 563] laid down three basic principles governing determination of compensation in injury disablement claims:

1. Principle of Assessability
2. Principle of Uniformity
3. Principle of Predictability

Principle of Assessability

In case of grave injury, where the body or the brain suffer massive impairment, it is difficult to assess fair compensation in terms of money. The ‘principle of assessability’ envisages that the award must basically be a conventional figure derived from experience and from awards pronounced in similar cases, to ensure some measure of uniformity in awards.

Principle of Uniformity

The ‘principle of uniformity’ is of utmost importance in administration of justice so that similar cases are decided uniformly; otherwise, there will be criticism and dissatisfaction in general community and a grievance for causing discrimination. The uniformity in award requires each case to be weighed upon its own individual merit. Since no two cases are alike, awards in comparable cases do enable the Court to seek guidance, not by referring to a particular case and treating it as a precedent, but by looking at general level of damages in similar cases, which would offer predictability by means of comparison of such cases by analogy.

Principle of predictability

The injured parties should be able to predict with some measure of accuracy, the sum that is likely to be awarded in a particular case, as per the basic ‘principle of predictability’ in assessment of compensation. The amount of compensation should neither be inadequate nor token.

The ratio of judicial compensation hinges on the pivotal issues of

- (a) ***Reasonable compensation,***
- (b) ***Uniformity in approach,***
- (c) ***Assessment with moderation.***

Principles of Damages

However, it may be noted that sympathy for the claimant should not be allowed to affect the calculation of damages. The award should neither be punitive or exemplary nor extravagant or oppressive. While assessing damages, the Court must exclude all considerations, which rest in speculation or fancy, though conjecture to some extent is inevitable.

The standard for quantification of compensation must be an objective standard. The following items / heads in personal injury claims are awarded as per AP High Courts decision [1998 ACJ 454 (AP)]

1. Shock, pain and suffering and loss of amenities of life.
2. Injury itself, depending upon the disability, whether permanent, temporary, partial or complete.
3. Medical and incidental expenses
4. Loss of income till the date of petition and from the date of petition till the date of award and future loss.
5. Loss of earning capacity, having bearing on above.
6. Shortened life expectancy.
7. Loss of prospects of marriage, avocation, education, social, economic and cultural opportunities.
8. Loss of beauty due to disfiguration.
9. Disability, physical, mental and social.
10. Medical treatment towards future treatment, if any.
11. Any other depending upon the facts and circumstances of the case.

In case of motor accident compensation claims, award is of two types, special compensation and general compensation. "Damages

which are awarded in the form of compensation to a claimant are of two kinds:

Pecuniary damages, which are also known as special damages. ‘Pecuniary damages’ are generally designed to make good the pecuniary loss, which is capable of being calculated in terms of money.....

‘**Nonpecuniary damages**’ are those which are incapable of being assessed by arithmetical calculation.” [{1983 ACJ 525 (Alld)} Sushila Pande vs. New India Assurance Co. Ltd]

The Court referred to these two elements in the Gobald Motor Service’s case. These two elements were to be awarded under Section 1 and Section 2 of the Fatal Accidents Act, 1855 under which the claim in that case arose. The Court in that case cautioned that while making the calculations no part of the claim under the first or the second element should be included twice. The Court gave a very lucid illustration, as quoted below :

“An illustration may clarify the position.

X is the income of the estate of the deceased,

Y is the yearly expenditure incurred by him on his dependents (we will ignore the other expenditure incurred by him).

X-Y i.e. Z, is the amount he saves every year.

The capitalised value of the income spent on the dependents, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot claim again under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive.

Conversely, if they got compensation (under S.1), representing the amount that the deceased would have spent on them, if alive,

to that extent there should be deduction in their claim (under S.2) of the Act in respect of compensation for the loss caused to the estate.

To put it differently, if (under S.1) they got capitalised value of Y, (under S.2) they could get only the capitalised value of Z, for the capitalised value $Y+Z=X$ would be the capitalised value of his entire income.”

The High Court of Gujarat in the case of [M/s. Hirji Virji Transport & Ors. vs. Basiranbibi (1971) 12 Gujarat Law Reporter 783] referred to all the three judgments of this Court mentioned above, considered the principles laid down in Davies and Nance case and explained the law to be applied for ascertaining the damages in such cases

Pecuniary Damages (Special Damages)

Pecuniary damages are also called special damage or special compensation. These relate to actual financial loss or expenses resulting from accident e.g., medical, surgical and hospital expenses. These damages are to be specifically proved and have to be supported by bills and vouchers. The special damages include the following:

- (a) **Expenses incurred by the claimant** in respect of injury, which may include medical expenses, special diet, and cost of nursing or attendant including loss of earning, or profit up to the date of trial.
- (b) **Loss of earning capacity** may include incapacity to earn in future and also incapacity in the labour market, loss on account of termination of service or discontinuance of any trade, business or profession.
- (c) **Any other material loss, which may require any special treatment** or aid to the injured for the rest of his life.

Non-Pecuniary Damages (General Damages)

Non-pecuniary or general damages are those, which the law presumes to flow from the negligence. These general damages are awarded as monetary compensation for pain and suffering, mental and nervous shock, loss of amenities of life, continued impairment of health, loss of prospective earnings, loss of matrimonial prospects in case of disfigurement etc.:

- (a) **Damages for mental and physical shock, pain and suffering** either already suffered by the claimant or likely to suffer in future. Damages are given for both mental and physical pain and suffering.
- (b) **Damages to compensate for the loss of amenities of life.** It results when the injured is deprived of ordinary experiences and enjoyment of life. e.g., claimant may not be able to sit, walk, run or loss of marriage prospects, loss of conjugal happiness etc. This head of damages were awarded in 1935 for the first time in UK in the case of Flint vs. Lovell, and was upheld in Rose vs. Ford in 1973.
- (c) **Damages for loss of expectation of life : when the injury leads to shortening of normal expectation of life** 'e.g., longevity of the affected person on account of injury.'
- (d) **Other inconvenience, hardship, discomfiture and mental stress in life**

There is a consensus on judicial precedents that when general damages are quantified, the status of a claimant in his life acquires significance. But it is the injury sustained by the claimant, which is material and not his status in life. The injury will cause the same pain, suffering and agony to the sufferer irrespective of the fact whether he is a pauper or prince, young or old.

There is neither a quantitative scale nor any mathematical formula, by which damages for pain, sufferings, loss of amenities of life

and injury to health can be quantified in terms of money. However, broadly speaking assessment of compensation depends on the following features :

1. Nature of injuries
2. Status of person
3. Effect of injuries on the person in future
4. Mental and physical pain that the injured has suffered
5. The age of the injured
6. Replacement of limb
7. Nature of medical treatment
8. The general effect on health and efficiency
9. The effect on marriage prospects
10. Loss of earnings and other allied matters.

Disability in Non-Fatal Accidents

In disability cases, the compensation is awarded to the victim for personal as well as economic loss suffered by him. The damages for personal loss will include general *damages for pain and suffering*, as well as *loss of amenities of life* as mentioned in Para 9.3 above. The principle for compensation in disability cases were enunciated by House of Lords in [West (H) & Sons Ltd. vs. Shepherd (1964) AC 326]

"Bodily injury is to be treated as a deprivation, which entitles a plaintiff to damages and [that] the amount of damages varies according to the gravity of injury. Deprivation may bring with it three consequences, viz., loss of earnings or earning capacity, expenses of having to pay others for what otherwise he would do

for himself and loss of enjoyment of life or a diminution in full pleasure of living: and in considering the deprivation, the court should have regard to the gravity and degree off deprivation, that is to say: whether one or more limbs have been lost, the duration of the deprivation and degree of awareness of the deprivation.”

Madras High Court in [State of Madras vs. J. Appadurai] specified the following three heads:

- (i) Personal suffering and loss of enjoyment of life;
- (ii) Actual pecuniary loss resulting into an expense reasonably incurred by the plaintiff; and
- (iii) The probable future loss of income by reason of incapacity or ‘diminished’ capacity for work.

It was further held that the principle of ***restitution in integrum*** i.e., placing in original financial position was unattainable as a perfect compensation, but the damages are to be assessed on a fair valuation standard on this head.

Basis for loss of earning capacity

The claim petitions in [Civil Appeal No. 5624 of 2006 National Insurance Co. Ltd. Vs. Mubasir Ahmed & Anr] were adjudicated by the Commissioner for Workmen’s Compensation and Assistant Commissioner of Labour, Nizamabad. In order to prove the nature of injuries sustained and the alleged loss of earning capacity, a Doctor was examined as witness. The Doctor, who was examined, indicated the percentage of permanent and temporary disablement, functional disability and loss of earning capacity. These cases related to injuries that were not specified in Schedule I and are as such covered by Section 4(1) (c) Explanation II. In terms of Explanation II the qualified medical practitioner has to assess loss of earning capacity, having due regards to percentage of loss of earning capacity in relation to the different injuries in Schedule I. Explanation I also provides that where there are more than one injury, the aggregate has to be taken so that the amount which

would be payable for permanent total disablement is not exceeded. In order to decide the basic issues Sections 4 and 4-A of the W.C. Act 1923 need to be understood as reproduced below:

Section 4(1) (a): Where death results from the injury an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of twenty thousand rupees, whichever is more;

Section 4(1) (b): Where permanent total disablement results from injury an amount equal to fifty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of twenty-four thousand rupees, whichever is more;

Explanation I: For the purposes of Cl. (a) and Cl. (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of the schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II: Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of Cl. (a) and Cl. (b) shall be deemed to be one thousand rupees only.

(c) Where permanent partial disablement results from the injury (i) in the case of an injury specified in Pt. II of Schedule I, such percentage of the compensation, which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by the injury; and

(ii) In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Motor Third Party Claims Management

Explanation I : Where more than one injuries are caused by the same accident, the amount of compensation payable under this head shall be aggregated but this amount shall in no case exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II : In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule.

(d) Where temporary disablement, whether total or partial results from the injury a half-monthly payment or the sum-equivalent to twenty-five per cent of monthly wages of the workman to be paid in accordance with the provisions of sub-section (2).

Section 4-A. Compensation to be paid when due and penalty for default

Section 4-A (1) Compensation under Sec. 4 shall be paid as soon as it falls due.

Section 4-A (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the event of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be without prejudice to the right of the workman to make any further claim.

Section 4-A (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."

Loss of earning capacity

Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In [National Insurance Co. Ltd. vs. Mubasir Ahmed & Anr supra] the Doctor who examined the claimant also noted about the *functional disablement*. In other words, the Doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, it cannot be sustained in equity.

So far the actual assessment is concerned; there is no set method for assessing compensation in disability. In [Vinod Kumar vs. Ved Mitra] MP High Court formulated certain rules in this regard to bring a measure of predictability to the awards given by the Courts.

- (i) The amount of compensation awarded must be reasonable and must be assessed with moderation;
- (ii) Regard must be had to awards made in comparable cases; and
- (iii) The sums awarded should to a considerable extent be conventional.

Motor Vehicle (Amendment) Bill 2007

Disability in non-fatal accidents in cases other than non-earning persons:

Following compensation amounts are recommended under ***Motor Vehicle (Amendment) Bill 2007*** in case of disability to the victim arising out of non-fatal accident. A Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks plus either of the following subject to maximum of Rs. 10.00 lakhs for disability in non-fatal accidents in cases other than non-earning persons.

Motor Third Party Claims Management

- (i) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the appropriate Multiplier applicable to the age of the victim on the date of determining the compensation.
- (ii) In case of Permanent Partial disablement, the amount of compensation payable shall be arrived at by multiplying the compensation payable in case of permanent total disablement as specified under item (i) above by the percentage of loss of earning capacity caused by that injury.

B. For injuries deemed to result in permanent total disablement / permanent partial disablement as per section 145 (h), the percentage of loss of earning capacity shall be as per Schedule I of the Workmen's Compensation Act, 1923.8 of 1923.

General damages in case of disability in non-fatal accidents as proposed in Motor Vehicle (Amendment) Bill 2007

- (i) Pain and suffering – Non grievous injury Up to Rs. 5,000
- (ii) Pain and suffering – Grievous injury Up to Rs. 20,000
- (iii) Medical expenses – Incurred before the death not exceeding duly supported by bills/vouchers. Rs. 50,000".

Assessment of Injury Claims

The assessment of compensation in this area has drawn maximum flak. The discretion vested with the Claims Tribunal is enormous and the assessment could differ from person to person and Tribunal to Tribunal. There can be no uniform yardstick possible. No two persons suffering even similar injuries can attract the same or similar compensation. The heads under which compensation can be computed are truly astounding. The scope for awarding general damages as opposed to special damages is too wide to be fully

spelt out. While it is true, that it is a settled law that compensation in injury claims can attract a higher award than even in cases of death, for the reason that the injured has to endure the disability for the rest of his life, in practical terms it is found that the discretion vested in assessment is abused and on top of it the evidence adduced in support of injuries is fabricated. [(M. Jayanna's Case) 2005 ACJ 344 (AP)] is a telling tale and a sad commentary on the evil practices in this field. The search for Justness is a never ending saga. But the elasticity with which it is approached is regrettable.

Permanent Disability

It was from 1/10/82 that No Fault liability under Sec.92-A was introduced in MV Act, 1939. The expression 'permanent disablement' was used in the statute itself. But the language is couched in generic terms and it has, therefore, led to varying interpretations. Any impairment of the functioning of the limbs or parts of body or disfigurement of the face would leave behind a permanent disablement. What appears to have become the norm or accepted standard is that irrespective of the nature of a fracture, it is treated as permanent disablement attracting the minimum compensation under No Fault Liability.

But the manner in which it has been understood and interpreted discloses total lack of consistency leading to considerable variation in the appreciation of it and assessment of compensation as well. The time has come to bring in consistency and uniformity in the assessment of permanent disablement. The absence of any uniformity it has led to very unhealthy practices of commissioning assessments of disability for convenience from stock witnesses and different yardsticks of treatment by different Tribunals. It is time there was an institutional mechanism introduced in the statute itself for the assessment of permanent disablement, even if the discretion to assess compensation thereupon rested with the Tribunals.

Evidence of Permanent Disablement

The evidence of permanent disablement has become a vexed issue in this jurisdiction. Ultimately, the Courts are seeking to award Just compensation. In the computation of Just compensation there is no straitjacket formula in place. In injury claims, the arena is completely open to exploitation for regrettable practices. It is settled law that there is no compulsion for the Doctors who treat the injured to appear and adduce evidence them on the nature of injuries or disability assessed. The claimants can have expert witnesses or Doctors to examine them during trial and adduce evidence through them on the nature of disability suffered. The experience on the ground appears to be that there are a handful of such medical men masquerading as experts and virtually practising before these Tribunals to appear as stock witnesses. The evidence of these witnesses is simply astounding. They know no standards and do not conform to any uniform practices. More often than not they are all manufactured for convenience and give a go by to healthy practices. Such medical men claim that they go by World Health Organisation practices but they simply do not follow any criteria. The Tribunals being under pressure to dispose of as many claims as possible, to fulfil arithmetical norms also, go through the motions as it were and the cross-examination is necessarily brief. The unhealthy practices in this field are well captured in [(M.Jayanna's Case) 2005 ACJ 344 (AP)] and one hopes and trusts every other High Court would follow this example for the effective implementation of this beneficial legislation.

For the sake of consistency and uniformity the Notification issued by Ministry of Social Justice and Empowerment dated 1/6/2001 must be applied in the assessment of permanent disability suffered by victims. Guidelines have been drawn under it which if applied would make sure that evidence of disablement was genuine and true. The fabrication and falsification or padding of evidence may be minimal. The person imposed with the obligation to pay compensation would also be aware of it. Leaving it to the whim and fancy of such stock witnesses has rendered this jurisdiction liable to misuse and abuse.

Guidelines for Assessment of Permanent Disablement

Apart from incorporation of these Guidelines as the standard or norm or yardstick for assessment of permanent disablement, the introduction of a clause in the MV Act, 1988 itself to this effect its application is called for. Such provision could be to the effect that assessment of disability shall be as per the stated Guidelines and such assessment shall be only through a Medical Board constituted in each District. The injured ought to appear as a matter of rule before such Medical Boards and produce the certificate of assessment of disability before the Tribunals, and the assessment of disability shall be held binding on the Tribunals without need for examination of the author of the same. This would save a lot of time and ensure speedier disposal of claims also. More importantly, it would usher in an era of consistency and uniformity and also introduce an element of bona fide in the assessment of disability, which is thoroughly lacking as on date. Those closely associated with this jurisdiction would be aware of the regrettable and unavoidable practices indulged in by medical men at the behest of law men purportedly for victims to receive Just compensation. A provision for application of the Guidelines mentioned above and reference to Medical Board for assessment of permanent disability with the certificate to this effect issued by the latter constituting binding proof of it, can be introduced. Such statutory mandate will rid the system of all the pernicious practices now prevalent due to the role play of stock witnesses/medical men.

Insurers Right to Examine the Injured

In [(M. Jayanna's Case) 2005 ACJ 344] the AP High Court had lamented that the insurance companies and transport corporations did not care to adduce contra evidence on alleged disablement and therefore the assessments of stock witnesses of claimants were becoming a fait accompli. But then when an insurer sought to refer the claimant for such examination for rebuttal evidence through their expert the plea was rejected by the Madras High Court as unfounded. It was ruled that it would suffice for the

insurer to cross examine the medical expert of the claimant and there was no necessity for the insurer to compel the injured to appear before their expert – [(R. James vs. National Insurance Company Limited) 2004 ACJ 918].

This view requires reconsideration by the court in the light of the malpractices prevalent in this area. When a claimant seeks compensation from a respondent then the respondent has every right to examine the injured to verify the truth and bonafides of the claim. Mere cross-examination of a stock witness would get them nowhere. By examination through their nominated expert or even through Medical Board the evidence of the stock witness can be shown up for what it was. Further, as the person being forced to pay compensation, the paymaster had a legal right to seek verification of the nature of injuries and possible disablement. The insurer must exercise such right and if refused should take it up to the apex court to test the correctness of the denial of such relief.

Loss of Earning Capacity vis-a-vis Loss of Earning Power

This is another vexed question as a component in the assessment of compensation in injury claims under the head of award under Permanent disablement. The injured, so disabled, may suffer a direct impact on ‘earning capacity’. For such consequence of disablement, a separate and distinct sum may be called for as ‘loss of earning power’. It is settled law that the two heads are distinct and separate. In [(Ramesh Chandra Vs. Randhir Singh) – 1990 (3) SCC 723] the Supreme Court had affirmed the distinct status of the two heads. In [(Managing Director, Thiruvallur Transport Corpn., Vs. Thangavelu) – 1995 (2) LW 685], it pointed out that permanent disability was the cause and the effect was loss of earning power. Hence separate sums would have to be granted thereupon. Way back in [(Managing Director, Thiruvalur Transport Corpn., Vs. M. Janardhanam) – 1987 ACJ 233] itself it was pointed out that compensation could be computed in proportion to the disability assessed. Now in the Second Schedule there is a reference to such computation.

Padding up the Claims For Permanent Disability through Multiplier method

The practice of assessment of compensation in proportion to the disability assessed, has led to the regrettable practice of padding up the claims for permanent disability. The multiplier method is being adopted indiscriminately in assessing compensation under this head. The Courts fix the earnings mechanically as per evidence and the multiplier as per age, and loss of earning power is computed in proportion to the assessed physical disability adopting the multiplier method. This has led to bloated awards disproportionate to the actual facts. For instance, before the multiplier method came into use a disablement of 20% suffered on the wrist of a person may have attracted Rs.30,000/- to Rs.35,000/- as award. Now apart from this sum of Rs.30,000/- to Rs.35,000/-, a further sum is assessed towards loss of earning capacity in proportion to the assessed/accepted disability of 20%. This amounts to virtual doubling of the Just compensation, unjust to the paymaster. Consider the fabricated assessment of disability and you can well imagine the plight of insurance companies facing the rough end of the stick.

There are instances of Bank Managers or software professionals suffering a dental disability and being awarded loss of earning power in proportion to the disability assessed. There is no effort to appreciate or understand the scope of this head. It is only in those cases where there is clear evidence to see that the disablement had left behind obvious signs of incapacity leading to depletion in income for the injured, that there can be any award under this head. It cannot be assumed that the injured would be entitled to an award for loss of earning capacity in proportion to the assessed disability irrespective of whether he had suffered a loss of income or not as discussed in [(National Insurance Co. Ltd., Vs. Dr.Dipika Choudhry) – 2004 ACJ 287]. In certain cases persons were employed in a company and had continued to be in service after the injuries and even enjoyed the benefit of enhanced income at the time of trial of the claim, yet they were awarded loss of earning capacity as if it was an irrelevant consideration that he ought to

have actually suffered loss of income. In [(United India Insurance Co. Ltd., Vs. Veluchamy) - 2005 ACJ 1483: 2005 (1) CTC 38] the Madras High Court had occasion to consider this aspect. The High Court ruled that multiplier method ought not to be applied indiscriminately assuming that in every case of disablement suffered, there must be a corresponding award for loss of earning power in proportion to the assessed disablement. There must be credible evidence to support an award. Further, even while considering a sum under this head, it was ruled that multiplier has to be much less than the schedule figure and the earnings too should be discounted for assessment. But the unfortunate reality is that instead of appreciating this decision for what it was, this decision is being seen as vindication for assessment of compensation in injury claims adopting the multiplier method.

General Damages for Death Cases

The compensation in fatal accident cases is assessed under two heads:

- (i) Pecuniary loss of maintenance to the dependents
- (ii) Loss of savings to the estate of the deceased including damages for pain & suffering, loss of expectation of life to the deceased

In assessing damages for fatal accident, the provision of the Fatal Accident Act 1855 Section 1 reads as follows :

"Whenever the death of a person be caused by wrongful act or neglect or default, and the act, neglect or default is such as would have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death has not ensued shall be liable to an action or suit for damages notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. Every such action or suit shall be for the benefit of the wife, husband, parent and child of any of the person whose death shall have

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been caused and shall be brought by and in the name of the executor, administrator or representative of the person deceased and in every such action the court may give such damages as it may think proportionate to the loss resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought, and amount so recovered after deducting all costs and expenses, including the costs not recovered from defendant, shall be divided amongst them before mentioned parties, or any of them in such shares as the court by its judgement or decree shall direct.”

The Motor Vehicle Act 1988 enlarges the scope of legal representatives who can initiate action or suit. The fatal cases involve claims in respect of :

- (i) Special damages up to the date of death
- (ii) Funeral expenses
- (iii) General damages for the pain and suffering up to the date of death
- (iv) Damages for loss of expectation of life
- (v) Damages under fatal accident act

General damages in case of death proposed in Motor Vehicle (Amendment) Bill 2007 are given below :

- (a) Pain and suffering up to Rs. 5,000
- (b) Loss of consortium, if beneficiary is the spouse up to Rs. 10,000
- (c) Loss of estate up to Rs. 5,000
- (d) Medical expenses – incurred before the death not exceeding Rs. 50,000 duly supported by bills/ vouchers.

Quantum and the Concept of Justness

Sec.110 B of MV Act, 1939 spoke of Just Compensation and under the present dispensation it is under Sec.168 of MV Act, 1988. The word quantum is incapable of any precise definition. Justness would depend upon the facts and circumstances of each case. The Supreme Court had ruled that assessment of compensation should be liberal not niggardly [(Concord of India Insurance Co. Ltd., Vs. Nirmala Devi) – 1980 ACJ 55]. It was also ruled that Justness was not related to the claim made, but in terms of the evidence adduced and assessment made by Court. This meant that awards in excess of the claim could also be made [(Nagappa vs. Gurudayal Singh) – 2003 ACJ 12 (SC)]. While so, it was also held that the Respondents ought to be given a chance to counter such grant and that the Claims Tribunals ought not to grant higher compensations than sought for without first affording an opportunity to the respondents to counter such possibility. The methodology adopted for assessment of compensation, be it for fatal claims or injury has evolved over the years and transformed, all in search of that elusive concept of Justness. While it was held that award should be liberal not niggardly, it has also been held that it ought not to be a bonanza as well. A middle path must be struck in the search for Justness. It is an admitted position of law that there is no one formula for assessment. Inevitably therefore an element of guesswork or estimation enters the arena [(Ashwani Kumar Mishra vs. Muniam Babu) – AIR 1999 SC 2260]. But such guesswork or estimation should not be based on conjecture, speculation or whim or fancy. It should be grounded in reality and relatable as a fact.

Multiplier

Admittedly, there is no one straitjacket formula for assessment. But the introduction of the Second Schedule and multiplier factor meant that there was scope for an element of uniformity or consistency at least with regard to the multiplier to be adopted. [(Rattan Lal Mehta vs. Rajinder Kapoor) – 1996 ACJ 372 (Del)]

However, the Second Schedule brought into force from 14/11/2004 was replete with arithmetical errors as observed in [(Uttar Pradesh State Transport Corpn., vs. Trilok Chandra) – 1996 ACJ 831 (SC)]. Notwithstanding such mistakes, it is now settled law that reference to the Schedule to fix the multiplier is the rule. As for multiplier as a concept of application, it is now accepted that it is the most scientific and refined system which has stood the test of time. But in the choice of multipliers, there are again varying decisions. In. Trilok Chandra case supra while referring to the anomalies, it was pointed out that in a case where the deceased was a bachelor, the multiplier cannot be related to age of the victim but shall be related to the age of the dependents. This position of law would appear to have become established as in [(H.S. Ahammed Hussain's case) - 2002 ACJ 1559].

Choice of multiplier

However, as for the choice of the multiplier, the Schedule shall only be a guide and not a ready-reckoner. Though there is restriction on the maximum multiplier permissible at 18, there was discretion vested with the courts in choosing it. In [(Jyoti Kaul vs. State of M.P). – 2000 ACJ 1368 (SC)] it was ruled that multiplier as per Schedule may be the starting point. Thereafter, the Court was vested with the discretion of the choice of multiplier except that it shall not exceed a maximum of 18. On choice of multiplier it need not be as per Schedule alone. The Court can consider the ages of the victim, claimants, longevity in the family etc and arrive at an appropriate multiplier. For a 50 year old, notwithstanding superannuation, a multiplier of 15 was fixed. In [(United India Insurance Co. Ltd., Vs. Patricia Jean Mahajan) - 2002 ACJ 1441] the Supreme Court ruled that multiplier need not be as per Schedule.

Multiplier in case of foreign citizen

In a case where the deceased was a foreign citizen and his earnings, say, in USA were substantial, assessment of compensation payable in India, has to necessarily take note of the

Indian economic and social conditions. The compensation payable shall have to take note of the differing economic conditions in the countries and accordingly reduce the multiplier to lesser than the Schedule figure. Thus, it would appear that in the choice of multiplier, the Courts are not duty bound to fix it as per Schedule figure alone to a tee. The Court has the discretion to adopt a suitable multiplier, be it higher than the schedule or lesser than it, for good and valid reasons, but shall, however, not exceed 18 at the maximum.

Fatal Claims – Rule of thumb

Assessment of compensation in fatal claims does not admit of much difficulty. The age of the victim or dependents and the earnings of the deceased would be relevant factors for consideration. It will all be a matter of evaluating the evidence adduced by the claimants. The multiplier shall be chosen in conformity with the age of the victim, claimants and due regard to longevity in the family. As for the multiplicand it would be in relation to the proven earnings of the deceased. On introduction of the Second Schedule the concept of notional income came into being. As per Second Schedule it was pegged at Rs.15,000/- p.a. as on 14/11/94. A reading of the case-law on this aspect would however reveal that there is no consistency in its application. The notional income is not even perceived as relevant. The Courts appear to go by the cost of living, number of dependents, nature of avocation and so on. As such, by a series of decisions the rule of thumb appears to have become a norm or standard in that the earnings could be fixed at Rs.3,000/- p.m. [(State of Haryana Vs. Jasbir Kaur) – 2003 (7) SCC 484 : 2003 (6) Supreme 206 : 2004 (1) LW 1; (Municipal Corporation of Greater Bombay Vs. Laxman Iyer) – 2004 ACJ 53 : 2003 (8) SCC 731 : 2003 (7) Supreme 492] irrespective of the nature of vocation for fixing a reasonable or subsistence of living wage as it were. In fact in [(Deepal Girishbai Soni's case) - 2004 ACJ 934] the Supreme Court has pointed out that the notional income fixed way back in 1994 may require an upward revision with due regard to increased cost of living.

Net Pay Concept

One significant development was with regard to the net pay concept introduced by the Supreme Court in [(Asha Vs. United India Insurance Co. Ltd.), - 2004 ACJ 448]. It has become a veritably vexed issue in application. Arguments and counter arguments have emanated as to whether the net pay concept was a golden rule for application and whether technically Courts shall adhere to the net pay or take home pay in the salary certificate. The net pay concept cannot be applied without regard to the nature of deductions from the gross pay. The dependency of the legal representatives cannot be fixed on the basis of the actual take home pay of the deceased. The Gross Pay is relevant. From and out of the gross pay if there are deductions, then the nature of deductions have to be examined. The deductions could be investments or savings of the deceased and, therefore, eschewing them from the zone of consideration would be unjust and improper. It is a fact of life that in many a case the employee may have provided for the rainy day and suffered deductions by way of LIC premium, Housing Loan advance, Public provident Fund contributions etc, These constitute savings of the deceased and treating the net pay would be unfair to the claimants. Those in the know of things would have seen salary certificates of even persons earning five digit salaries with 3 digit net pay or take home pay. Hence it would be unfair and unjust to disregard the nature of deductions and treat the net pay or take home pay as sacrosanct for assessment of compensation. In effect, the fervent plea would be to apply [(Asha Vs. United India Insurance Co. Ltd. case supra, in proper perspective with due regard to the nature of deductions and thereby arrive at a meaningful net pay for dependency rather than mechanically going by the numbers.

Future Increases in Income

While fixing the dependency of the deceased the Courts have to examine the income of the deceased. But while fixing such income as on date of death, there are a number of decisions suggesting that the income should not be as on date of accident/death. The

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Courts have to bear in mind the nature of vocation or employment, scope for increased earnings from proportion etc and also the inflationary impact on the Rupee and duly project the earnings and fix the dependency thereafter. In [(Hardeo Kaur Vs. Rajasthan State Road Transport Corpn.,) - 1992 ACJ 300 : AIR 1992 SC 1261 : 1992 (2) SCC 567 : 1992 (1) ACC 603; (General Manager, Kerala State Transport Corpn., Vs. Susamma Thomas) – 1994 ACJ 1 : AIR 1994 SC 1631 : 1994 (1) ACC 846 and (Sarla Dixit Vs. Balwant Yadav) - AIR 1996 SC 1274 : 1996 (3) SCC 179 : 1996 ACJ 581 : 1996 (2) TAC 1], the Supreme Court has adverted to this aspect. In the last of said the judgments, the salary as on date of death was doubled and from a totalling of the same with the last drawn pay the mean thereof was fixed as the income of the deceased for computing the dependency.

Such a ready and roughshod method may not always be correct in application. The Court should have before it the evidence regarding future prospects of increase of income in the course of employment or business or profession, as the case may be. That is what has now been clarified in the recent judgment of the Supreme Court reported in [(Bijoy Kumar Dugar Vs. Bidyadhar Dutta) 2006 (3) CTC 122] wherein it has been held that Courts cannot read into the present earnings, projected increases, without the benefit of actual evidence on record for it. Hence, it would appear that things may stabilise to the effect that while fixing the dependency, relevance could be had to future increases in income but it shall however be based on concrete evidence adduced before the Court and not on mere conjecture or speculation.

Property Damage Claims

The assessment of property damage claim is based on cost of repair or cost of replacement of the property so that it is restored to its original position. If the property is fully destroyed, the damages would be equal to the value of the property on the date of loss including reasonable consequential losses too. If the property is damaged the value will be cost of repairs subject to depreciation in its value and cost of hiring alternative property or loss of use or

loss of profit earned during the period of repairs. For example, in case of damage to tiller 10 years old, application of 50% depreciation may be proper. [2008 (1) TN MAC 361 (Mad)]. Loss of income is not sustainable in a property damage claim.[2008 (1) MLJ 640]. Loss of income – ‘Revenue Loss’ is disallowed – [2008 (1) TN MAC 95 (Mad)].

Liability to Pay Interest

Rate of Interest

The Section 171 of 1988 Act empowers tribunal to grant interest from the date of claim at simple interest at such rates as it deems reasonable. In [(P. Rama Devi vs. C.B. Sai Krishna and others) AIR 1994 Karn 8] it was observed that

“Compensation is an amount paid in advance for any loss of life or loss of dependency or loss of earnings. It is not a debt. Therefore, the interest to be awarded under section 110 CC of Motor Vehicles Act could only be 6% per annum.”

For grant of higher interest sufficient reasons are to be given by the Claims Tribunal. [(Puttanna and another vs. Lakshmana and others) 2000(1) Kar. L.J. 603(DB)]

Higher rate of interest

So far as the higher rate of interest stipulation is concerned, it is to be noted that grant of interest under Section 171 of the Motor Vehicles Act, 1988 is discretionary. The purpose for award of interest is to put pressure on the relevant person not to delay in making the payment and, to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of payment of interest.

In determining the quantum of interest awardable under the relevant Section 171, the Claims Tribunal acting under Section 166 of the 1988 Act can derive direct guidance from Section 34 of the Code

of Civil Procedure, 1908. In fact, the provision requires payment of interest in addition to compensation already determined. Even though the expression ‘*may*’ is used, a duty is laid on the Claims Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The provision is discretionary and is not and cannot be bound by rules. Lord Cairns, L.C. in Julius vs. Bishop of Oxford (1880 (5) AC 214) had said:

“But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so”.

The aforesaid observation has been quoted with approval in several cases. [Refer Commissioner of Police vs. Gordhandas Bhanji (AIR) 1952 SC 16] and [S.P. Gupta and Ors. vs. President of India and Ors. (AIR 1982 SC 149)].

Duty and discretion in awarding interest

In Halsbury’s ‘Laws of England’, 4th Edn. Vol. I, it has been observed in Para 28: “A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but discretion how to act. Discretion may thus be coupled with duties”.

When it is said that something is to be done within the discretion of the authorities that something is to be done according to the *rules of reason and justice*, but not according to private opinion; according to law but not humour it should not be arbitrary, vague,

and fanciful, but legal and regular and it must be exercised within the limit, to which an honest man, competent to the discharge of his office, ought to confine himself as per Lord Halsbury, L.C., in [Sharp vs. Wakefield, (1891) Appeal Cases 173] and [S.G. Jaisinghani vs. Union of India and Ors. AIR 1967 SC 1427]

Judicial Discretion vs. Responsibility

The word “discretion” standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently, therefore, discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility.

Lord Camden, L.C.J., [in (Hindson and Kersey) - 1680 (8) How, St. Tr.57.] said that *“The discretion of a Judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, and passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable,”*

If a certain latitude or liberty is accorded by statute or rules to a judge, as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters, which should regulate the exercise of discretion, have been stated by eminent judges in somewhat different forms of words but with substantial similarity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet as per Willes J. in [Lee

vs. Budge Railway Co., (1871) LR 6 CP 576], and in [Morgan vs. Morgan, 1869, LR 1 P & M 644].

No scope for retrospective enhancement in case of default

Though Section 171 of the 1988 Act confers discretion on the Claims Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the light of the above background, it is to be judged whether the Claims Tribunal can impose a stipulation for higher rate of interest in case of default. Once the discretion has been exercised by the Claims Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is *no scope for retrospective enhancement* for default in payment of compensation. No express or implied power in this regard can be culled out from Section 171 of the 1988 Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty, which is not statutorily envisaged and prescribed. [Appeal (civil) 399 of 2004 National Insurance Co. Ltd. vs. Keshav Bahadur and Ors. date of judgment: 20/01/2004]

Rate of interest offered by Nationalised Banks on FD's /annum

As per judgement reported in [2001 ACJ 428 (SC) in the case of Kaushuma Begum vs. New India Assurance] the Supreme Court observed in Para 23

“....in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf”.

Earlier interest @ 12% was found to be reasonable rate of simple interest, but with a change in economy and policy of the Reserve

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Bank of India the interest rate has been lowered. The Nationalised banks are now granting interest @ 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed herein before shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.

Similar view has been taken in the judgement reported in [2002 (10) ACJ 1814 Karnataka in Sanjeevini Ananda Awate & Others vs. MD Hiranyakeshi Sahakara Sakkare Karkhane & another.] where the court observed that the rate of interest to be awarded in all motor accident claims shall normally be the rate of interest offered by Nationalised Banks on fixed deposits for one year.

Quantum Fixations

This chapter deals with methods of assessment of compensation through multiplier method and structured formula and the doctrine of just compensation as envisaged by apex court.

Assessment of Compensation

The purpose of granting pecuniary award of 'damages' under the Motor Vehicle Act 1988 is to provide to the dependents of the victim of motor accident, a *capital sum*, if there had not been an accident by the reckless act of the driver of a motor vehicle. The amount has to be sufficient to supply the dependents/ representatives with material benefits of the same standard and duration, as would have been provided for them. Credit is given to the value of any material benefit, which would have accrued to them if death or disability had occurred. Under section 2 of the Indian Fatal Accidents Act 1885 the recovery of pecuniary loss to estate of the deceased for such damages was provided. But no specific guidelines have been given except recently by the amendment 54 of 1994 in Motor Vehicle Act 1988 effective from 14.11.1994. Under Section 163(A) Structured Compensation schedule has been appended on no fault basis. The courts tend to treat it as reference for determining the amount of compensation under Section 166 of the 1988 Act, which takes into account tortious liability.

In [Secretary of State vs. Gokachand, AIR 1925 Lahore 636] it was observed that

"Law contemplates two sorts of damages; the one is the pecuniary loss to the estate of the deceased resulting from the accident. The damages for the loss caused for the estate are claimed on behalf of the estate and when recovered, form part of the assets of the estate. The other loss is the pecuniary loss sustained by the members of the family through the death of the victim. The action for this is brought by the legal representatives not for the estate, but as trustees for the relatives beneficially entitled."

In order to determine an amount of compensation payable to motor accident victim, the damages have to be assessed separately as **pecuniary damages** and **non-pecuniary damages**. The pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money. In [1995 ACJ 366] Supreme Court had observed that

"Whenever compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimants are taken into account including his age, the unusual deprivation he has suffered, the effect thereon on his life. The amount for non pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration."

The permissible heads for assessment of compensation are as hereunder :

In case of death

1. Loss of dependency – It is generally notional dependency of legal representatives or the claimants and does not envisage actual proof of dependency.
2. Loss of expectancy – a conventional sum is allowed
3. Loss of consortium – a conventional sum is allowed
4. Funeral expenses – a conventional sum is allowed

5. Medical Expenses if deceased was given any treatment prior to fatality.

Global Expenses in case of simple injury

In case of simple injuries the compensation awarded is global compensation and no separate amount is awarded for medical expenses. However, if any X-ray or scanning is done, actual expenses incurred has to be reimbursed in addition to global compensation. Any incidental simple injuries sustained in an accident with grievous injuries, no separate compensation need be granted in respect of simple injuries.

In case of grievous injury

The permissible heads for determination of compensation in case of grievous injury are as given below:

Compensation for pain and suffering is to be compensated by awarding for injuries or fractures of different bones e.g.,

- Cranial bones or skull,
- Cerebral concussion i.e., injury to the brain resulting in unconsciousness,
- Cerebral contusion i.e., a direct blow to any part of the brain or cerebral oedema i.e., swelling resulting in collection of blood within the brain membrane or capillary haemorrhage (bruises)
- Cerebral laceration leading to multiple neurological deficiencies
- Eye having damage to optic nerve resulting in loss of vision

- Facial Bones consisting of lower jaw, upper jaw, cheek bone, orbit bone i.e., socket for resting eye ball
- Nasal bones
- Loss of tooth
- Spinal column otherwise called back bone
- Clavicle (collar) bone
- Scapular (shoulder girdle) bone
- Rib fractures (12 in number)
- Humerus (arm bone)
- Elbow joint
- Scaphoid bone (wrist joint and one out of 8 carpal bones)
- Meta carpal bones 5 in no.
- Pelvic bone consisting of two hip bones situated at lower abdomen
- Acetabulum bone, Pubic bone fracture may result in rupture of urethra requiring catheters permanently.
- Splenectomy and removal of spleen does not affect longevity of health of the suffering person
- Liver, Kidney, Femur (thigh) Bone
- Fracture of Patella (Knee cap bone)
- Ligaments (Lateral, Medial, Cruciate – anterior/ posterior)
- Meniscus (medial & lateral cartilages in knee joint)
- Haemarthrosis – (collection of blood into joint)

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- Biceps or calf Muscles (tearing and loss)
- Tibia & Fibula bones in the leg between knee joint and ankle joint
- Ankle joint
- Foot
- Fracture of Fingers and Toes
- Avulsion injury resulting in fracture of bones with tendons
- Nerve Palsy is damage to nerves resulting in paralysis of the muscles (Neuropraxia (reversible type of disability), Axontmesis (severe injury), Neurotmesis (whole nerve cut))

While assessing compensation for pain and suffering for a person, who has sustained more than one fracture and grievous injury in different parts of the body, the fracture or grievous injury which calls for maximum amount of compensation for pain and agony should be reckoned first and additional fracture or grievous injury for different parts of the body and additional amount for each such distinct injury is to be added and aggregate of the said amount awarded for pain and agony for all injuries towards compensation for pain and agony as given below :

1. Medical expenses including nursing, attendants and nourishment
2. Loss of income during the period of treatment : actual or notional wages or salary for the period of treatment is to be granted. In case of availing sick leave proportionate salary for the leave period should be allowed to compensate for loss of leave.
3. Loss of future earning capacity on account of permanent disabilities is computed when there is functional disability. If the disability does not affect earning capacity or career no

amount need be awarded. The multiplier principle as applicable in case of death is to be adopted to ascertain loss of future earnings.

4. Future medical expenses include expenses incurred for corrective surgeries or replacement of medical aids and equipments essential for having permanent handicaps.
5. Future unhappiness and loss of amenities depends upon nature of lasting disability or disfigurement. It could be amputation of limb, loss of vision of one eye, total impairment of hearing capacity of one year, any ugly visible scar, mal-union of fractures or limping.
6. Loss of marital prospects depending upon the gravity of the threat to marital prospects.
7. Loss of academic year in education can be compensated upon proof of the actual expenses incurred for the academic year
8. Shortening of life span as a consequence of injury may attract compensation based on medical opinion regarding shortening of life span on account of injury. In such cases the future earning capacity and future medical expenses shall be computed based on shortened life span.
9. The total compensation payable will be the aggregate of the compensation awarded towards each permissible head.

Damage to Third Property

The term property includes livestock like cattle, vehicle, building etc. In case of damages to vehicles minimum idling charges depending upon the reasonable time for repairs of the vehicle would be payable. In case of package policies, the insurer reimburses the damages to property upon production of proof of actual damage assessed on the basis of bills of repairs etc. In

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case of total loss, depreciation is taken into account while reimbursing the full value of the property.

1. The Own Damage claim of insured cannot be lodged before MACT. [2008 (1) TN MAC 112]. Also in [2007 (4) ACC 263 (Gau) (DB)].
2. A claim for loss of buffalo would come within the ambit of claim for damage to property. [(National Insurance Co. Ltd. vs. Abdul Karim) 2007 AIHC 2394 (J&K)]. In another claim it was held that an elephant would not be come within the ambit of property. [2008 ACJ 14 (Raj)].
3. The claim was in relation to onion carried in a goods vehicle. It was held that the claim for damage to goods carried in the vehicle was not required to be covered under the contract of insurance. [(Jahar Deb vs. National Insurance Co. Ltd.) 2007 ACJ 2169 (Gau)].
4. The claim for damages to property based on letter of subrogation would be outside the purview of a Claims Tribunal and will lie only before a Civil Court. [(D.I.Narayaswamy vs. National Insurance Co. Ltd.) 2007 (II) ACC 225 (Kant)].
5. A civil suit for damages to a vehicle washed away in floods was opposed as not tenable since Claims Tribunal had exclusive jurisdiction. It was held that Sec.175 was not a bar for such suit, as it was a contractual claim by the owner against his insurer. [(Jahar Deb vs. National Insurance Co. Ltd.) 2007 ACJ 2169 (Gau)]. It was held that Own Damage claim of the owner of the vehicle against his own insurer was not tenable before the claims tribunal. The proper forum would be a civil court or a consumer forum. [(State Express Transport Corporation vs. G. Kathamuthu) 2007 (2) TN MAC 432 (Mad)]
6. The claim by an owner of a motor vehicle for damages to his vehicle against his own insurer was held not maintainable before the Claims Tribunal since only a Third Party could file such a claim. [(Oriental Insurance Co. Ltd. vs. Pooranlal) 2007 ACJ 1804 (Chati)].

7. In a case where the Own Damage claim was settled by the insurer, the claim by the owner of vehicle for the disallowed portion against the negligent vehicle was dismissed by Tribunal observing that a Civil suit may be the right from. The appellate court set aside the order and remitted it for fresh consideration. [Hanumanthappa vs. Ganapathi R.Kini) 2007 ACJ 2089 (Kant)].

Option to choose jurisdiction

1. In a claim for damage to a motor vehicle in an accident, it was held that the sum received by the claimant from his insurer in respect of own damage claim, couldn't be deducted from the claim against the tort-feasor. The tort-feasor cannot get the benefit of any such deduction. [(GSRTC vs. Hargovinddas R.Modi) 2007 ACJ 1198 (Guj)]. In a case where the claim was in excess of Rs.2,000/- under the 1939 Act, the option to choose the Claims Tribunal or Civil Court lay with the claimant. [GSRTC vs. Hargovinddas R. Modi) 2007 ACJ 1198 (Guj)]. It was further held in this case that damage arising from non-use of the vehicle being 'revenue loss' could also be laid before the Tribunal.

In another claim the claim was for damage to goods carried in the vehicle before the Claims Tribunal. It was held that such a claim would not lie before the Tribunal and appropriate remedy was before a civil court. [(Oriental Fire & Genl Insurance Co. Ltd. vs. S.Rasheed Ahammad) 2007 ACJ 1433 (Kant)].

Various Methods

It is amply clear that no amount of compensation can restore the physical frame of the victim in their original form. The courts have been applying the principle of "Just Compensation" and "multiplier method" besides statutory formula of Structured Compensation" in different circumstances depending upon the provisions of law applicable for the victims and being invoked by the claimants.

Multiplier Method (Lord Wright's formula)

The Multiplier method is also known as Lord Wright's formula enunciated in Davies vs. Powell a famous English case which comprised of multiplying annual dependency amount of what deceased would have spent on the dependents by the commonly accepted multiplier known as year purchase factor.

(A-E) * (Y) = Total compensation for loss dependency as well as loss to the estate where:

'A' – amount of net wages earned by the deceased

'E' – expenditure incurred by the deceased on his own self

'Y' – number of years (A-E) covers the amount of loss of dependency as well as amount of accretion to his estate.

(A-E) must be split up to know the separate figures of dependency and accretion to the estate.

In Davies vs. Powell Lord Wright said

"It is hard matter of pounds, shilling and pence subject to the element of reasonable future probabilities. The starting point is the amount of wages the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum [that] however, has to be taxed down by having due regard to uncertainties for instance, the widow might have remarried and thus ceased to be dependent, and other like matters of speculation and doubt."

This method takes into account not only discount of arriving at lump sum amount of benefit spread over number of years, but also discount for other contingencies and imponderables which enter into such computations.

Principles for computing compensation

In [Kerala SRTC vs. Susuma Thomas 1994 ACJ 1 (SC)] the Apex Court considered in detail appropriate method of arriving at proper multiplier on a scientific basis for arriving at a proper ‘multiplicand, and multiple,’ in fatal accident cases in the light of decided cases in our country as well as in England and laid down principles for computing compensation in motor vehicle accident cases. On the question of selection of multiplicand Lord Diplock observed :

“The starting point in any estimate of the amount of the dependency is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But there are many factors, which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or children grew up and became independent; the proportion of his earnings spent on his dependants would have been likely to fall.”

Factors for variations in dependency

In considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind.

- The first is that the *more remote in the future is the anticipated change* the less confidence there can be in the chance of its occurring and the smaller the allowance to be made for it in the assessment.
 - The second is that as a *matter of the arithmetic of the calculation of present value*, the later the change takes place the less will be its effect upon the total award of damages.
1. In case of the deceased being bachelor or spinster, 50% is to be deducted instead of 1/3rd of income towards personal needs

and maintenance of the deceased and balance is taken for dependency.

2. In case of the deceased leaving behind only Brothers and Sisters, or only spouse 50% is to be deducted towards personal needs and maintenance of the deceased and balance is taken for dependency.
3. In case of the deceased being a bachelor leaving behind **parents with at least a brother or sister**, $1/3^{\text{rd}}$ is to be allowed towards personal needs and maintenance.
4. For applying multiplier, the youngest parent is considered and not the brother or sister, in case the deceased leaves behind his parents, and brother and sister.
5. In case the deceased is an agriculturist and owns agriculture lands, the computation of income shall be on the basis of normal wages paid towards effective supervisory charges for supervising the agricultural operations irrespective of the yield and income from the agriculture produce. [AIR 1982 Gujarat 260]

Highest and lowest multiplier

The award can be more than the claim and even without any cross-objections. In [2008 (1) TN MAC 275] an award for Rs. 1,36,000/- for 30 year old deceased was enhanced to Rs.2,54,200/- with interest at 12% p.a. for 1994 accident. [Also refer (TNSTC vs.Saroja) 2008 (1) TN MAC 352 (Mad)]. For a 27 year old Medicine distributor, aged 29 year old, who had suffered fracture of lower part of the right leg below, degloving injury with disability of 55%; an award for Rs.2,63,000/- with medical expenses of Rs.79,000/- was upheld. [2008 (1) TN MAC 238]. It was held that an award can be enhanced in appeal by respondent, without appeal preferred by claimants following [2003 ACJ 12 (SC)]. Award of Rs. 2,36,000/- by Claims Tribunal for 40 year old person earning Rs. 3,536/- p.m. and enhanced to Rs. 3,35,952/- by High Court was reduced to Rs.2,60,000/- plus interest at 9% p.a. for accident

dated 1998. Multiplier of 12 by High Court was reduced to 10 only. [(APSRTC vs.M.Ramadevi) 2008 (1) TN MAC 234 (SC)] : [2008 (3) SCC 379]. As the amount was deposited already, the appeal was held to be infructuous. [CA No. 5340/2002 dt.30/4/2008 in National Insurance Co. vs.Balbir Jaur]. [In (NIC vs.K.Amutha) 2008 (7) MLJ 709] where the deceased held agricultural land for supervisory services an assessment of income can be made taking into account the continuity of income despite untimely accidental death.

Multiplier method cannot be applied mechanically as held in [2005 (1) CTC 38]: [2005 ACJ 1483] : [(TNSTC vs. Rajeswar) – 2008 (2) TLNJ 367 (Civil)] : [2008 (2) TLNJ 372 (Civil)]. A multiplier of 18 was adopted for a 29-year old - [MTC vs. Vijaya 2008 (5) MLJ 108.]. In another case a deceased Panchayat President, Agriculturist was aged 61 years. The multiplier in his case was reduced to 5 and the award accordingly reduced to Rs.8,50,000/- from Rs.12,80,397/- plus interest and costs. [2008 (6) MLJ 1098]. Earnings of Rs.12 and the 500/- p.m. IT return after accident was rejected. The income was fixed at Rs. 7,000/- p.m. in all and adopting a multiplier of 18 an award for Rs.10,08,072/- was confirmed. [2008 (2) Supreme 91]: [(V.Subbulakshmi vs. S.Lakshmi). 2008 (1) TN MAC 375]

Multiplier at the Verge of Retirement

For the death of a 58-year old employee of a Coalfield with gross salary of Rs.12,914.62 and net pay of Rs.11,003/-, a dependency of Rs.7,400/- p.m. was fixed and adopting a multiplier of 8, an award for Rs. 7,50,000/- was passed. [(United India Insurance Co. Ltd. vs. Shail Kumari Devi) 2007 (3) T A C 789 (Jhar). (Premabai vs. Kilolsingh) 2007 ACJ 1464 (MP)]. In another case for a 58-year old person on the verge of retirement 8 multiplier proper and earnings of Rs.11,003/- was adjudged and the award was passed for Rs.7,50,000/- [2007 4 ACC 296 (Jhar)] ; Similarly for a 59 year old person a multiplier of 8 was upheld [2008 (7) MLJ 613].

For the death of a 60-year-old retired employee of LIC getting Rs.3,639/-p.m. as pension, the award for Rs.82,000/- was enhanced

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to Rs.2,49,204/- A multiplier of 12 was adopted for the 60 year old [2007 (4) TLNJ 478 (Civil)].

Multiplier for Foreigners/ NRI

The deceased was aged 36 years with a Master's in Business Administration. She was earning US\$ 2500 in USA. The claimants were husband, daughter and son. The tribunal construed the income/dependency at US\$ 2000 and arrived at a compensation of Rs.1,14,75,000/- in all. On appeal, the High Court took the earnings at US\$ 2000, reduced 1/3rd for personal expenses and adopting a multiplier of 13, assessed the compensation payable at Rs.66,49,000/- in all, converting the exchange at Rs.31.75 per dollar. [(National Insurance Co. Ltd. vs. Yogeshbhai Ramanbhai Shah) 2007. For victims employed abroad, foreign exchange rate was held to be effective as on date of judgment. [2007 (4) ACC 909 (Ker)(DB). 2008 (2) MLJ 510].

Present value of an annuity

Thus at interest rates of 4 per cent the **present value of an annuity** for 20 years of which the first ten years are at Rs. 100 per annum and the second ten years at Rs. 200 per annum, is about 12 years' purchase of the arithmetical average annuity of Rs.150 per annum, whereas if the first ten years are at Rs.200 per annum and the second ten years at Rs. 100 per annum, the present issue is about 14 years' purchase of the arithmetical mean of Rs. 150 per annum.

In [Kerala SRTC vs. Susuma Thomas 1994 ACJ 1 (SC)] it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out.

Impact of interest rate on multiplier

As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 the multiplier of 18 adopted in [U.P. State Road Transport Corporation and

others vs. Trilok Chandra & Others date of judgment: 07/05/1996] appears to be appropriate. In fact Trilok Chandra case (*supra*) is to serve as a guide, but cannot be said to be invariable ready reckoner.

The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest at 60 to 70 years, which is the normal retirement age. (See: New India Assurance Co. Ltd. vs. Charlie”)

Variations in the “dependency”

If the chances of variations in the “dependency” are to be reflected in the multiplicand of the years’ purchase is the multiplier, variations in the dependency are not expected to take place until after ten years. It should have a relatively small effect in increasing or diminishing the “dependency” used for the purpose of assessing the damages.”

The **use of the correct multiplier for determination of compensation** to be awarded to the legal representatives of a victim of a road accident is illustrated in (U.P. State Road Transport Corporation and others vs. Trilok Chandra & Others) date of judgment: 07/05/1996].

Case of Nance

In the method adopted by Viscount Simon in the **case of Nance** also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors have a bearing on the uncertainties of life, such as, premature death of the deceased or the dependent, remarriage, accelerated payment and in increased earning by wise and prudent investments etc.

Discounting on various imponderables

It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life span considered. That is the reason why Courts in India as well as England preferred the *Davies' formula*, it being simple and more realistic.

However, as pointed out in Susamma Thomas' case, usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when Tribunal/Courts began to use a hybrid method of using Nance's method without making deductions for Imponderables. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by amendment Act, 54 of 1994.

The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Section 163A and 163B in Chapter XI entitled 'Insurance of Motor Vehicles against Third Party Risks'.

Section 163A begins with a non-obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculating compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousands payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged.

Structured Compensation Method

Section 163A was enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/- having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income, but also the other relevant factors. An award made shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The compensation so awarded is not interim in nature. The note appended to deal with fatal accidents makes the position furthermore clear, stating that from the total amount of compensation one-third part is to reduce in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive.

This together with the other heads of compensation leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without contesting a protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.” [Deepal Girishbhai Soni and Ors. vs. United India Insurance Co. Ltd., Baroda (2004) 5 SCC 385: AIR 2004 SC 2107]. The scheme for payment of compensation under the 1988 Act can be divided as under:

- (i) Section 140 for no-fault liability in case of death or disablement;
- (ii) Section 161 in case of hit-and-run motor accidents, where the identity of the vehicle cannot be ascertained, compensation amount is Rs.25,000/- in case of death and Rs.12,500/- in case of grievous hurt;
- (iii) Section 163A: special provisions as to payment of compensation on structured formula basis without

- establishing or proving any wrongful act or neglect or default of any person;
- (iv) Section 168 for determination of compensation payable in pursuance of any right on the principle of fault liability.

The Claims Tribunal is required to determine the application for payment of compensation either under Section 140 or Section 163A on the *principle of no-fault liability* and also on the basis of right to receive compensation on the *principle of fault liability* on the basis of Law of Torts, as modified by the Fatal Accidents Act, 1855 read with Motor Vehicles Act, 1988.

Whether Award is Final under Sec. 163-A

Sec.163-A, Second Schedule, has been enacted dispensing with the need for claimants to prove fault. Sec.163-A appeared to be another 'No Fault liability' regime. The Gujarat High Court went so far as to suggest that an award under Sec.163-A would only be an 'interim award' and further compensation besides the scheduled sum can be prosecuted on proof of fault. The Supreme Court, however, has reversed this position [in (Deepal Girishbai Soni Vs. United India Insurance Co. Ltd.) – 2004 ACJ 934] and concluded that an award under Sec. 163-A was final and not interim.

The question still remained whether a person who was at fault himself can sustain a claim under Sec.163-A. A careful reading of the difference in Secs.140 and 163-A would reveal that he couldn't. While under Sec.140 the claim cannot be defeated or reduced on grounds of the victim's fault, there is no similar provision in 163A, if so, it does appear as if a claim under 163-A can be defeated where the victim was at fault or the claim can be reduced on grounds that he was shown to have contributed to the accident. Hence, it does seem that in a claim under 163-A, negligence can be a defence tool. It is true that the claimants need not prove negligence.

But it cannot be understood as suggesting that where the claimant

was himself at fault, he can sustain the claim under 163-A. The Karnataka High Court [in (Appaji (since deceased) Vs. M. Krishna) – 2004 ACJ 1289 (Kant.)] alone appears to have given a proper and correct verdict. The High Courts of Bombay [(Latabai Bhagwan Kakade Vs. Mohammed Ismail Mohd. Saab Bagwan) – 2002 ACJ 407], Himachal Pradesh [Kokla Devi Vs. Chet Ram – 2002 ACJ 1150], Kerala [National Insurance Co. Ltd., Vs. Malathi C. Salian) – 2003 ACJ 2033 (Ker)] have taken differing stands.

The Karnataka Courts view appears correct and legal. As for the Supreme Court, stray observations in [(Deepal Girishbai Soni's case) 2004 ACJ 934] to the effect that “Sec.163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Sec.166 and the concept of social justice has been duly taken care of,” has queered the pitch. Technically, as student of law, it is clear that the said observations have been made in passing without any direction on the issue under consideration. If so, it would constitute obiter dicta not forming part of the ratio of the decision. It has to be understood in context and not independent of it. But such technical academia may not find persuasive ears before the courts below. The jury is still out as far as Supreme Court observations are concerned and Supreme Court cannot be said to have delivered its verdict in [(Deepal Girishbai Soni's Case), 2004 ACJ 934] on this aspect.

Relevant provisions of Sections 140 (Chapter X), 161, 162, 163A, 163B (Chapter XI) and 167 (Chapter XII) of the Act are given as hereunder under:

Section 140. Liability to pay compensation on the principle of no fault.

- (1) Whether death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

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- (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.
- (3) 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.
- (4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.
- (5) Notwithstanding anything contained in sub-section (2) regarding the death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.

Section 141. Right to claim compensation for death or permanent disablement.

- (1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter in this section referred to as the right on the principle of fault)

to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

- (2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.
- (3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and
 - (a) If the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition) to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;
 - (b) If the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

No Fault Liability

Negligence is a fundamental requirement to sustain a claim before claims Tribunal. This is the law of the land as laid in Minu B. Mehta Vs. Balakrishna Ramachandra Nayar -1977 ACJ 118. But thereafter calls went out that the lot of the victims was miserable and legislature evolved a No Fault Liability regime for speedy and certain relief. It was found that the insurance industry was nationalised and transport and roads were in State hands and as

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such compliance with the high constitutional principle of social justice was a common refrain. Supreme Court adverted to the absence of No Fault regime in State of Haryana Vs. Darshana Devi – 1979 ACJ 205: AIR 1979 SC 855; Concord of India Insurance Co. Ltd., Vs. Nirmala Devi – 1980 ACJ 55 and thereby Parliament was compelled to step in and introduce Act 47 of 1982 as of 1/10/82. By virtue of Sec.92-A of MV Act, 1939 provision for an interim award was introduced.

It was a clear departure from the known requirement under common law. But the Madras High Court seemingly following Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai – 1987 ACJ 561 (SC) to hold that no fault liability claim would not lie if the victim was himself at fault. Payment of compensation to a victim who himself was at fault was held to be an anathema to the Indian judicial ethos built on common law foundations. Reference was to observations in 1987 ACJ 561 for requirement of proof of negligence and fault to render this verdict. Calls went out that this judgment was unfair and incorrect and flew in the face of clear-cut statutory provision in sub-section (4) of 92-A. The Learned Judges had held that on the face of it, the claimant, even if at fault had a case to sustain. But on further examination it was found vide 1987 ACJ 561 that there can be no liability attaching in favour of a person who himself was the cause for the accident. The Learned Judges had erred. They ought not to have gone further than the first one. Sub-section (4) was clear in indicating that a claim under no fault liability shall not be defeated or reduced for any fault on the part of the victim. If so, Parliament had differed from the known path based on tortious liability and provided for relief even where the victim was at fault.

This position of law was quickly corrected by the Supreme Court in 1996 ACJ 555 (Nandakumar's Case) wherein it was held that a victim can sustain a claim under No fault Liability even where he himself was at fault. The claim for minimum compensation cannot be defeated or reduced for fault or contribution to fault by the victim himself. There was a clear departure from the common law regime by a conscious provision. This position of law holds good even now.

Section 161 : Compensation in case of hit-and-run.

Section 161(1) : For the purposes of this Section, [Section 162 and Section 163]

- (a) Grievous hurt shall have the same meaning as in the Indian Penal Code, 1860 (45 of 1860);
- (b) Hit and run motor accident means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;
- (c) Scheme means the scheme framed under section 163.

Section 161(2) : Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

Section 161(3) : Subject to the provisions of this Act and the scheme, there shall be paid as compensation :

- (a) In respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees;
- (b) In respect of grievous hurt to any person resulting from a hit-and-run motor accident, a fixed sum of twelve thousand five hundred rupees.

Section 161 (4) The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub- section.

Section 162. Refund of compensation paid under Section 161.

Section 162(1) : The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid. As is equal to the compensation paid under Section 161 shall be refunded to the insurer.

Section 162(2) : Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the Tribunal, Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall,

- (a) If compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it, to refund to the insurer, so much thereof, as is required to be refunded, in accordance with the provisions of sub- section (1);
- (b) If an application for payment of compensation is impending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation: For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending :

- (i) If such application has been rejected, till the date of the rejection of the application, and

- (ii) In any other case, till the date of payment of compensation in pursuance of the application.

Section 163A. Payment of compensation on structured formula basis.

Section 163A (1) : Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. For the purposes of this sub-section, permanent disability shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

Section 163A (2) : In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

Section 163A (3) : The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

Section 163B : Option to file claim

Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both.

Section 167 : Option regarding claims for compensation.

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily

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injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Further, Section 164 empowers the Central Government to make rules for the purpose of carrying into effect the provisions of Chapter XI, which include making such rules for (a) the forms to be used for the purpose of the said chapter and (f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of the Chapter. Learned counsel appearing on behalf of the respondents, however, submitted that until now, the Central Government has not framed any such rules as provided under Section 164.

Section 165 : Establishment of Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving a death of, or bodily injury to, persons arising out of or use of motor vehicles, or damages to any property of a third party so arising, or both, and Explanation to sub-section (1) provides that claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicle includes claims for compensation under Section 140 and 163A. Hence, the application claiming compensation under Section 140 or 163A and/or on the right to claim compensation on the principle of fault liability is required to be filed before the Claims Tribunal. Section 166 states who can make application for such compensation and where it could be filed.

Additionally, sub-section (4) of section 166 makes it clear that the Claims Tribunal shall treat the report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under the Act and sub-section (6) of section 158 provides for submitting the report to the Claims Tribunal by the officer in-charge of the police station as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under Section 158 is completed by a police officer. Section 168 requires the Claims Tribunal to determine the amount of compensation that appears to it to be just and specify person or persons to whom compensation is to be paid by making

an award. Such award shall also specify the amount, which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Proviso to sub-section (1) of Section 168 makes it clear that in an application which is filed under Section 165, if there is a claim for compensation under Section 140 in respect of death or permanent disablement of any person, the same is to be disposed of in the first place in accordance with provisions of Chapter X (Sections 140 to 143).

Legislative intent for Structured Compensation

From the provisions quoted above, it appears that no specific mention is made whether remedy provided under Section 163A is in addition or an alternative to the determination of compensation on the principle of fault liability. Section 163A was not there in the original Act of 1988 and was inserted by an amendment 54 of 1994 w.e.f. 14.11.1994. Hence for arriving at the proper conclusion, it would be necessary to cull out legislative intent by referring to the legislative history as well as Objects and Reasons for inserting the said provision.

History, Objects and Reasons of Structured Compensation

The Law Commission of India in its 119th Report in the introductory Chapter [Para 1.6] observed that previously there was recommendation for inserting provision in the Motor Vehicles Act 1988 to extend protection to victims of *Hit-and-Run* accidents where the person liable to pay such compensation or his whereabouts cannot be ascertained after reasonable effort by providing that in such an event the person entitled to such compensation shall be entitled to receive it from the State.

In Para 1.7 for introducing provision for no fault liability, the Law Commission observed that :

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"By 1980, a wind was blowing that compensation to the victims of motor accidents should be by way of social security and the liability to pay the same must be based on No-fault liability. The law, as it stands at present, save the provision in Chapter VII A, inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay compensation and which fault caused the harm such as bodily injury or death. In the event of death of a victim of a motor accident and the consequent harm caused to his dependants, the question whether the person responsible for the action causing harm had committed a fault or it was an inevitable accident, is hardly relevant from the point of view of victim or his/her dependants. The expanding notions of social security and social justice envisaged that the liability to pay compensation must be a No-fault liability".

Before the Motor Vehicles Act 1939 was repealed by the present 1988 Act, the Legislature introduced Chapter VII-A of the Motor Vehicles Act, 1939. While interpreting the said provisions in [Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and Another [(1987) 3 SCR 404] the Supreme Court referred to the aforesaid recommendations made by the Law Commission and observed thus:

"When the Fatal Accidents Act, 1855 was enacted there were no motor vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in [Rylands vs. Fletcher, (186) L.R. 3 H.L .330, 340]. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit-and-run cases where the drivers of the motor vehicles who have caused the accidents are not known, are increasing in number".

Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives as the case may be will be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents, there has been a continuous agitation through out the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission Chapter VIIA was introduced in the 1939 Act vide Sections 92-A to 92-E of the Act are to be found in Chapter VII A.

This part of the Act is clearly a departure from the usual Common Law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified. The special provisions contained in section 109-A to section 109-C of the Act providing for a scheme for granting relief to victims or the legal representatives of victims of hit-and-run motor vehicle accident cases is another novel effort on the part of the Government to remedy the situation created by the modern society which has been responsible for introducing so many fast moving vehicles on roads.

Review Committee Report

Thereafter, a Committee to review the provisions of Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989 was setup by the Government of India in March 1990. The Review Committee in its report suggested changes in a number of provisions in the 1988 Act. The Review Committee considered that determination of the claims cases pending before the Claims Tribunal takes a long time. To obviate such delay, proposals were made that finalisation of compensation claims would greatly facilitate to the advantage of claimants, the vehicle owners as well as the insurance

companies, if a system of structured compensation can be introduced. Under such scheme the affected party can have the option of accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing their claim through the normal channels. Thereafter, the Review Committee considered the suggestion of General Insurance Corporation that claimants should first file their claims with Motor Accident Claims Tribunals and the insurers be allowed six months' time to confirm their *prima facie* liability subject to defences available under the 1988 Act. After such confirmation the claimants should be required to exercise their option for conciliation under Structured Compensation Formula within stipulated time.

Option to Claimant Envisaged

Finally, the Review Committee also observed [Para 4.11.2] : "*in case a claimant opts for conciliation, necessary consent award may be given by MACT and if he does not opt for it, he may proceed with regular Motor Accidents Claims Tribunal in the usual course*".

The Committee also recommended that the decision of the insurer to accept liability before the expiry of the stipulated period should be the final one and after it is available it will be open to the insured to claim compensation under the structured compensation.

Further, the statement of objects and reasons for amending the 1988 Act inter alia mentions that the recommendations of the Review Committee of 1990 were forwarded to the State Governments for comments and they generally agreed with these recommendations. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The Transport Development Council made certain suggestions and one relevant suggestion is providing adequate compensation to victims of road accidents without going into long drawn procedure. The proposed legislation inter alia provides for :

- (a) Increase in the amount of compensation to the victims of hit and run cases;
- (b) A new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational.

The recommendations made by the Review Committee are reflected in the provisions which are inserted by the said Act. It is contended that the relevant provisions nowhere provide that lump sum compensation payable under the structured formula basis is alternative and optional to the determination of compensation under Section 168. As stated above the Legislature has not specified or clarified that compensation payable under Section 163-A is in the alternative or addition.

Therefore, we are referring to the reasons for inserting Section 163A in the context of other provisions. For the purpose of interpretation in such cases, this Court in [Utkal Contractors and Joinery P. Ltd. & Ors. vs.. State of Orissa & Ors. {(1987) 3 SCC 279}] observed that: “the reason for a statute is the safest guide to its interpretation”.

The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are *Statement of Objects and Reasons* when the Bill is presented to Parliament, the reports of committees, which preceded the Bill, and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important Again, while the words of an enactment are important, the context is no less important.

Relief to the victims

In this context if we refer to the Review Committees Report, the reason for enacting Section 163A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes long time and, therefore, under a system of structural compensation, the compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of minor, loss of income on account of loss of limb etc. can be notified and the affected party can then have the option of accepting lump sum compensation under the scheme of structural compensation or of pursuing their claim through the normal channels. The State Governments considered the Report of the Review Committee and comments were notified. Thereafter, the Transport Development Council made suggestions for providing adequate compensation to victims of road accidents without going into long drawn procedure. As per the objects and reasons, it is a new pre-determined formula for payment of compensation to road accidents victims on the basis of age/income, which is more liberal and rational. On the basis of the said recommendation after considering the Report of the Transport Development Council, the Bill was introduced with a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income which is more liberal and notional, i.e. Section 163A. It is also apparent that compensation payable under Section 163A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied. In addition to the figure which is arrived at on the basis of said criteria, schedule also provides that amount of compensation shall not be less than Rs. 50,000/- It provides for fixed amount of *general damage* in case of death such as:

- (1) Rs. 2,000/- for funeral expenses
- (2) Rs. 5,000/- for loss of consortium if beneficiary is the spouse
- (3) Rs. 2,400/- for loss of estate

- (4) For medical expenses supported by the bills, voucher not exceeding Rs. 15,000/-.

Similarly, for disability in non-fatal accident Para 5 of the Schedule provides for determination of compensation on the basis of *permanent disability*. Para 6 provides for notional income for those who had no income prior to accident at Rs. 15,000/- per annum. There is also provision for reduction of 1/3rd amount of compensation on the assumption that the victim would have incurred the said amount towards maintaining himself had he been alive.

Purpose of Structured Formula

The purpose of this Section 163A and the Second Schedule is to avoid long drawn litigation and delay in payment of compensation to the victim or their heirs who are in dire need of relief. If such affected claimant opts for accepting the lump-sum compensation based on structured formula, they would get relief at the earliest. It also gives vital advantage of *not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles*. This no-fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be no-fault liability in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents. However, the claimant can avail of this benefit only by restricting his claim on the basis of income at a slab of Rs. 40,000/- that is the highest slab in the Second Schedule, which indicates that the legislature wanted to give benefit of no-fault liability to a certain limit.

This would clearly indicate that the scheme is an alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long drawn litigation on a predetermined formula, which is known as structured formula basis which itself is

based on relevant criteria for determining compensation and the procedure for paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault on the principle of social justice as a social security measure because of ever increasing motor vehicle accidents in a fast moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking long time. That mischief is sought to be remedied by introducing Section 163A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles.

Use of specific words also and in addition in Sections 140 and 141

The aforesaid conclusion gets support from the language used in Sections 140, 141, 161 and 163A. Sections 140 to 143 provide for liability of the owner of the vehicle in case of death or permanent disablement of any person resulting from an accident arising out of use of a motor vehicle or motor vehicles to pay compensation without any pleading or establishing that death or permanent disablement was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles.

By way of earliest relief, the victim is entitled to get the amount of compensation of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement. It is further provided that such claim shall not be defeated by reason of any wrongful Act, neglect or default of the person in respect of whose death or permanent disablement has occurred. Sub-section (5) of Section 140 upon which much reliance is placed by learned counsel for the Insurance Companies as well as the claimants requires consideration and interpretation, which *inter alia* provides that owner of the vehicle, is

also liable to pay compensation under any other law for the time being in force. The word also indicates that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force. The proviso to sub-section (5) further clarifies that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of compensation payable under sub-section (2) or under section 163A.

This is further confirmed by Section 141 which provides that the right to claim compensation under Section 140 is in addition to any other right to claim compensation on the principle of fault liability and specifically excludes the right to claim compensation under the scheme referred to in Section 163A.

Section 163B also provides that where a person is entitled to claim compensation under Section 140 and Section 163A, he can file the claim under either of the said sections but not under both. Similarly, Section 141(1) also confirms that the right to claim compensation under Section 140 is in addition to the right to claim compensation in respect thereof under any other provision of the 1988 Act or any other law for the time being in force. Sub-section (2) further provides that if the claimant has filed an application for compensation under Section 140 and also in pursuance of any right on the principle of fault liability, the claim for compensation under Section 140 is to be disposed of in the first place and as provided in sub-section (3) the amount received under sub-section (2) of Section 140 is to be adjusted while paying the compensation on the principle of fault liability. On the basis of fault liability if additional amount is required to be paid then the claimant is entitled to get the same but there is no provision for refund of the amount received under Section 140(2), even if the Claims Tribunal arrives at the conclusion that the claimant was not entitled to get any compensation on the principle of fault liability.

Further, Section 144 gives overriding effect to the provisions made under Chapter X by providing that the provisions of the chapter shall have effect notwithstanding any thing contained in any

provision of the Act or of any other law for the time being in force. From the aforesaid Sections, one aspect is abundantly clear that the right to claim compensation on the basis of no-fault liability under Section 140 is in addition to the right to claim compensation on the principle of fault liability or right to get compensation under any other law. Such amount is required to be reduced from the amount payable under the fault liability or compensation, which may be received under any other law. If nothing is payable under the Act then the claimant is not required to refund the amount received by him.

As against this, there is specific departure in the scheme envisaged for paying compensation under Section 163A. Section 163A nowhere provides that this payment of compensation on no-fault liability on the basis of structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability, and unless otherwise provided for the same cause, compensation cannot be paid again. Provisions for refund of compensation if compensation is received under any other law or under the Act: Further, as the legislature has not provided for refund or adjustment of compensation received under the Act and compensation payable under Section 163A, it would mean that Scheme of payment of compensation under Section 163A is an alternative to determination of compensation under Section 168.

As stated above, sections 140(5) and 141(3) make provisions for reduction of compensation paid under section 140. Under proviso to sub-Section (5) of Section 140, the amount of such compensation which the claimant is entitled to receive under any other law is required to be reduced from the amount of compensation payable under Section 140 under Section 163A. Under Section 141(3), even if a person gets the compensation on principle of fault liability, provision is made for adjustment of compensation received under Section 140. There is no such provision for adjustment of compensation received under Section 163A from the compensation receivable under the Act on the principle of fault.

Similarly, section 161 provides for payment of compensation in case of hit-and-run motor accidents. Under Section 161(3), in cases in respect of the death of any person resulting from a hit-and-run motor accident, a fixed sum of Rs. 25,000/- is to be paid as compensation and in case of grievous hurt, the amount fixed is Rs.12,500/-. Thereafter, under Section 162, the legislature has provided for refund of compensation paid under Section 161 on the principle of hit-and-run motor accident by providing that the payment of compensation under Section 161 shall be subject to the condition that if any compensation is awarded under any other provision of this Act or any other law or otherwise, so much amount as is equal to the compensation paid under Section 161 is required to be adjusted or refunded to the insurer.

Under Section 162(2), duty is cast on the Tribunal, Court or other authority awarding such compensation to verify whether in respect of such death or bodily injury, compensation has already been paid under Section 161 and to make adjustments required there under. As such the claimant is not entitled to have additional compensation but at the same time he can proceed by filing application under Section 165 or under the Workmen's Compensation Act (i.e. other law) and if he gets compensation under either of the said provisions, the amount paid under Section 161 is to be refunded or adjusted. The contention of the learned counsel for the claimants that compensation payable under Section 163A is in addition to the determination of compensation on the basis of fault liability and thereafter it could be adjusted on similar lines provided under Section 140 read with Section 141 or Section 162 cannot be accepted. The Legislature has specifically provided scheme of adjustment of compensation under Section 140 read with Section 141 and Section 162 if the claimants get compensation under the Act, while there is no such provision under Section 163A. Addition or introduction of such scheme in provisions would be impermissible.

The minimum compensation payable should be considered on the basis of the extent of disability suffered by the victim. In certain situations, the multiplier specified in the Second Schedule cannot

and should not be altered but there must be strong circumstances as observed by the Supreme Court in [A.P.S.R.T.C. vs. M. Pentaiah Chary Appeal (Civil) 3988 of 2007 date of judgment: 30/08/2007 {Arising out of SLP (Civil) No. 860 of 2007}] In the year 1995, the rate of interest was lower than the rate of interest taken into consideration in Susamma Thomas case [(1994) 2 SCC p176]. Application of multiplicative factor should also be considered from that angle. Susamma Thomas [(1994) 2 SCC p176] or the other decisions relied upon, do not lay down any law in absolute terms.

The manner in which the Structured Compensation scheme shall be administered includes the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, administration of the scheme and the payment of compensation [**Sec 163 (1)**].

Sec 163 (2). A scheme made may provide that – (a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both; (b) the powers, functions or duties conferred or imposed on any Officer or Authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such Officer or Authority to any other Officer or Authority; (c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939, (4 of 1939.) as it stood immediately before the commencement of this Act.

Benefit of Structural Formula

Application of the *multiplier* in a structural form was provided in the Second Schedule appended to the Motor Vehicles Act. This Court considered benefit of applying the structural formula in

[General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs) and Others {[(1994) 2 SCC p176]}.

In [1996 ACJ p 831 (SC)] it was held that the ‘structural formula’ suffered from several defects. Neither the Claims Tribunal nor the High courts can go by the ready reckoner. It can be used as a guide only. In case of a bachelor, when parents are dependent, the age of parents would be a relevant factor for multiplier method.

Comparison with Section 166

Section 166 of the Act evidently stands on a different footing. The extent of compensation payable there under may vary from case to case. Various other factors including contributory negligence, earning capacity, extent of negligence on the part of one vehicle or the other, are relevant factors for computation of damages. Loss of property can also be a subject matter of the claim petition.

Is the compensation payable under Section 163A of the Motor Vehicles Act, 1988 as per the structured formula basis is in addition or an alternative to the determination of the compensation on the principle of fault liability, after following the procedure prescribed under the Act?

Just Compensation

Section 168 of 1988 Act 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 nor a source of profit; but the same should not be a pittance as well.

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. [Helen C. Rebello vs. Maharashtra SRTC (1999(1) SCC 90)]

Dictionary meaning of ‘compensation’

The word compensation is not defined in the 1988 Act or in the Rules, it is the giving of an equivalent or substitute of equivalent value. In Black’s Law Dictionary, “compensation” is shown as “equivalent in money for a loss sustained; or giving back an equivalent, in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute.”

It means when compensation is paid in terms of money, it must represent on the date of ordering such payment ***the equivalent value***. In this context we may look at Section 168 (1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 164 or 164-A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an

interdict that no person shall be entitled to claim compensation for more than once in respect of the same accident.

This means that the party has two alternatives: one is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provision, and the other is to apply before the Claims Tribunal under Section 164 or 164-A of the Act. As the claimant cannot avail himself of both the remedies he has to choose one between the two.

The provisions in Chapter XII of the 1988 Act are intended to provide a speedier remedy to the victims of accidents and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the legislature that the Central Government is alive to the need for ‘prescribing fair and just compensation’ in the Rules from time to time.

The provisions are not intended to give an advantage to the Railway Administration but they are meant to afford just and reasonable compensation to the victims as a speedier measure. If a person files a suit the amount of compensation will depend upon what the court considers ‘just and reasonable’ on the date of determination. Hence, when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination.

Definition of ‘Income’

The term ‘income’ in P. Ramanatha Aiyar’s Advanced Law Lexicon (3rd Ed.) has been defined as : “*The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture.*”

'Income' signifies 'what comes in' (per Selborne, C., Jones vs. Ogle, 42 LJ Ch. 336). 'It is as large a word as can be used to denote a person's receipts' (per Jessel, M.R. Re Huggins, 51 LJ Ch.938.). Income is not confined to receipts from business only and means periodical receipts from one's work, land, investment, etc. [AIR 1921 Mad 427 (SB). Ref. 124 IC 511: 1930 MWN 29: 31 MLW 438 AIR 1930 Mad 626: 58 MLJ 337.]

If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax; although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

In [N. Sivammal & Ors. vs. Managing Director, Pandian Roadways Corporation & Ors. (1985) 1 SCC 18], pay packet of the deceased was taken into consideration. In [T.N. State Transport Corporation Ltd. vs. S. Rajapriya & Ors. [(2005) 6 SCC 236], it was held that :

"The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together."

Ascertaining net income

The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income

as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that part of the net income should be capitalized by multiplying it by a figure representing the proper number of years' purchase.

Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can to compensate the loss suffered." In [New India Assurance Co. Ltd. vs. Charlie & Ann [(2005) 10 SCC 720], the words 'net income' has been used but the same itself would ordinarily mean 'gross income minus the statutory deductions'. The said decision has been followed in [New India Assurance Co. Ltd. vs. Kalpana (Smt.) & Ors. {(2007) 3 SCC 538}].

Private Sector Approach to Contributory Provident Fund

The private sector companies in place of introducing a Pension Scheme take recourse to payment of contributory provident fund, gratuity and other perks to attract efficient and hard working people.

The employer may make different offers to an officer; it may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis whereof, the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.

The elements of wages paid to the deceased includes : Basic Pay, Conveyance Allowance, Rent Co Lease, Bonus (35% Of Basic). In addition to aforesaid, other entitlements are Contribution to PF 10% of Basic, LTA reimbursement, Medical reimbursement,

Superannuation 15% of Basic, Gratuity Cont. 5.34% of Basic, Medical Policy-self & Family, Education scholarship, payable to his two children directly. There are three basic features in the aforementioned statement :

- (a) Reimbursement of rent to be equivalent to HRA
- (b) Bonus is payable as a part of salary; and
- (c) Contribution to the Provident Fund.

Apart from these superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship are also benefit the members of the family. Medical reimbursement, which provides for a slab and which keeping in view the terminology used, would mean reimbursement for medical expenses on production of medical bills, would not come within the purview of the aforementioned category.

Contributions by salaried person are deferred payment

It was held in [National Insurance Co. Ltd. vs. Padmavathy & Ors. [CA No.114 of 2006 decided on 29.1.2007] that "Income tax, Professional tax which is deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., other contributions are amounts paid in specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason, such contribution made by the salaried person is deferred payments and they are savings.

The compensation payable under the Motor Vehicles Act 1988 is '*Statutory*' and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the

contractual liability. If the contributions made by the employee which are otherwise savings from the salary, are deducted from the **gross income** and only the net income is considered for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income.

“In view of the settled proposition of law, the Claims Tribunal can make only statutory deductions such as Income tax and Professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.”

The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount, which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was, therefore, right in so holding.” In [Asha & Ors. vs. United Indian Insurance Co. Ltd. & Anors. [2004 ACC 533], reliance has been placed on these points while arguing a case where several perks were included in salary. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, Society charges and HBA etc.

What would be ‘just compensation’ must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.

The amounts which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income, as that would have been added to his

monthly income by way of contribution to the family as contra distinguished to the ones which were for his benefit subject to deduction of the statutory amount of tax payable thereupon must be deducted. [(Oriental Insurance Co. Ltd vs. Syed Ibrahim & Ors Appeal) (Civil) 4308 of 2007. date of judgment: 17/09/2007]

Determination of Damages for a Child or Non-earning Person

There are some aspects of human life, which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of the stars, beyond the reach of monetary tape measure. The expression 'just' must also be given its logical meaning. While it cannot be a bonanza or a source of profit, in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.

Compensation for death of an Infant

The House of Lords in [Taff Vale Rly vs. Jenkins (1913) AC 1] laid down the principle for compensation in case of the death of an infant. There may have been no actual pecuniary benefit derived by the parents during the child's lifetime, but this will not necessarily bar the parents' claim, and prospective loss will find a valid claim provided the parents establish that they had a reasonable expectation of pecuniary benefit if the child had survived. Lord

Atkinson said thus:

*“.....all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, **first** that the deceased earned money in the past, and, **second**, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them.”*

Distinction between various age groups

The Supreme Court [in (Lata Wadhwa and Ors. vs. State of Bihar and Ors) - 2001 (8) SCC 197] while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

“In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation”.

In view of what has been stated in Swaran Singh's case (supra) we are of the view that the appellant insurer was not liable to indemnify the award. However, at this juncture it would be relevant to take note of paragraphs 11 and 19 of [(National Insurance Co. Ltd. vs. Kusum Rai and Others) - 2006(4) SCC 250].

Some Case Studies

Multiplier for infant child

1. An award for Rs.51,500/- for the death of an infant child was enhanced to Rs.1,52,500/- by the High Court. On appeal, the Supreme Court affirmed and laid down the basis for determining 'Just compensation' in such cases and stiffer nature of assessment. It adverted to various principles in doing so. [(Oriental Insurance Co. Ltd. vs. Syed Ibrahim) 2007 (4) LW 782] : [2007 (6) Supreme 574] : [2007 6) MLJ 1477] : [2007 (2) TN MAC 474] [(New India Assurance Co. Ltd. vs. Padam Singh) 2007 (4) TAC 388 (All)].
2. For housewives Rs.3,000/- p.m. as loss of contribution is reasonable. [2008 1 TN MAC 29 (Del)]. Gross Pay and Net Pay concept clarified to fix income [(Indira Srivastava case 2008 (2) MLJ 495 (SC)]. Indira Srivastava followed in [2008 (7) MLJ 573]. See also [Asha vs. UIIC 2008 (2) SCC 774] on net pay concept.
3. For the death of an infant child, an award for Rs.4, 45,000/- was reduced to Rs.1,80,000/- after advertiring to principles for assessments in similar cases. [(New India Assurance Co. Ltd. vs. Satender) 2007 (3) ACC 46 (SC)].
4. For the death of a 3-year-old child an award for Rs.1,86,000/- was upheld.
5. For a 3-year-old girl child Rs.1, 80,000/- was upheld in [2007 (2) TN MAC 497].
6. For the death of a 3 year old boy at the instance of his father the award of the Tribunal for Rs.2,00,000/- was reduced to Rs.1,50,000/- adopting notional income and Rs.15,000/-p.a. and multiplier of 10.National Insurance Co. Ltd. vs. Swapan Mudi 2007 ACJ 1495 (Cal). A similar award for Rs. 1,59,500/- was passed for a 3 year old in R.J.Foujdar Service vs. Ganpat Singh 2007 ACJ 1591 (Gau) also.

7. For a 4 year old son the award of Rs.75,000/- was enhanced to Rs.1,60,000/- Laxmikant Sharma @ Laxmishankar vs. Narayan Singh Pal 2007 (3) T A C 806 (MP).
8. Following the verdict of the apex court in [Manju Devi vs. Musafir Paswan in 2005 ACJ 99] an award for Rs.2,25,000/- was passed for the death of a 5-year-old boy. [Oriental Insurance Co. Ltd. vs. Surendra Kumar 2007 ACJ 1466 (All)]. The apex court upheld the award of Rs.1,52,500/- by the High Court for a 7-year-old boy at the instance of parents. [(Oriental Insurance Co. Ltd. vs. Syed Ibrahim) 2007 (6) Supreme 574].

Multiplier for student

9. For a 14 year old student an award of Rs.1,00,000/- was upheld in [(Kaushalya Devi vs. Karan Arora) 2007 ACJ 1870 (SC)]: [2007 (2) TN MAC 41(SC)]: [AIR 2007 SC 1912]: [2007 (4) TLNJ 224 (Civil)]: [2007 (5) CTC 173:2007 (3) ACC 10].
10. Where the deceased was aged 14 years, an award for Rs.70,000/- by the Tribunal was enhanced to Rs.2,25,000/- with interest at 7.5% p.a. [(C.Manivasagam vs. R.Jaganathan) 2007 (2) TN MAC 190 (Mad)]. For the death of a 16 year old following 2005 ACJ 99 (SC) the award of Rs.1,44,000/- was enhanced to Rs.2,25,000/- and restricted to Rs.2,00,000/- with interest at 7.5% p.a. as sought for [(S.Raziya vs. Anand Transports) 2007 (2) TN MAC 111 (Mad)].
11. An award for Rs.2,25,000/- was passed for a 16 year old in [2008 ACJ 11 Uttar]. The award of Rs.1,50,000/- for a 16-year-old boy was enhanced to Rs.2,25,000/- with interest and costs. [(M.Lakshmi vs. D.Chandran) 2007 (2) TN MAC 385 (Mad)]. For 16-year old girl student of IX- an award for Rs.1, 60,000/- was enhanced to Rs.2,25,000/- following [2005 ACJ 99 (SC)] in [2008 ACJ 11 (Uttar) (DB)].

Multiplier for bachelor

12. For 20 year old with parents aged 47 and 42-year multiplier of

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12 was suggested and award for Rs.2,50,000/- upheld in [CA No. 6313/2001 dt.12/3/2008. (Bilkish vs. UIIC Ltd) 2008 (1) TN MAC 307 (SC)].

13. The deceased was a bachelor aged 25 years and parents were aged 65 years. Applicable multiplier was held to be 5 and not 17 and the award of Rs.4,10,000/- was reduced to Rs.2,10,000/- [(The New India Assurance Co. Ltd. vs. Shanti Pathak) 2007 (2) TN MAC 84 (SC)]: [2007 (6) MLJ 707: 2007 (4) TAC 17]
14. For the death of a 29-year-old bachelor of parents aged 55 and 50 years an award for Rs.1,50,000/- was enhanced to Rs.2,25,000/- with 7.5% p.a. as interest. [(Palaniappa Gounder vs. TNSTC Ltd) 2007 (2) TN MAC 242. (Mad)].
15. For a 33 year old stamp vendor/bachelor Rs.4,60,000/- as award was upheld in CMA No.313/2008 dt.30/1/2008.

Multiplier for housewife

16. For the death of a 27 year old housewife leaving behind her husband and 2 minor children, the court adopted a multiplier of 15 and dependency of Rs.20,000/-p.a. and reduced the award of Rs.3,65,000/- to Rs.3,30,000/- [(National Insurance Co. Ltd. vs. Mahadevan) 2007 (5) MLJ 129 (Mad)].
17. The claimants were husband and children of a housewife aged 35 years also engaged in stitching, agriculture and tending to cattle. The compensation of Rs.50,000/- was raised to Rs.2,18,500/- .
18. For mother aged 40 years, 13 was adopted as multiplier instead of 17. [2008 (2) TLNJ 564 (Civil)].

Treatment of Interest

So far as the higher rate of interest stipulation is concerned, it is to be noted that grant of interest under Section 171 of the Motor

Vehicles Act, 1988 is discretionary. The purpose for award of interest is to put pressure on the relevant person not to delay in making the payment; and, to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of interest.

In determining the quantum of interest awardable under the relevant Section 171, the Tribunal acting under Section 166 of the 1988 Act, can derive direct guidance from Section 34 of the Code of Civil Procedure, 1908 (in short the 'CPC'). In fact, the provisions require payment of interest in addition to compensation already determined. Even though the expression 'may' is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The provision is discretionary and is not and cannot be bound by rules.

In Halsbury's Laws of England, 4th Edn., Vol. I, it duty and discretion is explained as given below:

"A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but discretion how to act. Discretion may thus be coupled with duties".

Discretion as per rules of Reason and Justice

As per Lord Halsbury, L.C., in [Sharp vs. Wakefield, (1891) Appeal Cases 173]

"When it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. The discretion must be exercised

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within the limit, to which an honest man, competent to the discharge duty of his office ought to confine himself.

The word “discretion” standing alone and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste. Therefore, discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility. See [(S.G. Jaisinghani vs. Union of India and Ors). 1967 AIR (SC) p1427]. If a certain latitude or liberty is accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review. When a statute gives discretion to a judge, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (Per Willes J. in Lee vs. Budge Railway Co., (1871) LR 6 CP 576, and in Morgan vs. Morgan, 1869, LR 1 P & M 644).

Though Section 171 of the 1988 Act confers discretion on the Tribunal to award interest, the same is to be exercised in cases where the claimant can claim the same, as a matter of right. In the above background, the question is, whether the Claims Tribunal can impose a stipulation for higher rate of interest in case of default.

Once the discretion has been exercised by the Claims Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. In [(National Insurance Co. Ltd. vs. Keshav Bahadur and Ors). {Appeal (Civil) 399 of 2004}; Date of Judgment: 20/01/2004], the Supreme Court held that no express or implied power in this regard can be culled out from Section 171 of the 1988 Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest

payable thereon, virtually amounts to imposition of penalty, which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

Interest Liability Falling Due/WC Claim

The decision of the Supreme Court in [(National Insurance Co. Ltd. vs. Mubasir Ahmed) 2007 ACJ 845: 2007 (1) TN MAC 214 (SC)] came up for consideration. The workman had submitted that under WC Act, 1923 employer's liability "**fell due**" upon **occurrence** of the accident itself. The recent decision of the apex court was contrary to earlier and larger bench decisions of the apex court itself. In view of the existing larger benches of the apex court ruling that liability to pay compensation "**fell due**" **contemporaneously to the occurrence** of accident, the latest pronouncement was not good law. The Learned Judge has boldly ruled that [2007 ACJ 845] was not good law to be followed in the face of earliest verdicts. A series of decisions of apex court on the **law of precedent** was also relied upon to come to contrary verdict to that in [2007 ACJ 845(SC)]. [(Marimuthuammal vs. R.P.P.Construction (P) Ltd.) 2007 (3) TLNJ 358 (Civil) (Mad)]. [2007 (2) TN MAC 98]; [2008 (1) TN MAC 38 (Mad)] also. And in [2008 (7) MLJ 963] also.

In another instance of a similar dispute, a Learned Judge of the High Court, Madras has chosen to follow the decision in [2007 ACJ 845 (SC)]: [2007 (2) LW 700]. He declined to go into the question of whether the decision in [2007 ACJ 845 (SC)] was in accord with the earlier pronouncement of law by a larger bench on the meaning and import of liability falling due in a WC claim. [(H.Dawood vs. L.Thangarajan) 2007 (4) CTC 468 (Mad)]: [2007 (2) TN MAC 235]; [(National Insurance Co. Ltd. vs. Raheema Begum) 2007 ACJ 2481 (AP)]. The appeal of the claimants seeking payment interest at 12% p.a. from date of accident itself was negatived. [(Velu Ammal vs. Sri Krishna Agencies) 2007 (3) LW 23 (Mad)]: [2007 (3) ACC 72]; It was held that interest should have

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been allowed at 9% p.a. from date of claim petition itself. [(Mohinder Kaur vs. Hira Nand Sindhi) 2007 ACJ 2123 (SC)].

The insurer's contention to absolve them of interest liability relied on [(New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya) AIR 2006 SC 1926]: [2006 (3) TAC 321], [(P.J.Narain vs. Union of India) 2004 ACJ 452]. The contention was rejected on the ground that though it was permissible for insurer to contract out of interest liability under a WC policy, they ought to plead and prove such contracting out. **In the absence of such proof, the insurer was fastened with interest liability also.** [(Oriental Insurance Co. Ltd. vs. Subhash Burman 2007 (4) TAC 193 (Gau))].

Defences Available to Insurers

This chapter deals with pleadings, evidence and exhibits while contesting the Liability claim and protecting the right to appeal. The chapter also deals with defences for insurers when there is breach of policy conditions, limitations as to use and liability towards unauthorised passengers.

Introduction

While contesting cases the insurer takes up statutory defences available and pleads as well as submits evidences to protect its insured's legal liability as well as insurer's statutory liability to pay and recover due to benevolent nature of legislation.

Where there are no defences, filing of written statement is of secondary importance and the insurers should give greater emphasis on settlement of liability through compromise. The Motor Accident Claims Tribunal has evolved as a separate and independent branch, where applicability of The Evidence Act to Claims Tribunal has not been accepted as a right [see judgment in AIR 1957 p 882] and the same trend still continues.

Pleadings

But where defences are available, pleadings assume significance, since Claims Tribunals are inclined to treat the litigation as application for claimants and as civil suit for opponents.

Specific denial

Each and every allegation made in the claims petition should be dealt with specifically, either by admission or denial. It may be noted that simply writing '**Not admitted**' in the written statement is no denial. Further mentioning '**No knowledge**' is worse than '*Not admitted*'. '*No Knowledge*' is not denial by implication. Bare denial does not serve any purpose where an allegation of fact needs to be specifically denied. The averments in the claim petition, which has not been specifically denied, have to be accepted as true in the absence of any circumstances indicating collusion.

In order to defend Third Party cases effectively:

- (A) The insurance company must collect all relevant documents through investigator relating to
 - (a) Accident site details
 - (i) Vehicle(s) involved
 - (ii) Sketch of site of accident,
 - (iii) Extent of property damage;
 - (iv) Number of injured / dead,
 - (v) Primary treatment taken, by deceased / injured
 - (vi) Witnesses at the site/ passengers if any,
 - (b) Contact with insured
 - (i) Insured's policy documents;
 - (ii) Driver's address & whereabouts
 - (iii) Copy of driving licence

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- (iv) Manner in which the alleged accident occurred
- (v) Copies of vehicular documents
 - 1. Extract of Registration Certificate
 - 2. Extract of Driving Licence of the driver
- (c) Contact with Driver
 - (i) Collect information of the alleged accident
 - (ii) Number of persons died or injured
 - (iii) Inform driver to make himself available to establish negligence aspect (either contributory or composite) by giving evidence
- (d) Contact with claimants/deceased representatives/Friends and neighbours/colleagues
 - (i) Deceased/insured's age, occupation, income, status, and related evidence/proof
 - (ii) Details of family members including minor children, dependents and other earning members, legal representative
 - (iii) PM report,
 - (iv) Relevant material/documents with regard to employment of the deceased or injured if matter relates to W.C. Act
 - (v) Medical Leave certificate of injured
 - (vi) Whether two or more claims by different dependents
 - (vii) Whether claim at any other MACT also

(e) Police Papers

(i) F.I.R.

(ii) Charge Sheet

(iii) MVI report, sketch of site,

(iv) Form 54

(v) Panchnama

(f) RTO Papers

(i) Verification of RC book, Permit, Load Challan

(ii) Verification of driving licences validity and effectiveness

(g) Medical Papers

(i) Bed side ticket,

(ii) Prescription and bills

(iii) Disability certificate

(B) Besides procuring documents if any important aspect of accident is brought out by the investigator, it should also be brought to the notice of Claims Tribunal and if necessary the investigator should be asked to give evidence personally and prove the notarised affidavits obtained from relevant witnesses/ persons giving statements. The written statements are to be carefully studied and redrafted, if necessary to lead defences by the insurance company.

Specific plea

Specific rules of pleadings as contained in the Code of Civil

Procedure 1908 need not be adhered to, but it is necessary for claimants to lead evidence for each item for which the compensation is sought. It is the duty of the panel advocate to see that specific pleas are framed as issues.

Evidence, an exhibit

The executives of Insurance company should give evidence especially in case of ‘violation of policy condition’ as it is not enough to take the plea in written statement. One should mark the Policy as an exhibit, and evidence should be given. Similarly in the case of fake driving license, Registration certificate, where company undertakes the plea that the class of vehicle used is for the purpose other than indicated in Registration Certificate. RTA may be summoned to give evidence, and the attending Doctor may be called to give evidence in case of disability. Similarly, Highway Authorities may be called to give evidence for over loading etc.

It should also be seen that the Policy copy is filed as evidence in all the cases at the commencement of the proceedings. This is particularly important when violation of Policy condition as to limitation to use, is involved.

Ground to Contest

An insurer can contest the proceedings before the Claims Tribunal only on any of the grounds prescribed under Section 149 (2) of the 1988 Act, and unless specific permission is granted by the Claims Tribunal under Section 170 of the 1988 Act, the insurer cannot contest the case on grounds other than those mentioned in Section 149 (2) of the 1988 Act as given below :

“Section 149 (2) stipulates that no sum shall be payable by an insurer under Section 149 (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so

long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :

- (A) That there has been a breach of specified condition of the policy, it being one of the following conditions, namely :
 - (i) A condition excluding the use of the vehicle
 - (a) For hire or reward, where the vehicle is on the date of the contract of insurance, a vehicle not covered by a permit to ply for hire or reward, or
 - (b) For organised racing and speed testing, or
 - (c) For a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
 - (d) Without side-car being attached where the vehicle is a motor cycle; or
 - (ii) A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
 - (iii) A condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion, or
- (B) That the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

If a policy is cancelled and the 'certificate of insurance' returned to the insurer before the occurrence of the accident, it was a valid ground of defence in the old 1939 Act, but the same was deleted

from the 1988 Act. The Apex courts in Deddappa & Ors Appeal vs National Insurance Co. Ltd. [(CA) 5829 of 2007 dt.12/12/2007]. has expressed the view that "If all concerned have been informed, mainly RTO and Insured, by registered post A. D. & all the proof made available at the time of the evidence, and if the contract of insurance has been cancelled and all concerned have been intimated thereabout, the insurance company would not be liable to satisfy the claim as held. The same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated; the insurance company would not be liable to satisfy the claim."

Insured's Collusion vs. Insurer's Right to Proceedings

It is evident from the above that the Insurance Company can contest the claim preferred before the Claims Tribunal only on the statutory grounds prescribed under Section 149(2) of the Act, but, if there is *collusion between the petitioner making the claim and the insured resisting the claim or if the insured against whom the claim is made has failed to contest the claim*, the Insurance Company can step in and seek permission of the Claims Tribunal by making a prayer for getting itself impleaded as a party to the proceeding and the insurer so impleaded can then contest the proceeding on grounds other than the grounds enumerated in Section 149 (2) of the 1988 Act.

Reasoned Order under Section 170

The Company has to obtain the order in writing from the Claims Tribunal, which should be a reasoned order by the Claims Tribunal, and unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence.

In most of the primary category of cases the insured/owner remains ex-parte despite service of summons. In the second category of cases insured/owner never comes forward to contest the claim effectively, even though appearance is made. In the third category of cases even after filing of Written Statement on their behalf, neither any persuasion is done nor are any evidences produced to support the defence contentions of the insurance company. Due to these factors the insurer's interest is adversely placed.

In such circumstances in the absence of an application u/s 170 of the Motor Vehicle Act 1988 (as amended) and for not obtaining of suitable order from the Tribunal the insurance company is precluded from contesting the claim on merit or beyond the grounds stipulated under the statute under Section 149(2) of the Motor Vehicle Act 1988. The insurance company is precluded from pursuing appeal before the High Court in the absence of application u/s 170 of the Motor Vehicle Act 1988 for not obtaining order towards ineffective participation of the insured. There are several rulings that without the order of the Claims Tribunal no advantage can be given to the insurance company to contest the claim on merits of the case.

Section 170 of the Motor Vehicles Act 1988

The section impleads insurer in certain cases where in the course of any inquiry, the Claims Tribunal is satisfied that :

- (a) There is collusion between the person making the claim and the person against whom the claim is made, or
- (b) The person against whom the claim is made has failed to contest the claim, it may for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

Conditions Precedent

Supreme Court in *Shankarayya vs. United India Insurance Co. Ltd.* [AIR 1998 (SC) p 2968] decided on 16th Jan 1998 making it mandatory for Insurance Companies to file an application under Section 170 in the Lower Court in case they wish to file an appeal on quantum without the cooperation of the insured. An application has to be filed by panel advocate in the MACT under Section 170. An oral submission will not do. The Court may accept or reject the application. However, this order of the court should be a written order. A certified copy of this order should also be obtained, to be filed in High Court in case appeal is preferred. In case the application under Sec. 170 is rejected by the MACT, an appeal should be filed in the High Court immediately (not after the pronouncement of judgment) for consideration of the appeal. Appeals filed with delay are not admitted at the High Court.

The Apex Court held in *Shankarayya vs. United India Insurance Co. Ltd.* [AIR 1998 (SC) p 2968] that the Insurance Company when impleaded as a party by the Claims Tribunal can be permitted to contest the proceedings on merits, only if the conditions precedent mentioned in Section 170 of the 1988 Act are found to be satisfied and for that purpose the insurance company has to obtain an order, in writing from the Claims Tribunal, which should be a reasoned order by the Claims Tribunal and unless this procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence.

Recording of fact is sufficient under Section 170

In [(*United India Insurance Co. Ltd. vs. Jyotsnaben Sudhirbhai Patel & Ors*)], the driver and the owner of the offending vehicle appeared before the Claims Tribunal, but did not file any written statement refuting the allegations made in the petition. The Claims Tribunal stated that these respondents did not step into the witness box, to explain the circumstances and the manner, in which the

actual mishap took place. It was further stated that in view of this the *Claims Tribunal was compelled to draw an adverse inference against the respondents*. This case arising out of SLP[C] No. 13002 of 2002] appeal under Section 170 before Gujarat High Court was found not maintainable, especially in view of the observations made by the Supreme Court [in (Shankarayya vs. United India Insurance Co. Ltd.) AIR 1998 SC p 2968] and the appeal preferred by the appellant was dismissed.

The Supreme Court in this case [in (United India Insurance Co. Ltd. vs. Jyotsnaben Sudhirbhai Patel & Ors) {Appeal (civil) 6295 of 2003 (Arising out of SLP[C] No. 13002 of 2002) Date of judgment 11/08/2003}] held that the Claims Tribunal could have merely recorded that fact while allowing the application. In a situation contemplated by clause (b) of Section 170, *nothing more was required than recording that indisputable fact*. For failure to do so, the appellant shall not suffer prejudice. Therefore, the Appellant-Insurance Company was justified in contesting the proceedings on the grounds other than those enumerated under Section 149 (2) of the Act, pursuant to the permission granted by Court.

Appeal for rejection of permission u/s 170

The tribunal may accept or reject the application, however, the order of the court must be written order. A certified copy of the order must be obtained for filing in the High Court, in case an appeal against Section 170 Order is required to be preferred. The appeal should be filed in the High Court immediately not after the pronouncement of judgment for consideration of appeal.

No fresh or additional evidence

It should be borne in mind that High Courts do not accept any fresh evidence or any additional evidence later. In United India Insurance Company Ltd vs. Rajendra Singh & ors [2000 ACJ p1032] claimants claimed compensation for injuries alleged to have been sustained by them in accident of Motor Cycle they were riding and a Car. Claims Tribunal passed the award against the insurance

company. Subsequently insurance company came to know that the claimants sustained injuries when their Tractor slipped into a pit and they played a fraud against the insurance company. The following questions were answered by the Apex Court.

Would the appeal by the insurance company against the award on the fresh plea of fraud would be maintainable?

Apex Court in [2000 ACJ p 1032 (Para 14)] held that the consideration of appeal would be limited to issues formulated from the pleadings.

Should the High Court have considered the grievances of the insurance company?

Apex Court in [2000 ACJ p 1032 (Para 10 &11)] held that the writ jurisdiction is almost plenary for which no statutory constrictions could possibly be imposed. A party to an order of court later discovering that it was obtained by fraud should have some legal remedy.

Must the claim be allowed to be resisted on grounds of fraud now alleged by the Insurance Company?

Application for review by the Tribunal was rejected for want of powers to tribunal and later High Court also dismissed the writ for rejecting review by the Tribunal. The Apex Court held that "no Court or Tribunal can be regarded as powerless to review its order if it is convinced that the order was wrangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim as it would lead to serious miscarriage of justice so the claim is remitted to Tribunal for afresh consideration.

No right of appeal under Section 173

Very often the question has arisen as to whether an insurer is entitled to file an appeal under Section 173 of 1988 Act on the grounds available to the insured, when either there is a collusion between the claimants and the insured or when the insured has not filed an appeal before the High Court questioning the quantum of compensation.

The consistent view had been that the insurer has no right to file an appeal to challenge the quantum of compensation or the finding of the Claims Tribunal as regards the negligence or contributory negligence of offending vehicle.

Right of appeal not an inherent right

In *National Insurance Co. Ltd. vs. Nicolletta Rohtagi & Ors.* [(2002) 7 SCC 456], the Supreme Court considered the question elaborately and held that the right of appeal is not an inherent right and as the Insurance Company is permitted to contest only on the grounds stated in Section 149(2) of the Motor Vehicles Act 1988, the insurer cannot file an appeal on any other ground, except in accordance with the procedure prescribed under Section 170 of the 1988 Act. While recommending cases for appeal the following aspects should be borne in mind :

1. Our liability is in question even though the award amount is less.
2. Such defence has been taken in our written statement.
3. If defence taken, whether the same has been substantiated by any documentary or oral evidence.
4. If files are referred on quantum only, then Insured's Vakalathnama should be sent along with the claim papers.
5. In case the Insured remains ex-parte throughout the Lower

Court proceedings, then the Vakalathnama is not necessary for filing appeal on quantum. An application u/s 170 can be filed.

With regard to the facts, [in (United India Insurance Co. Ltd. vs. Jyotsnaben Sudhirbhai Patel & Ors. (Supra)], the Insurance Company can be legitimately considered to be ‘person aggrieved’ within the meaning of Section 173 of the 1988 Act. The Supreme Court held in this case that the Gujarat High Court should not have dismissed the appeal on the sole ground that the appellant had not obtained reasoned order permitting it to contest under Section 170 of the 1988 Act. Section 170 of the 1988 Act is an enabling provision in the event of collusion between the claimant and the insured or the tort-feasor.

Relief Under Sec.170 vis-à-vis Compulsory Motor Insurance

The earliest decision on the defences of an insurer is the one reported in [(Capt. Itbar Singh's Case). 1958-65 ACJ 1: AIR 1959 SC 1331]. The insurer took the stand that asking them to contest a case with one hand tied, was unfair and unjust. If they had reserved all their rights under the policy of insurance, they could do so, without let or hindrance to contest on merits. The Supreme Court ruled that the Parliamentary intent was clear and vivid. The purpose of compulsory motor insurance was to ensure that victims could look to an insurer for relief with some degree of certainty rather than be asked to go after men of straw viz., owners of vehicles. The Parliament had not provided for the scheme to enable insurers to run their businesses. It was for the insurers to take note and manage their affairs in conformity with the requirements. This position of law has remained unchanged and the insurers are not entitled to any defences other than those provided for under Sec.149 (2).

However, as of 1969, Sec.110-C (2-A) was introduced into 1939 Act. The fact that a provision such as this, now Sec.170 of M V Act 1988, was not there at the outset, is a relevant fact not taken

note of at all by any decision much less even the Apex Court itself. The legal position is now contained in [(Nicolletta Rohtagi Vs. National Insurance Co. Ltd.) AIR 2002 SC 3350: 2002 (7) SCC 456 : 2002 (6) Supreme 362 : 2002 ACJ 1950], which is that no insurer can contest a claim on merits except after obtaining permission from the Court by a reasoned order to do so. A reading of the case-law on the subject would reveal that there is now a semblance of certainty on the pre-condition to obtain relief under Sec.170 for an insurer.

Whether Insurer is to be made a party

The insurance company had contested the claim, while the insured/owner of vehicle, as is common chose to remain ex parte. The award was passed against the insurer also with liberty to seek recovery from the insurer. Thereafter, the insurer moved an application in 2005 in respect of a claim dated 2003, awarded in 2004, that he became aware only then. The insurer produced evidence to show that as soon as they received summons in the claim petition they had informed the insured/owner about it and sought a response. On that basis, the High Court ruled that the insured was not truthful in his averments having become aware of the claim petition in 2003 itself. Only because the insurer was granted right of recovery, the effort was being made and accordingly the effort was held to be untenable on facts. [Murugan vs. Bala Vannanathan 2007 (4) CTC 64 (Mad):2007 (6) MLJ 306 :2007 (4) TAC 142].

As to the contingency of insurer contesting along with the insured, the variants are just too many and conflicting and completely ruling out certainty of understanding. It varies from [(Narendra Kumar vs. Yarenissa) - 1998 ACJ 244 : 1998 (9) SCC 202 to {(Chinnamma George vs. N.K. Raju) – 2000 (4) SCC 130: AIR 2000 SC 1565: 2000 (3) Supreme 136} to the more recent {(R. Mannarkatti vs. R. Subramanian) – 2005 (11) SCC 389}]. What is the insurer is to make of this stand? There is absence of clarity and it is hightime the Apex Court clarified the issue.

Fundamentally, it is the liability of the insured that is indemnified by the insurer. No insurer can be held liable without the insured being liable in the first place [(Oriental Insurance Co. Ltd., Vs. Sunitha Rani) - 1998 ACJ 121 (SC)]. The relationship between the insured and insurer is contained in the contract of insurance. Under Sec.149 (1) of MV Act, 1988 as given under the equivalent Sec.96 under 1939 Act, there was and is no need or compulsion for the insurer to be made a party to the proceedings. The insured alone can be made a party and contest it. The insured after such contest and an award can seek to enforce his right to indemnity under the policy of insurance. On production of vehicular records, the insurer if satisfied that no defence under Sec.149 (2) arose, has to satisfy the award. Hence the starting premise is that the insurer need not be a party to the claim petition in original proceeding.

When Insurer is to be impleaded

From this standpoint, one should look at Sec.110-C (2-A) and Sec.170. It was introduced for the first time in 1969 and was not there before. If so, a change was introduced for the first time and the language of the said section is very vital. Under Sec.170 the insurer is entitled to avail impleading, if he was not a party earlier, and “upon such impleading” (which is the vital missing link remaining unaddressed for its importance) be entitled to seek to contest the claim on all grounds that would be available to the insured. It is the Parliamentary intent that since insurers are not necessary parties to such proceedings, there may arise situations where the insured may collude with the claimants or insured may simply fail to contest the claim and as such the interest of insurer would be jeopardized. In such contingencies, the insurers were given liberty to get themselves impleaded and “upon such impleading” be granted liberty to contest on all grounds. The crucial phrase is “upon such impleading”. So it is only in such of those cases where insurers were not already parties and they got themselves impleaded, that they are required to seek permission to contest on merits under Sec.170 of the MV Act 1988. Therefore, does it mean that Sec.170 relief need not be invoked in cases where the insurers were already parties?

This crucial aspect seems to have escaped the attention of all judicial pronouncements except probably in [(Oriental Fire & General Insurance Vs. Rajrani Surendra Kumar) - 1990 ACJ 60 (Bom)]. It was in [(New India Assurance Co. Ltd., vs. D. Kamalam) - 1992 (1) MLJ 41], that the High Court took the view for the need for such permission for insurer to sustain appeals without insured, a position of law that was affirmed in [(New India Assurance Co. Ltd., Vs. Thangammal) - 1999 (2) MLJ 446] by a full bench of the Madras High Court. As of [(United India Fire & General Insurance Co. Ltd., Vs. Parvathy) - 1979 ACJ 101], in all cases where the insured remained ex-parte and failed to contest, as a matter of course, insurer was permitted to contest on merits, without any need for an application under Sec.110-C (2-A) and a prior permission by a reasoned order. In [(D. Kamalam's Case) 1992 (1) MLJ 41] it was ruled that insurer ought to be held entitled to contest on merits only if they had been permitted by an order of the Claims Tribunal, on an application and not otherwise. It is this decision which gets reaffirmed for probably all times to come, as it were, in Niccolletta's case supra. The argument of insurer's that only when insurers were not earlier parties and got themselves impleaded, that they need to seek such permission was ignored,

Whether permission to contest is mandatory?

The legal position needs clarification by the apex court. It needs to be made clear that permission under Sec.170 of the Act of 1988 was not mandatory in cases where the insurer was already a party. In cases where insurer was made a party and the insured fails to contest, by remaining ex-parte, the insurer must be held automatically held entitled to contest on merits, without any need for such application. And only in cases where the insurer was not originally a party and they got impleaded, thereafter, was there need for seeking permission by an application under Sec.170 of the Act of 1988 to contest on merits.

It would be interesting to see if (Niccolletta Rohtagi Vs. National Insurance Co. Ltd case supra) is clarified if the phrase in "upon

such impleading" is specifically adverted to and considered in context of Sec.149 (1) and the availability of right to contest on merits for insurer is reserved by a clause in the policy of insurance. Otherwise, to insist upon the insurers to seek application under Sec.170 of the Act even where they were already parties makes it an empty formality. Mechanically such applications are taken out and claimants record no objection and they get allowed as a matter of course. The meaning and purpose behind the need for such application has been reduced to a statistical formality.

Whether Insurers' obligation to defend is contractual & legal

Coming to the issue of contest by insurer along with the insured, there is again need for clarity from the apex court. Fundamentally, under the policy of insurance, the insurer has a duty to contest on behalf of the insured. If the vehicular records are in order and there is no conflict of interest, then the insurer has to contest on behalf of the insured. They have agreed to do so and also bear the litigation costs involved. This being so, insurers are entitled to contest along with the insured. And when they so contest before the Tribunal, equally, they ought to be held entitled to prefer an appeal as contesting parties. The pitch was queered for the first time in [(Yarenissa's Case)] in observing that such an appeal along with the insured was not maintainable. But it was a curable defect by treating the appeal as being filed by the insured and transposing the insurer as a respondent. It appears a legal jugglery and nothing more. Ultimately, it is the insurer who foots the bill. The insurer has reserved the right to contest on behalf of insured in the policy of insurance. More importantly, the insurer has a solemn obligation to contest on behalf of the insured. The insurer having contested on behalf of the insured before the Claims Tribunal simply continues the course. If so, to suggest that insurer cannot be seen to contest because their defences are only those under Sec.149 (2) is to miss the wood for the trees. No doubt, an insurer's defences are limited to those under Sec.149 (2), but that is so only when the insurer has a conflict with the insured or refuses indemnity to the insured. In a case, where the interest of the insured and the

insurer merge and the insurer takes over the defences as contractual and legal obligation, they must be entitled in fact and in law to contest on all grounds. It would not be necessary to hold that they can be seen to contest on behalf of insured, while arrayed as a respondent. The substantive content of such a procedural act is not understandable.

Then came the decision [in (Chinnamma George case)], which was perplexing to say the least. It was seemingly a carry forward from (Yarneissa's Case supra). But it went on to hold that only in cases where the insurer had defence under Sec.149 (2) could they file an appeal. And they could join with the insured in appeal also, only when they had a defence under Sec.149 (2). In effect, the decisions stated that the insurer can file along with the insured, while having a defence a under Sec.149 (2). It is not quite understandable and seems untenable, to say the least. When the insurer has a defence under Sec.149 (2) there is an obvious conflict with the insured. The insurer is refusing to indemnify the insured. If so, would it be possible for the insurer and insured to contest on common grounds, other than Sec.149 (2)? Can two appellants with cross-purposes and conflicting interests canvass an appeal together? It is illogical, This was highlighted in a judgment of the High Court Madras reported in [(Revathi Rajasekaran Vs. Vijayakumaran)- 2001 (2) LW 509] where stronger language was used to explain the untenability of verdict in Chinnamma George. It is true that the insurer's defences are limited under Sec.149 (2). It is equally true that the insurer cannot be seen to be circumventing the circumscription under Sec.149 (2). But joining the insured in forces to challenge an appeal on merits does not amount to circumvention or violation of the Parliamentary mandate. It is but carrying out an obligation of the insurer to its insured. In fact, the insurer cannot be seen to be forsaking the interests of his insured. The insured and the insurer can legitimately contest before the Tribunal and they can well maintain an appeal on merits in appeal. There is no earthly possibility of the insurer canvassing a grievance under Sec.149 (2) and still be joining forces with the insured on merits. Hence the ratio of the decision in Chinnamma George is not correct.

Now has come the decision in (Mannarkatti case supra) purportedly based on (Nicolletta case supra) wherein it has been held that an appeal filed by the insured along with the insurer was not sustainable for the reason that the insurer, not having filed an application under Sec.170, cannot be seen to be challenging an appeal on merits. In that case the insured had remained ex-parte. The insurer alone had contested the proceedings. When an appeal was filed along with the insured it was held not maintainable. A person suffering an ex parte award, such as the insured, is entitled to file the appeal against it. When joining forces with the insurer, it is an expression of commitment by the insurer to contest on his behalf. More importantly, in Yarneissa case and in [(H.S. Ahammed Hussain vs. Irfem Ahammed) – AIR 2002 SC 2483: 2002 (6) SCC 52: 2002 (4) Supreme 501: 2002 ACJ 1559] it has been held that such appeals by the insurer and the insured can be treated as appeals by the insured alone. Ignoring all these aspects on the sole premise that no petition under Sec.170 was filed, it has been ruled that the appeal is not sustainable. With utmost respect, it is submitted that this decision requires reconsideration and earlier the better as otherwise there would be conflicting verdicts based upon conflicting precedents of the apex court.

Insurer ignoring to contest: Bhusan Sachdeva Case

This imposition of the burden of Sec.170 on the insurer, even in cases where they were already made parties, has resulted in the insurer refraining from contesting on behalf of the insured. Even in cases where the insured come forward to co-operate with the insurer to contest, the insurers quietly ignore the request and would rather await the insured to fail to contest, because then the insurer can safely invoke the remedy under Sec.170. We also had the spectacle of [(United India Insurance Co. Ltd., Vs. Bhusan Sachdeva) – 2002 (2) SCC 265 : 2002 ACJ 333 : AIR 2002 SC 662 : 2002 (1) Supreme 177] being in vogue for sometime. The Bhusan Sachdeva judgement may be good law for the reason it has taken note of the fundamental aspect of the insurer being an aggrieved as they were the paymasters and in the absence of

contest by the insured, they must be deemed to have taken over the defences and the Claims Tribunal having permitted a contest too. It is only that Bhushan Sachdeva case supra can be better explained and expanded by reference to the aspects as the requirement in Sec.149 (1), a clause in the policy providing for insurers to take over the defences of insured etc.

Failure of Tribunal to Pass Reasoned Order

This needless pre-condition of Sec.170 has rendered the purpose and import of it meaningless. Insurers tend to mechanically obtain the permission even at the time of submitting written statement and contest the claims. They disregard the interests of the insured or actual contest by the insured and would rather much have them remain ex-parte. The requirement that relief under Sec.170 should be by way of reasoned order [(Shanakarayya Vs. United India Insurance Co. Ltd.,) - 1998 ACJ 513] has also been dispensed with by the apex court [(United India Insurance Co. Ltd., Vs. Jyotsnaben Sudhirbhai Patel) – 2003 ACJ 2107: 2003 (7) SCC 212: 2003 (5) Supreme 529] by holding that if the Tribunal fails to pass a reasoned order the insurer cannot be penalized on that count. Sec.170 has become a mere formality to be accomplished for the record and nothing more. It is time the apex court adverted to it and pronounced on it for a wholesome verdict to clear the confusion.

Insurer's Remedy in Statutory Appeal

There may be instances of the insured remaining ex-parte and the insurer not taking out an application under Sec.170. It has also been ruled that the need for a statutory appeal cannot be ignored through the Art. 227 route or revision petition under Sec.115 CPC to circumvent the need for Sec.170. (Nicolletta's Case supra) If so, in the face of grossly disproportionate and unfair award, the insurer has to acquiesce in it. It is not a fair set of circumstances. The insurer must be deemed to have the right to file an appeal along with the insured or even seek the relief under Sec.170 in appeal, as it is a continuation of the proceedings. Otherwise it would be a

case of the statute perpetrating an unjust set of circumstances, which can never be said to be the basic purpose behind the legislative intent.

Insured's refusal to file an appeal for disproportionate income

There can also be another contingency. The insured may be contesting on his own. The insurer may be unable to prove a case of collusion. But in fact it could be a friendly contest and upon an award of disproportionate extent, the insured may refuse to file an appeal on behalf of the insurer. Can the insurer be expected to acquiesce in and meekly pay up? The legislative intent cannot be read in this manner. In such eventualities the insurer must be deemed to have the right to seek the remedy of "failure to contest" or "collusion" even in the appeal proceedings. Otherwise, the remedy under Sec.170 would be a harmful provision rather than an enabling provision for a meaningful defence.

Uncertainty Prevailing u/s 170

The bottom-line is that Sec.170 is not necessary where the insured is already a party. Only in cases where they were not already a party and get themselves impleaded, "upon such impleading" permission under Sec.170 will becomes necessary. Further, the insurer has a solemn duty to contest on behalf of the insured as a solemn contractual obligation. If so, they must be seen to have the concomitant right to contest on behalf of the insured in appeal. Ultimately, the requirement under Sec.170 has to be seen and appreciated for what it is. It is not a minor hurdle to be overcome for the insurer, but is a provision with meaning and substance since the insurer need not be a party in the first place under Sec.149 (1). The Supreme Court would be required to consider Sec.170 from the context of the phraseology "upon such impleading" and pronounce on it as well, clarifying its purport and also on the sustainability of appeals of insurer along with insured and on the verdicts commencing from Yarenissa case to Chinnamma George case to Mannarkatti case clearing the field of the uncertainty

prevailing and, leaving it to individual discretion to apply any of the decisions as may be perceived as a binding precedent.

Defences for Insurance Companies

The defence for insurance companies can be categorised under four heads:

- 11.3.1 Breach of Policy conditions,
- 11.3.2 Dishonour of Premium Cheque
- 11.3.3 Valid Driving Licence
- 11.3.4 Passengers carried in goods Vehicle
- 11.3.5 Private car used for Hire
- 11.3.6 Limit of liability

Breach of Policy Conditions

The breach of policy conditions which have no nexus to the loss or damage are interpreted leniently rendering contract rectifiable at the option of the insurance company for future liabilities, but the breach of material policy condition renders the Policy contract void. Section 64 VB of Insurance Act 1938 for advance payment of premium renders contract void *ab initio*. Though the policy of insurance was issued to commence from 4/5/96, the court ruled that since the premium was received in cash on 2/5/96, the insurer would be liable to the Third Party victim for the accident dt. 2/5/96 at 6 P.M [(Oriental Insurance Co. Ltd. vs. Sheela Bai) 2007 ACJ 798 (MP)]. **This judgment is contrary to the verdict of the Supreme Court in 1997 ACJ 351 (SC).** Therefore, this section has been a matter of contest and differing judgments by the Apex Court.

The availability of Insurance policy and particulars has been held to be the burden on insurer. [2008 (1) TLNJ 225 (Civil)]. It was held that when the claimants failed to furnish particulars of insurance policy, it would suffice for the insurer to deny the factum of insurance. The burden would be on the claimants to furnish particulars to impose an obligation on the insurer to adduce evidence that there was no insurance cover granted. [(The Oriental Insurance Co. Ltd. vs. Karthikesan) 2007 (2) TN MAC 188 (Mad)]. If no Insurance Policy, burden of Proof discussed [in {2008 (2) TLNJ 57 (Civil)} relying on {2004 ACJ 727}(contra view)].

Liability of Insurer to Driver

The very nomenclature Third Party would presuppose the existence of two other parties. The insured or owner of the vehicle would be the first and the insurer would be second. All others would appear to come within the ambit of the expression. But under MV Act, 1988 the meaning of the said expression cannot be understood in such simple terms. Under Sec.147 there is stipulation of mandatory cover to be provided to third parties. But in the context of the statute it is not every claimant who would come within the scope of a third party. Third Party is confined to those persons who are victims and not travelling on the vehicle but are outside the vehicle. The driver, passengers in any class of vehicle, though technically third parties come outside the scope of Third Party under the Act. They are required to be covered under Sec.147 as driver, occupants or passengers separately.

Engaged as Driver

The driver of a vehicle is required to be covered under Sec.147. But a close look at the provision would disclose that it is not any and every driver of a vehicle, who is required to be covered. It is only such of those drivers who are "engaged" to drive, who are required to be covered. In effect, paid drivers or workmen drivers alone are required to be covered. When the owner of the vehicle was driving the vehicle, he obviously cannot lodge a claim for himself, though he is driver in the literal sense of the meaning

[(Dhanraj vs. New India Assurance Co. Ltd. - 2005 ACJ 1 (SC)]. The insurer has offered cover for the liability of the owner to third parties not for his entitlement. Equally, if a friend of the owner of the vehicle were to be driving a private car, then he too would not be covered under the policy of insurance. Such friend or any person, other than a driver engaged to drive would be entitled to claim under Sec.140 MV Act, 1988. As for entitlement to claim under Sec.163-A if such driver was himself was at fault, he would not be entitled to pursue the remedy. If the driver was a workman, then notwithstanding the requirement to establish negligence before a Claims Tribunal, the law has to accept a claim for such driver/workman under WC Act, 1988 before MACT itself vide [(Rita Devi Vs. New India Assurance Co. Ltd.), – 2000 ACJ 801], [(National Insurance Co. Ltd. Vs. Prembhai Patel) –2005 (3) Supreme 587].

It is not drivers of all classes of vehicles irrespective of their status as drivers, who are required to be covered. It is only persons “engaged as drivers” who are required to be covered. Such drivers, unless workmen, when not insured, would be entitled to no more than ‘No fault liability’ sum payable under Sec.140 [(Oriental Insurance Co. Ltd., vs. Krishnan) - 2004 ACJ 1790 (Mad)] One further aspect that needs to be highlighted is that the liability to such drivers would be restricted as per WC Act, 1923 under an Act Policy [National Insurance Co. Ltd. vs. Prembhai Patel – 2005 (3) Supreme 587], If, however, additional compensation was paid to avail cover under common law, the liability of the insurer would be for such sum as awarded by the Tribunal, in excess of WC Act also. [(C. Abdul Salam vs. A.A. Jaleel) – 1978 TLNJ 489]

Dishonour of Cheque

Public Policy to prevail — *Principle of estoppels*

The question of dishonour of cheque came up for consideration in Oriental Insurance Co. Ltd. vs. Inderjit Kaur and Ors. [(1998) 1 SCC 371] wherein, it was stated that a policy of insurance, which is

issued in public interest would prevail over the interest of the insurance company.

The policy of insurance was issued on 30.11.1989. A letter communicating the dishonour of premium cheque was sent by the Insurance Company to the insurer on 23.1.1990. The premium was paid again in cash on 2.5.1990. The accident took place on 19.4.1990 prior to payment of premium. Having regard to the underlying public policy behind the statutory scheme in respect of insurance as evidenced by Sections 147 and Section 149 of the Motor Vehicle Act 1988, and in particular having regard to the fact that policy of insurance was issued to cover the vehicle without receiving the premium, the Court held that the Insurance Company was liable to indemnify the insured. The said decision proceeded on the basis that the Insurance Company was responsible for placing itself in the said predicament as it had issued a policy of insurance upon receipt of a Cheque towards the consideration, in contravention of the provisions of Section 64-VB of the Insurance Act 1938. Applying the ***principle of estoppels***, the court held that, the public interest in a situation of that nature would prevail over the interest of the Insurance Company.

Insured to restore the advantage

Section 25 of the Indian Contract Act 1872 states, that when a contract becomes void, the person who has received any advantage under such contract is bound to restore it to the person from whom he received it. Therefore, even though the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to reimbursement of the money so received.

However, if the insured pays the premium even after the cheque was dishonoured, but before the date of accident, it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an if event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents.

A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration. In today's world payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.

Section 64 VB

In terms of Section 147 (5) and Section 149 (1) of the Act, the Insurance Company became liable to satisfy awards of compensation, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium had not been honoured. The dicta laid down clarifies that if on the date of the accident a policy subsists, then only would the third party be entitled to avail benefit. The decision was analysed in the light of Section 64-VB of the 1938 Act in National Insurance Co. Ltd. vs. Seema Malhotra and Ors. [(2001) 3 SCC 151].

The time of commencement of cover is an important issue in fixing liability on insurers. An accident had occurred at 8.15 a.m. It was found that the insurance coverage was availed on the same day and only from 10.30 a.m. as mentioned in the contract of insurance. Following the verdict [in (National Insurance Co. Ltd. vs. N.Ponnaiyan) reported in 2005 ACJ 1103 (Mad)] it was held that the insurer was not liable for the claim and the owner of the vehicle has to answer the liability. [(New India Assurance Co. Ltd. vs. L.Sunderrajan 2007 (3) TLNJ 367 (Civil): 2007 (2) TN MAC 128].

Post accident cover

The accident had occurred on 1/12/98 at about 9.a.m. The policy of insurance was issued as of 2/12/98 midnight. Following the decisions in [1999 ACJ 534 (SC), 2000 ACJ 40 (SC) and 2005 ACJ 1103 (Mad)], the insurer was exonerated from liability. [(B.N.Jeevan Prakash vs. Shabeer Ahamed Shariff) 2007 ACJ 1709 (Kant)]. The policy having been issued from 1/8/96 wef 09.00 a.m. the coverage would be only from that date and time and

would not cover an accident dt.31/7/96. Relevant decisions on this aspect were considered. [in (NIC vs. Mangalakshmi) 2008 (4) LW 488].

Renewal of policy

It was held that since the policy of insurance was issued on 18/12/1993 at 9 P.M. indicating that it shall operate from 19/12/93 to 18/12/2004, it should not cover an accident occurring between 4 and 5 P.M. on 18/12/93. [(Oriental Insurance Co. Ltd. vs. Pushpa) 2007 ACJ 2508 (HP)]. The policy was issued for the period 3/9/91 to 2/9/92 on the basis of a third party cheque. The Development Officer took back the original Cover Note and cancelled it since third party cheque was not acceptable. In respect of accident dt.12/9/91, the insurer was held not liable (under Art.142 pay and recovery was ordered). [(National Insurance Company vs. Yellamma) 2008 (6) MLJ 142]. In a case on the expiry of the policy on 16/9/94, the insured sent a letter by certificate of posting on 10/10/94 seeking issue of a contract of insurance. **The insurer did not encash the cheque sent** and was held liable for accident dated 18/10/94 as, as per Sec.64 VB read with explanation, the commencement of cover shall relate back to date of cheque itself. [(Ramesh Chand vs. Polloagoni Venkanna) 2007 ACJ 2198 (AP)].

Discrepancy between the documents

On the basis of discrepancy between the documents relied on by the insurer at the time of commencement as 4.15 P.M. or the previous midnight, it was ruled that based on the verdict of the Supreme Court in [(The New India Assurance Co. Ltd. vs. Ram Dayal) 1990 ACJ 545], the benefit shall go to the claimants [(New India Assurance Co. Ltd. vs. B.Gopala) 2007 ACJ 2502 (AP)].

Policy was not produced

In a case where the insurer has pleaded expiry of the policy prior to accident and that the same was not renewed, but did not produce the insurance policy the insurer was held liable for the **claim for**

absence of proof. [(UIIC vs. Kandan) 2008 (7) MLJ 123 (Mad) (referring to 2007 (1) MLJ 234, 2003 (1) MLJ 268)].

In another case the previous policy of insurance had expired on 29/6/94. The subsequent policy was availed on and from 20/7/94 and the time of commencement of cover was mentioned as 2 P.M. The accident had occurred on 9.15 P.M. The order of the High Court fastening liability on the insurer on the premise that Development Officer and Cashier of the insurer were not examined was set aside. It was observed that in the face of the documented factum of the policy commencing from 2 P.M. no award could have been fastened on the insurer. The appeal was allowed exonerating the insurer of any liability. [in (National Insurance Co. Ltd. vs. Sobina Lakai) 2007 (2) TN MAC 37 (SC)}]. {2007 ACJ 2043 (SC)} {2007 (4) TAC 19} :{ 2007 (3) ACC 1}{2007 (5) CTC 892}. [(National Insurance Co. Ltd. vs. Lakhi Devi) 2007 (3) T A C 814 (Jhar)].

Dishonour of Cheque – Liability of Insurer ceases

The premium cheque was dishonoured for lack of adequate funds in the account of the insured; consequently the insurance company cancelled the Policy contract. However, Insurance Company failed to intimate Road Transport Authority. It was held in [{1991 ACJ p 650 (SC)} and {1993 ACJ p 1219 (M.P.)}] that as the fact of no balance in the account was within the knowledge of the insured, therefore, no special notice was necessary and hence the liability of the insurance company was extinguished. Following the verdicts of the apex court in [(Oriental Insurance Co. Ltd. vs. Inderjit Kaur) in 1998 ACJ 123 (SC)] and [(New India Assurance Co. Ltd. vs. Rula) in 2004 ACJ 630 (SC)], it was held that when it was found that notices of cancellation of the covers were not intimated to the insured, the insurer cannot avoid liability and their remedy may only be to seek recovery from the insured. [(Shiva Devi Jadon vs. Shiv Kumar Sharma) 2007 ACJ 774 (MP)]: [(United India Insurance Co. Ltd. vs. Dharendranath Shridev Dube) 2007 ACJ 998 (Bom)]. [(Oriental Fire & Genl Ins Co. Ltd. vs. Shantilata Das) 2007 ACJ 753 (Orissa)]: [(Oriental Insurance Co. Ltd. vs. Mahesh Prasad

Rawat) 2007 ACJ 1142 (MP)]: [(United India Insurance Co. Ltd. vs. Boya Siva Kumar) 2007 ACJ 1315 (AP)]: [(Pranab Kumar Mitra vs. Oriental Insurance Co Ltd) 2007 ACJ 1467 (Cal)]: [(United India Insurance Co. Ltd. vs. Devaiah) 2007 ACJ 1659 (Kant)]: [(Andekar Laxmi Bai vs. Syed Rahmatullah Quadri) 2007 (3) TAC 690 (AP)]: [(United India Insurance Co. Ltd. vs. Tiniki @ Mudam Lachavva @ Laxmi) 2007 (II) ACC 810 (AP)]: [(New India Assurance Co. Ltd. vs. Sona Devi) 2007 (II) ACC 916 (Pat)]: [(Oriental Insurance Co. Ltd. vs. Yogendra Bhalchandra Patil) 2007 ACJ 2051 (Bom)]: [(Pranab Kumar Mitra vs. Oriental Insurance Co Ltd) 2007 (4) TAC 184 (Cal)]: [(Oriental Insurance Co. Ltd. vs. Savitri Kumari Singh) 2007 (4) TAC 269 (Jhar)]. [(National Insurance Co. Ltd. vs. Rajendra Mourya) 2007 (4) TAC 455 (Chhattis)]: [(United India Insurance Co. Ltd. vs. Parvati Ramachandran) 2007 (4) TAC 626 (AP)].

The cancellation of Policy earlier to the date of accident on account of dishonour of premium cheque exonerates the insurance company from Third Party Liability [2002 ACJ p 217 (Kerala)]. The owner of the vehicle was driving it. The policy of insurance was for the period 17/10/97 to 16/10/98. The cheque for premium was dated 15/10/97. It was dishonoured on 21/10/97. The insurer sent communications to the insured and the RTO about cancellation of the policy of insurance. The accident had occurred on 6/2/98 after such cancellation. The Supreme Court ruled that the insurer couldn't be held liable for the claim in a case where the policy was cancelled by the time of occurrence of accident. It was only by virtue of the jurisdiction under Art.136 that the insurer was directed to pay and recover, more so since the victim was from lower strata of society.

The inference is that the insurer **can avoid liability** in such cases where the cancellation took place prior to the occurrence of the accident. The invocation of Art.136 cannot be taken as suggesting that what was permissible was only the right of recovery. The peculiar jurisdiction available only to the apex court cannot be the basis to mulct insurer on liability in such cases. [(Deddappa vs. National Insurance Co Ltd) 2007 (4) TLNJ 601 (Civil) (SC)]: [2008 1 TN MAC 138].

Insured can't claim performance

In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque on presentation would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order, directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

Therefore, if the insured fails to pay the premium promised, or the bank concerned returns the cheque issued by him towards the premium dishonoured, the insurer need not perform his part of the promise. Under section 25 of the Indian Contract Act 1872, an agreement made without consideration is void. The corollary is that the insured cannot claim performance from the insurer in such a situation.

Limited obligation of insurer under W.C. ACT 1923

In case of a claim for compensation to a third party arising under the Workmen's Compensation Act 1923, the obligation of the insurance company clearly stands limited, and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. The Supreme Court [in (New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya and Anr). -2006 (5) SCC 192], held that... “*Unlike the scheme of the Motor Vehicles Act 1988 the Workmen's Compensation Act 1923 does not confer a right on the claimant for compensation under that W. C. Act 1923 to claim the payment of compensation in its entirety from the insurer himself.*”

The law relating to contracts of insurance is part of the general law of contract. It was approved by Lord Wilberforce in [Reardon Smith vs. Hansen-Tangen [All ER p. 576 h] wherein he said: “*It is desirable that the same legal principles should apply to the law of*

contract as a whole and those different legal principles should not apply to different branches of that law." A contract of insurance is to be construed in the first place from the terms used in it, which terms are to be understood in their primary, natural, ordinary, and popular sense. (See Colinvaux's Law of Insurance, 7th Edn. para 2-01.)

A policy of insurance has to be construed like any other contract. On construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay, among other things under the Workmen's Compensation Act. Unless one is in a position to avoid the exclusion clause concerning liability for interest and penalty, imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.

Statutory liability of Insurer vis-à-vis a third party and its liabilities in other cases

The Supreme Court [in (Deddappa & Ors vs. National Insurance Co. Ltd) [Appeal (Civil) 5829 of 2007 Date of judgment: 12/12/2007] arising out of SLP (C) NO.7746 of 2006 held that they were not oblivious of the *distinction between the statutory liability of the Insurance Company vis-à-vis a third party in the context of Sections 147 and 149 of the 1988 Act and its liabilities in other cases*. But the liabilities arising under the contract of insurance would have to be met, if the contract is valid and subsisting. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion the insurance company would not be liable to satisfy the claim.

Valid driving licence

To avoid liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise

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reasonable care in the matter of fulfilling the condition of the policy regarding *use of vehicles* by a duly licensed driver or one who was not disqualified to drive at the relevant time. It was not open to the insurer to dispute the validity of the driving licence in the execution proceedings, when the issue had reached its finality in the trial proceedings itself. [(United India Insurance Co. Ltd. vs. Gulzar Singh) 2007 ACJ 1265 (P&H)].

The driver did not hold a valid driving licence to drive the auto rickshaw/transport vehicle. The owner was also contesting the claim. In a rare decision of its kind, after advertizing to a catena of decisions, the High Court ruled that the insurer could avoid liability in toto. The question of directing the insurer to pay and seek recovery would not arise. The decision of the Supreme Court in [(Kusum Rai in 2006 (4) SCC 250:2006 (1) TN MAC 9] elaborated further by pointing out that in the said decision discretion under Art.136 was exercised, as the claimants were poor and the insured was not found to be contesting. [(Oriental Insurance Co. Ltd. vs. Sivammal) 2007 (2) TN MAC 216 (Mad)]. However, at the instance of the insured, no right of recovery can be claimed against the insurer. [2008 (1) TN MAC 15 (Jha)].

The author feels that Insurance Company should not be saddled with such a burden for the sake of the poor insured, where they have no liability at all. Legislature may permit such liability to be met through solatium fund to meet out uninsured liabilities, instead of fastening the liability on insurers, who are required to serve the poor customers who had to bear the consequences of such investment by the insurers, where the possibility of recovery is remote?

The following sections of the Motor Vehicle Act, 1988, govern the main provisions relating to driving licence.

Section 2 (10) defines the term 'driving licence'

Section 3 (1) deals with the necessity for driving licence. It states that no person shall drive a motor vehicle in a public place unless he holds an effective driving licence.

Section 4 deals with the age limit

Section 4 (2) where it is stated that no person under the age of 20 years can drive a transport vehicle.

Section 2 (19) defines the term ‘Learning Licence’.

Section 7 deals with the restriction on the granting of ‘Learners Licence’ for certain vehicles. It states that to hold a Learners Licence to drive Transport Vehicles, one should have held driving licence for at least one year. (The provision is being made more stringent by raising the limit to 2 years in the proposed Motor Vehicle (amendment) Bill 2007)

Section 9 (3) (a i/ii/ii) the words DL to drive “**such class of vehicle**”, is used.

Section 10 deals with the form and contents of driving licence. It elaborates classification of vehicles and the endorsements, which can be passed by RTO

Section 11(i) authorizes the licensing authority to add such other class or designation of motor vehicle’ to the driving licence.

Section 14 deals with the currency of licenses to drive the motor vehicle

- Learners Licence to be **effective for 6 months** from the date of issue.
- Transport Vehicle licence is to be **effective for 3 years** from the date of issue. Explanation: Transport vehicle carrying dangerous / hazardous goods: the licence is effective for only one year.
- All the other licenses are to be **effective for 20 years** from the date of issue of licence or 50 years whichever is earlier.

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PROVIDED that every driving licence shall, notwithstanding the expiry under the sub section '**continue to be effective**' for a period of thirty days from such expiry.

Section 15 deals with the renewal of licences: Any expired licence will have the grace period and will be effective from the date of expiry till expiry of thirty days. If the renewal is obtained within 30 days of its expiry, the licence will be renewed retrospectively from the date of its expired date, if not the renewal will have only prospective effect, i.e. from the date of its renewal.

As per the 1988 Act and in conjunction with the Central Motor Vehicle Rules and the State Motor Vehicles Rules, the following type of licences are required to be given to different class of vehicle.

The effective driving licence means a valid licence both as regard the period and type of vehicle [2002 ACJ p 319 (SC)]. On the other hand any fake driving licence if renewed subsequently can not be legally valid [2001 SCW p 1340 (SC)].

The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Section 149(2)(a)(ii), has to be proved to have been committed by the insured, for avoiding liability by the insurer. This can be done in the following manner :

- o A specific plea should be taken in the written statement and the Claims Tribunal should also frame an issue.
- o To prove the plea extract of DL from the concerned RTO should be produced in the Tribunal. Insurance company officials can also mark the extract of DL.
- o Evidence has to be let in by summoning the concerned RTO officials who have given the extract of the DL through the Tribunal.

The burden lies on insurer to plead and prove the case. Even then, unless there was breach by the insured, the insurer cannot avoid liability. They may have to pay and seek recovery from the insured. [Patiraj Singh vs. National Insurance Co. Ltd. 2007 ACJ 944 (MP):New India Assurance Co. Ltd. vs. Krishna Murari 2007 ACJ 791 (All)]: [(Bhagwandas vs. Satishchand) 2007 ACJ 1228 (MP)] : [(New India Assurance Co. Ltd. vs. Sher Singh) 2007 ACJ 1276 (HP)] : [(Oriental Insurance Co. Ltd. vs. Indrasani Devi) 2007 ACJ 1192 (All)] : [(Mangal Sain vs. Ghulam Rasool) 2007 ACJ 1633 (P&H)] : [(National Insurance Co. Ltd. vs. Bhateri) 2007 ACJ 1842 (P&H)] : [(Narinder Singh vs. Oriental Insurance Co Ltd) 2007 (II) ACC 510 (P&H)] : [(New India Assurance Co. Ltd. vs. Kalia Behera) 2007 (3) TAC 557 (Orissa)] : [(National Insurance Co. Ltd. vs. Nan Bhai) 2007 (3) TAC 484 (Jhar)]: [(Mohi Ram vs. Surat Ram 2007 (II) ACC 828 (HP)]: [(New Assurance Co. Ltd. vs. Lily Borah) 2007 (II) ACC 575 (Gau)].:[(Bhajan Singh vs. Sarla Devi) 2007 (II) ACC 605 (P&H)]: [(National Insurance Co. Ltd. vs. Bhagwati Devi) 2007 ACJ 2124 (Del)]: [(New India Assurance Co. Ltd. vs. Kusum Bai) 2007 ACJ 2047 (MP)]: [(Saleeman vs. Brijesh Kumar Maheshwari) 2007 ACJ 2034 (Uttara)]: [(Oriental Insurance Co. Ltd. vs. Aswinder Singh) 2007 ACJ 2250 (P&H)]: [(Oriental Insurance Co. Ltd. vs. Devi Prasad Gaur) 2007 (4) TAC 107 (Uttara)].:[(Oriental Insurance Co. Ltd. vs. G.Roshanna) 2007 (4) TAC 631 (AP)]: [(National Insurance Co. Ltd. vs. Kedar) Gope 2007 (3) ACC 88 (Jhar)]:[(Sunia Bai vs. Rammu Patel) 2007 ACJ 2640 (MP)].

Cases where DL particulars are not known

Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or third parties. The insurance company should plead and lead with evidence and on failure seek, permission to avail all defences for non-cooperation by the insured / driver under Section 170 by a separate application moved in the Tribunal.

- (a) An investigator should be appointed to contact insured

and driver at the given address to obtain driving licence particulars.

- (b) The insurer must seek information by Registered AD Post from the concerned RTO, where the driver normally resides as per address given in the petitioner's copy or revealed by the investigator.
- (c) RTO's reply for non-issue of licence is to be carefully preserved.
- (d) The outcome of both (a) & (b) is produced as an evidence in Claims Tribunal to show that the Insurance Company has taken all steps to find out the validity of driving licence
- (e) The panel Advocate should examine Insurance company official on the aspect of driving licence and that the particular person was driving the vehicle at the material time of accident. This may be done on the strength of documents like, FIR, Charge sheet, Form 54, and injury report of the driver.
- (f) Any other eyewitness can also be examined, who could be passengers of the vehicle if any or the Doctor of the hospital who had given first aid etc.

The provision of Section 3 deals with the necessity for driving licence & Section 10 deals with the form and contents of driving licence of the Motor Vehicle Act 1988. Therefore, appreciation of driving licence on the part of Apex Courts declarations, still appears to be pay and recover in view of Supreme Court observations in [2004 ACJ 843] & [2007 ACJ 1067] & [2008 ACJ 776].

Fake Licence

In the case of fake driving licence, the question of indemnity from insurer would be available only in case of a Third Party claim. In

[(NIC Vs. Kaushalaya Devi) 2008 (4) Supreme 441] also it was pointed out that only for Third Party victims (not where owner or passengers were involved), insurer can be asked to pay and recover. The own damage claim being contractual would not be on the same footing and insurer would be entitled to refuse indemnity. [(National Insurance Co. Ltd. vs. Laxmi Narain Dutt) 2007 (II) ACC 28 (SC)].

If the DL is fake, the insurer would not be liable but has to pay and recover. But such pay and recover award would be applicable only in Third Party claims, meaning victims of the road and not persons such as passengers. [(NIC vs. Geetha Bhat) in CA No. 2257/2008 dt.31/3/2008: 2008 (5) MLJ 316: 2008 (1) TN MAC 316 (SC)" 2008 (3) LW 1104]. See also [CA No. 3055/2008 dt.29/4/2008 in (OIC vs. Zaharulnisha)]. The insurer can avoid liability to pay only if they prove that the owner was aware of the fake nature and still entrusted the vehicle to such driver. Similar to Lalchand was delivered in [(Premkumari vs. Prahlad Dev) in 2008 (3) MLJ 568 (SC)]: [2008 (2) LW 416]: [2008 (3) SCC 193] (right of recovery only in case of Third Party victims not where the victims are passengers). Following [Laxmi Narain Dutt in OIC vs. Prithivi Raj in 2008 (2) LW 131 (SC): 2008 (1) TN MAC 216 [also insurer was exonerated from OD liability]. Where the DL was fake, the insurer would not be liable. Any amount paid by way of interim orders can be recovered from the insured. For Balance amount the claimants have to proceed against owner/driver only [2008 (1) TN MAC 115 (SC) (Prem Kumari vs. Prahlad Dev)]. Once the DL is fake, its renewal cannot make it valid.[OIC vs. Prithiviraj 2008 (2) MLJ 913 (SC)]. It is the ratio in [2008 (2) LW 10 (SC) Davinder Singh]: [(UIIC vs. Davinder Singh) 2008 ACJ 1].

Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact, those other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it was genuine. Once a licence is found fake, its renewal cannot take away the effect of a fake licence. It was observed in Kamla case [SC p. 347, Para 12] and Section 15 that the 1988 Act only empowers any licensing authority to renew a driving licence

issued under the provisions of this Act, with effect from the date of its expiry. No licensing authority has the power to renew a fake licence, therefore, a renewal if at all made, cannot transform a fake licence into a genuine one. The whole protection provided by Chapter XI of the 1988 Act is against third party risk [Oriental Insurance Company Limited vs. Meena Variyal and Ors. [2007 (5) SCALE 269]. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to the ratio in [(National Insurance Co. Ltd. vs. Swaran Singh and Other) (2004) 3 SCC 297].

Effective Driving Licence

The defences open to the insurer are circumscribed by Sec.149 (2) {erstwhile Sec.96 (2)}. One of the major defences that come within its ambit, is the absence of an effective driving licence to the driver of the insured vehicle. The burden is squarely on the insurer to plead and prove that the driver did not hold an effective driving licence [(Narcinva V. Kamat vs Alfredo Antonio Doe Martins) - 1985 ACJ 397 (SC)]. To begin with, in such claims the driver was also a party. But it is now well settled that the driver is not a necessary party to the proceedings. The insurer was expected to send notices to the insured and the driver to produce the driving licence, summon the records from RTA, if particulars were available, and also produce the criminal court records on whether the driver and / or owner were also prosecuted, examine their officials and mark the insurance policy to draw the attention of the Court to the relevant clause in the policy of insurance. Such burden cast on the insurer was very heavy and any lapse, thereof, worked to the benefit of the claimants. Then came a line of decisions suggesting that the insurer was even obliged to summon the driver and examine him to prove their case [(Rukmani vs The New India Assurance Co. Ltd.) — 1998 (9) SCC 160].

In a case where the driving licence had expired, the insurer was held to be not liable [(New India Assurance Co. Ltd. vs. Sudesh Kumari.)]. The burden is squarely on the insurer to plead and

prove absence of driving licence. If the insurer took necessary steps to discharge the burden and the insured kept silent, then adverse inference shall be drawn against the owner of the vehicle. The insurer would then be entitled to seek right of recovery from the insured. [(National Insurance Co. Ltd. vs. Krishnammal) 2007 (5) MLJ 1038 (Mad)]. If the Driving Licence was not valid to drive the commercial vehicle, the suit for own damage claim is to be dismissed. [(M. Chidambaram vs. UIIC Ltd) 2008 (5) MLJ 193]. A Motorcycle rider was not possessing valid DL:1 being a statutory risk cover the insurer was held liable to pay and seek recovery. [2008 (6) MLJ 99].

In a case it was held that without particulars of DL, the insurer cannot search all the RTOs to adduce evidence. [2008 1 TN MAC 191 (Ma)]

Disqualified from holding or obtaining a licence only where driver held a licence

The insurers were thus compelled to satisfy these requirements without any relief. The Courts found that on such satisfaction of the burden by the insurers, under the dispensation under MV Act, 1939, the insurers could avoid liability. The lot of the claimants was placed in a tricky position. Therefore, on closer examination of the relevant clause in the policy of insurance, it was found that there was a phrase reading “and is not disqualified from holding or obtaining” driving licence. In a case where the driver was prosecuted under Sec.3 and owner under Sec.5 and both had been convicted on admission of guilt, the insurer could be set to have discharged the burden cast on them by adducing such proof and marking the policy of insurance to avoid liability. Hence, the High Court of Madras ruled in [(The New India Assurance Co. Ltd. vs C.B.Shankar) — 1986 ACJ 82 (Mad)] that mere proof of absence of driving licence would not suffice for the insurer. They had undertaken the burden of not proving absence of driving licence but also the “disqualification” of the driver to hold or obtain driving licence. In such circumstances, it was held that there was no evidence adduced by insurer to demonstrate that the driver was

so “disqualified” from holding or obtaining a licence and therefore they cannot avoid liability. Even in a case where the driver never held a licence, this disqualification was held against the insurer. It was obviously erroneous.

Disqualification ought to be construed as pre-supposing the existence of a valid licence prior in point of time. This was clarified in [(National Insurance Co. Ltd., Vs. Thulasi) -1994 (1) LW 567]. In a case where the driver obtained the licence after the accident and it was argued that the fact the driver had obtained the licence subsequent to accident must be held as proof that the driver was not disqualified. The insurer was held not liable as the driver held no licence at all prior to the date of the accident. Hence it can now be taken that disqualification aspect would come into play only where the driver held a licence before the accident.

Breach of Policy condition

Deliberate, wilful and intentional

Let us illustrate the point with a series of cases. A person drove a vehicle ‘*without a driving licence*’, but was found to be not the regular driver of the insured. In another case the insured had entrusted the vehicle to his regular driver and the *driver in the course of journey chose to entrust the vehicle to another person* say cleaner as in [(Skandia Insurance’s case) 1987 ACJ 411 (SC)] and the cleaner held no licence, the insurer’s prayer for exoneration was rejected by the Supreme Court explaining the expression “breach” as used in the statute as well as the policy of insurance. It was held that “breach” cannot be so easily attached on the insured. Obviously, the insured had done his bit when he entrusted the vehicle to a regular, licensed driver. If in the course of the journey, such driver chose to entrust the vehicle, without the knowledge and authority of insured, to a cleaner who was unlicensed, such “breach” cannot be attached on the insured. [(New India Assurance Co. Ltd. vs. Mohinder Singh) 2007 ACJ 936 (P&H)]: [2007 (II) ACC 866]: [(National Insurance Co. Ltd. vs. Salinder Kumar) 2007 ACJ 1181 (P&H)]: [(New India Assurance Co. Ltd.

vs. Ratibai) 2007 ACJ 1119 (MP)]: [(United India Insurance Co. Ltd. vs. Shakuntala Sharma) 2007 ACJ 1134 (Raj)]:

A Minor aged 15 years is driving the MV. The insurer is not liable. [2008 (1) CTC 50]. The breach, to enable the insurer to avoid liability, must therefore, be “deliberate, wilful and intentional”, meaning thereby, the insured was aware that his driver was unlicensed and still chose to entrust the vehicle to him. Hence the burden of proof placed on the insurer was put on a higher pedestal, making it thereby, virtually impossible for the insurers to avoid liability. In a series of judgments it was made clear by various High Courts that such construction of the statute was only in keeping with the mandate of Parliament to ensure that the victims were provided compensation by the insurer rather than be left to the fate of seeking enforcement from owners of vehicles. The slant of the courts was evident and it was made clear as well that compulsory motor insurance was to provide relief to victims and if so, the courts have to necessarily lean in favour of this mandate.

Absence of Driving Licence

Where the driver admitted the absence of driving licence, the insurer was held liable to pay, but declared entitled for recovery from the insured. [(Hans Raj vs. Anil Sachdeva) 2007 (4) TAC 179 (P&H)]: [(National Insurance Co. Ltd. vs. Sarala Pasayat) 2007 (4) TAC 591 (Ori)]. However, in another case, the insurer was denied the defence that the driver did not possess a valid driving licence to drive the bus, since it was found that there was no pleading made by him even to prosecute the defence. [(Akhilesh Gupta vs. Arvind Kumar) 2007 ACJ 2477 (MP)]. In a most recent case absence of driving licence for tractor was held sufficient to exonerate insurer from liability. [(Sardari vs. Sushil Kumar) 2008 (2) Supreme 451]: [2008 (1) TN MAC 294].

Expired Driving Licence

In the specific case of persons holding expired licences, it was found that under the then India Motor Tariff regime, the insurers

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had used the expression “*has held*” in the licence clause. This was interpreted to mean that in the experience of the insurers, holding a permanent licence, even if expired would suffice. Such drivers must be deemed to be competent as well. Mere expiry, therefore, would not enable insurers to avoid liability [(Srinivasa Roadways Vs. Saroja) 1975 ACJ 265 : AIR 1975 (Mad) 126 : 88 LW 144 : 1974 (2) MLJ 364]. With the coming into force of MV Act, 1988 the India Motor Tariff provisions were also amended. The expression “*has held*” was removed from the policy hold. As per Form 51 of Central Motor Vehicles Rules, 1989 the expression now used is “*holds*” in the present continuous and not past participle. If so, the insurer claimed that under the new dispensation they can no longer be held liable if the licence had expired. This argument was held specious in the face of the use of conjunction “and” in the licence clause including “and is not disqualified from holding or obtaining”. The driving licence was not renewed in time, within the stipulated 30 days. It was held that insurer cannot avoid liability, more so, when the occurrence of accident was unrelated to the cause vide [2004 ACJ 1 (SC). [(National Insurance Co. Ltd. vs. Sushil Kumar) 2007 ACJ 2230 (P&H)]. Also read [(New India Assurance Co. Ltd. vs. Phelisha Bakai) 2007 ACJ 2388 (Gau)] for a contra view.

If the accident occurs within 30 days of the expiry of Driving Licence; the Driving Licence *could have been renewed* and, therefore, is deemed to be valid and effective [(Ram Babu Tiwari vs. UIIC Ltd) 2008 (3) TLNJ 312] Where the driving licence had expired and *renewal was not availed within 30 days* provided, then the insurer would not be liable. [(New India Assurance Co. Ltd. vs. Sudesh Kumari) 2007 (II) ACC 386 (HP)]. Where the *owner himself was the driver and the driving licence had expired and not renewed in time*, it was held that exoneration of insurance company was proper. [(Dhirendra Singh Sengar vs. Gopi Singh Kalicharan) 2007 (3) TAC 755 (MP)]. Therefore, except in cases where the drivers never held a licence, it was evident that insurers cannot escape liability. For one reason or another the factual matrix was held against the insurer.

In a case where the licence had expired prior to accident and was

renewed afterwards, it was held that the fact that the driver had got his licence renewed was proof that he was not “disqualified” from holding or obtaining one. Hence, the insurer was held obliged to not only prove absence of effective licence but also that the driver was disqualified in Oriental Insurance Co. Ltd., Vs. Indrani – 1995 ACJ 703: 1995 (1) MLJ 82 which position of law has since been affirmed by the apex court also in 2004 ACJ 1 (Swaran Singh’s Case). On expiry of Driving Licence the Insurer is not liable. [(Ram Babu Tewari vs. UIIC Ltd) 2008 (6) MLJ 1056 (SC)]. [(NIC vs. Vidhyadhar Mahariwala) 2008 (7) Supreme 89] also is to the same effect.

Learner’s Licence

Holding a LLR itself is no ground to refuse indemnity for the insurer. [(Daulat Ram vs. Kuri) 2007 ACJ 1449 (Raj)]: [(Oriental Insurance Co. Ltd. vs. Shiv Narain Sahani) 2007 ACJ 1640 (Pat)]: [(Oriental Insurance Co. Ltd. vs. Shailendra Singh) 2007 ACJ 1655 (MP)]: [(National Insurance Co. Ltd. vs. Nalini U.Mallya) 2007 ACJ 1595 (Kant)] : [(National Insurance Co. Ltd. vs. Rajeev Verma) 2007 ACJ 1643 (HP)] : [(Ramjan Khan vs. Khuman) 2007 (II) ACC 315 (MP)]: [(National Insurance Co. Ltd. vs. K.N.Gurunathan) 2007 (II) ACC 104 (Mad)]: [(The New India Assurance Co. Ltd. vs. Jyoriemayee @ Ranu Rout) 2007 AIHC 2410 (Orissa)]: [(Oriental Insurance Co. Ltd. vs. Kanti Bai) 2007 (3) TAC 831 (Chhatis)]. The insurer cannot avoid liability on the ground that the driver held only LLR driving licence. [(National Insurance Co. Ltd. vs. Chakali Rangaiah) 2007 (4) TAC 650 (AP)].

The owner / rider of the 2-wheeler held a LLR and the pillion rider did not hold a driving licence. It was held that the insurer was not liable in such circumstances, since the LLR holder shall have to be accompanied by an instructor holding a valid driving licence. Therefore, the insurer was granted the right of recovery. The distinction may be relevant in certain cases where such LLR holder may not carry a pillion rider. In such cases, there would be no contravention of Rule 3 of CMV Rules, 1989, since in the case of 2-wheelers the second proviso to the said Rule contemplates an exception. A LLR holder of a 2-wheeler can ride himself and if a

pillion rider accompanies him then such pillion rider shall have to hold a permanent driving licence. It is only in the case of 4-wheelers that the LLR holder cannot drive without an instructor in tow.

In the specific case of learner's licence again, any Court, including the Supreme Court, did not note the specific clause in the policy properly. In [(Tambe's case {New India Assurance Co. Ltd., Vs. Mandhar Madhav Tambe} – AIR 1996 SC 1150 : 1996 (2) SCC 328: 1996 (1) ACC 392: 1996 ACJ 253] the Supreme Court ruled that the insurer can escape liability in a case where the driver possessed only a LLR. But please see that in that case the LLR had actually expired prior to date of accident. However even under the earlier dispensation LLR holder would be competent to claim indemnity from insurer, except in cases where the LLR itself was not current and valid on the date of accident. It was also made clear by insurers by circulars that in view of the use of the parentheses in the licence clause (other than a learner's licence) in contra-distinction to permanent licence, the insurer would be liable, even where the driver held a LLR. They would escape liability in cases where the LLR had expired prior to accident and no permanent licence was also obtained. ***This distinction has been missed out by almost every judgment relating to LLR, including in Tambe's case.***

Effective Driving Licence

Under the 1939 Act on proof of breach by the insured, the insurer could avoid liability. Sec. 96 (3) and 96 (4) though provides for a recovery right to insurer and also under the policies of insurers vide Important Conditions, the insurer could avoid liability on proof of a defence under Sec.96 (2). But under the present dispensation ushered in as of 1/7/89, Secs.149 (3) and 149 (4) though seemingly of the same language have led to completely and dramatically different construction. A simple carry forward from the earlier era without realizing the different classification of the provisions has led to this remarkable benefit to the community of victims. Parliament, of course, is deemed to have applied its mind in passing any legislation.

In view of the changed situation under Secs.149 (3) and (4) it is the stated legal position that notwithstanding proof of absence of effective licence for the driver, the insurer would have to pay. As for recovery, the insurer has to establish that the insured was in deliberate breach and the accident was caused by such absence of driving licence etc. The authoritative pronouncement in this regard is in Swaran Singh's case supra. A careful reading of the said decision would disclose that the Learned Judges were convinced that it was their solemn duty to ensure that the insurers shall be made to pay as otherwise the direction to pay would be meaningless to the victims. They were well supported by earlier decisions and therefore they concluded that for the insurer avoiding liability was next to impossible. And even for recovery, the degree of proof for the insurer was pegged very high. Thus the lot of accident victims has been well protected to ensure that irrespective of the nature of proof/evidence of the insurer on absence of driving licence, the claimants would still be entitled for the relief and the insurer after all the labouring would only be entitled to the elusive remedy of right of recovery from the insured. So be it.

Licence for Transport Vehicles

Let us consider Sec.10 of MV Act, 1988 as amended on 14/11/94. The said provision relates to Form and Contents of driving licences. The sub clauses (e) to (h) from 10 (2) were deleted as of 14/11/94 removing the classifications as Heavy Goods Vehicle, Heavy Passenger Vehicle, Medium Goods Vehicle and Medium Passenger Vehicle and introducing one omnibus clause in "Transport Vehicle".

This necessarily meant that a person having an endorsement to drive a Transport Vehicle would be entitled to drive all classes of transport vehicles. All the different classes of transport vehicles having come under one fold, they ought to be read so. In fact the RTAs themselves would not be entitled to mention any more than 'Transport Vehicle' and this meant that a persons entitled to drive on such endorsement, can drive all classes of transport vehicles. This interpretation was also so accepted by the State Consumer

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Disputes Redressal Commission, Chennai in [(New India Assurance Co. Ltd., Vs. Ambika) – 2003 (3) CPJ 155].

Competency for class or type of Vehicle

However, one conundrum needs detailed explaining. Under Sec.9 (5) a person's competence has to be tested in a particular class or type of vehicle. The driver held driving licence of LMV but did not have an endorsement to drive HGV. The insurer was not liable. It has been made clear that **pay and recover was permissible only for third party claimants**, namely those on the road and outside the vehicle. [(NIC vs. Kaushalya Devi) CA No.9910/2006 dt.13/5/2008]. In Annappa's case the Supreme Court has held that LMV holder can drive GV also. [2008 (1) TN MAC 200 (SC).] : [2008 (3) SCC 464]. If so, he can be held competent only in that category. While so, the licence granted to him shall read one common "transport vehicle". There is no type of vehicle as transport. Within transport vehicle it could be 'HGV, HPV or whatever. If so, a person testing for competence in a specific vehicle as HGV or HPV was now deemed authorized and competent to drive any other class of transport vehicle or all of them as the case may be. In a case, where Driving Licence was valid & effective to drive 3-wheeler, but the vehicle involved in accident was a Goods Vehicle, the insurer was held not liable. [(NIA vs. Roshanben Rahemansha Fakir) in CA No.3496/2008 dt.12/5/2008]: [2008 (4) Supreme 396].

Lack of authorization to drive

In the absence of endorsement to drive a 2-wheeler, the insurer is not liable. [(OIC vs. Amma ponnu) 2008 (3) TLNJ 215 (Civil)]. In (CA No. 3055/2008 dt.29/4/2008) in [(OIC vs. Zaharulnisha) [2008 (1) TN MAC 123 (Mad)]. In the absence of 'Badge to drive auto rickshaw', it was held that examination of RTO official was not necessary. The insurer was held not liable but was directed to pay and seek recovery.

The driver held a LMV driving licence and only subsequent to accident, obtained an endorsement to drive a HGV and it was held

that the insured's father cannot be said to be unaware of the absence of requisite valid driving licence for his son and the insurer would not be liable for the claim. But in the circumstances of this case insurer was directed to pay and seek recovery from the insured. [(Oriental Insurance Co. Ltd. vs. Syed Ibrahim) 2007 (6) Supreme 574]: [2007 (4) LW 782:2007 (4) TAC 385].

The driver possessed a driving licence for LMV, while he was found driving Commercial Jeep carrying passengers. The lack of authorization to drive a Taxi was held a breach, but it was held that the insurer would have to pay and seek recovery. [(Radhabai vs. H K Siddiqui) 2007 ACJ 991 (MP)]: [(Darshan Singh vs. National Insurance Co. Ltd) 2007 ACJ 2001 (P&H)]: [(United India Insurance Co. Ltd. vs. Dhulipalla Prameela Devi) 2007 ACJ 2321 (AP)]: [(Malkiat Singh vs. Mohinder Singh) 2007 ACJ 2370 (P&H)]. In another case the driver possessed LMV driving licence with authority to drive Maxi Cab. The argument that he was not authorized to drive a Tourist Taxi was negated. [(National Insurance Co. Ltd. vs. Kanakammal) 2007 (4) LW 994 (Mad): 2008 (1) TLNJ 93 (Civil)].

However, in a case holding a LMV driving licence was not found sufficient, if the vehicle involved was a Commercial/ Transport vehicle. The insurer in this case was exonerated from liability. [(The Oriental Insurance Co. Ltd. vs. Sivammal) 2007 (3) TLNJ 487 (Civil)]: [2007 (6) MLJ 384] & [(Oriental Insurance Co. Ltd. vs. Bhimala Pavan Kumar) 2007 (3) T A C 989 (AP)]. The Supreme Court has now categorically ruled that mere possession of LMV driving licence would not suffice, if the vehicle in question was registered as a Transport Vehicle. In the absence of '*any endorsement*' in the driving licence to drive the said class of vehicle, the insurer would not be liable to meet the Own Damage claims. [(New India Assurance Co. Ltd. vs. Prabhu Lal) 2007 (8) Supreme 343]: [2008 (1) TN MAC 97].

As the driver had held a driving licence to drive a Public Service Vehicle and a Heavy Transport Vehicle, he was held entitled to drive a Heavy Goods vehicle as well as Heavy Passenger Vehicle. The insurer was denied the right to avoid liability and as such the right of recovery granted to the insurer was set aside. [(National

Insurance Co. Ltd. vs. Om Prakash) 2007 ACJ 2634 (J&K)]. Where the vehicle was LMV and the driver possessed a driving licence to drive a Heavy Vehicle, the insurer could not dispute liability. [Sanjay vs. Akhilesh 2007 ACJ 771 (MP): [(United India Insurance Co. Ltd. vs. Joseph Rochunga) 2007 (II) ACC 562 (Gau)]: [(National Insurance Co. Ltd. vs. Nalini U.Mallya) 2007 (3) ACC 185 (Kant)]. The driver possessed authorization to drive a Heavy Goods Vehicle but did not possess endorsement to drive such a vehicle carrying dangerous and hazardous goods as required by CMV Rules, 1989. It was held that its absence was not material since it did not affect the competence of the driver and did not prove that the accident was traceable to its absence. [(Baghelkhan Filling Station vs. Brijbhan Prasad) 2007 (II) ACC 457 (MP)]. The driver held a driving licence to drive HGV, but did not hold the driving licence to ride 2-wheeler. The insurer was held not liable but asked to pay and recover. It was made clear that such recovery was only for third party victims and not for those inside the vehicle as passengers.

The author feels that the legislators need to explain the implications of type of Transport vehicles for clarity of provisions. Sec.10 of MV Act has been amended as of 14/11/94, and the corresponding Form in the CMV Rules, 1989 was amended from 2001. Significantly though even now Medium Passenger Vehicle finds a mention in the Form under the Rules.

Motor vehicle requisitioned by the statutory authority

The motor vehicle insured with an insurer was requisitioned during assembly election by SDM through appropriate authority and was under the possession and control of the said officer. The death of a third party was caused by the officer, which led to a claim under Section 166 of 1988 Act impleading the SDM and the State.

In the above case, save and except for the legal ownership, for all intent and purposes, the registered owner of the vehicle lost control over the vehicle due to requisition made by the SDM in exercise of power conferred upon him under the People's Representation Act.

Since the owner of the vehicle can not refuse to abide by the order of requisition of the vehicle, he does not exercise any control while the vehicle remains under requisition. The driver may still be the employee of the owner of the vehicle, but he has to drive it as per the direction of the officer of the State who is put in charge of it.

The Apex Court in National Insurance company vs. Deepa Devi [(2008) 1 SCC 414 decision dated 11-12-2007]; having regard to *definition of owner* as contained in Section 2(30) of the 1988 Act, and to the fact that the vehicle in question was not used for the purpose for which the contract of insurance was entered into, held that the State shall be liable to pay compensation and not the registered owner of the vehicle and consequently not the insurer. The vehicle in question was requisitioned by the State for election purposes. The Supreme Court upheld the defence of the insurer that registered owner/insured and the insurer were not liable. It was ruled that since requisitioning was compulsory and the control of the vehicle was shifted to the State, the registered owner and the insurer would not be liable to answer the claim. The State was held liable to meet the claim [(National; Insurance Co. Ltd. vs. Deepa Devi) 2007 (8) Supreme 554: 2008 1 TN MAC 126]

The court further observed that the case must move on the presumption that the Parliament while enacting the 1988 Act did not envisage such an eventuality. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit; the same should be understood from the commonsense point of view.

Passengers carried in goods vehicle

Sec-147 of the 1988 Act purports to insure person or classes of persons under 'Act only Policy' as follows :

1. In case of the goods vehicles, Policy covers the driver & employees carried in the vehicle (up to WC Act liability only) employed in connection with the operation and maintenance of the vehicle, owner of goods or his authorized representatives, and persons outside the vehicle.

2. In case of the public service vehicles, Policy covers the passengers & persons outside the vehicle under 'Act only Policy'. It also covers Workmen's Compensation liability of employed driver, conductor and ticket examiner.
3. In case of private vehicle (2 or 4-wheeler) Policy covers the driver (up to Workmen's Compensation Act liability only), and persons outside the vehicle.

The restricted insurance coverage applies only when insured opts for the Act only/Liability policy. If the insured is prepared to pay extra premium, the liability is covered as per the Indian Motor Tariff guidelines for Comprehensive /Package policy of two wheeler and Private Car, as inbuilt coverage for occupants of the vehicle (not carried for hire or reward) up to the limit of seating capacity of the vehicle. The non-fare paying or fare paying passengers / gratuitous passengers can be covered by paying extra premium up to the limit of liability chosen by the insured under Personal Accident cover.

However, in case of excess carrying of passengers, or passengers carried in goods vehicle, MACT has been doling out adverse verdicts against the insurance companies, keeping in view the Policy contract terms and conditions vis-à-vis provisions of Motor Vehicle Act 1988, permitting passengers in various type of vehicles, specified numbers of passengers permitted to travel in certain type of vehicles and specified persons authorized to drive such vehicles.

It is a fact that it is a common practice on our highways Heavy Vehicle drivers, solicit carriage of persons stranded or looking for transport for a price or even offer to carry them gratuitously. The number of accidents involving such vehicles is also very large. Also, accidents leave behind a trail of destruction in host of victims, making it difficult for the insurers to defend their interest.

Who is a Gratuitous Passenger?

Gratuitous Passenger is the person carried in a vehicle for the ride

without paying fare i.e., a “Nishulk Yatri.” Such occupants of the vehicle may or may not be known to the owner-insured of the vehicle. For example,

- The pillion rider of two wheeler,
- Occupants of the private car,
- Occupants of ‘goods carriage’ other than those employed as driver & workmen in connection with the operation and maintenance of the vehicle,
- Person other than the passengers, employed as driver, conductor, ticket examiner carried in public service vehicles.

Under Section 147 of MV Act1988, no statutory liability has been enjoined on the owners to get vehicles insured for such class of persons under the ‘Act only policy’ issued in compliance to the Motor Vehicle Act 1988, despite existence of section 147-(1) (b) (i) including “any person”. The words “any person” as used in Section 147 of the Motor Vehicles Act, 1988, would not include passengers or occupants of the vehicle, but would rather be confined to the legislative intent to provide for third party risk outside the insured vehicle. In [(Ramshrey vs. New India Assurance Co. Ltd) date of judgement 22.07.03] where a cleaner of the bus died in the accident, the Supreme Court held that as no premium for cleaner was paid, and premium payment was for only 1 driver and 13 passengers, under section-147 of the MV Act 1988, the cleaner of the bus is not statutorily covered.

Obligation of insurers

In [(National Insurance Co. Ltd. vs. Baljit Kaur and Others) date of judgement 06/01/2004] it was held that the word “any person” in Section 147(1) (b) (i) was not intended by the legislature to include passengers who are gratuitous or otherwise present in the goods carriage, but is intended to address “third parties”, that is why separate amendment of 1994 was made to include “owner of the

goods or its authorized representatives". The Supreme Court observed that if the word "any person" had included every person in the vehicle, than there was no need to include "owner of the goods or his representative" separately in 'goods carriage' by an amendment. The corollary is that the owner of the vehicle is not enjoined with any responsibility under Section 147 of the Act to take coverage for the gratuitous passengers, and the insurer is not under any obligation to indemnify the insured for the death or injury to any gratuitous passenger.

Position until 14/11/94

The earliest reported judgment of the Supreme Court under MV Act, 1939 on this issue is reported in [(Mallawaa Vs. Oriental Insurance Co. Ltd) – 1999 ACJ 1]. It has been repeatedly held that under 1939 Act, the insurer was not liable for gratuitous occupants, fare paying passengers and owner or representative of owner of goods carried in a goods vehicle. [(Oriental Insurance Co. Ltd. vs. Thukarama Adappa) 2007 ACJ 1497 (Kant)]. This judgment is an affirmation of Law laid down [in (National Insurance Co. Ltd., vs. Dundamma) 1992 ACJ 1]. It has been made clear that only those persons who are workmen are required to be covered and no one else is visualized under statutory coverage. The legal position as enunciated therein is good law under MV Act, 1988 too, except to the limited extent of extending it to owners or representatives of owners of goods also as of 14/11/94 as confirmed in a recent judgement that the expression "any person" in a Goods Vehicle would refer only to 'owner of goods or authorized representative'. [2008 (1) MLK 754].

As per Section 147 of Motor Vehicle Act 1988, representative or owner of the goods carrying vehicle cannot travel in the Goods carriage in interms of the definition of Goods carriage given in 1988 Act. However, as per 14-11-1994 amendments to Motor Vehicle Act 1988, the representative or owner of the goods is allowed to travel in goods carriage, and the insurance company is liable to pay compensation.

Even while adverting to the fact that as of 14/11/94 owners or representative of owners of goods, were contemplated for statutory coverage, a curious but significant fact on record had hitherto gone unnoticed. Under MV Act, 1939, persons carried in a goods vehicle were not required to be covered. Calls went out that considering the notorious fact of such carriage of persons, Parliament should step in to provide coverage to them. In answer to the demand, Parliament Introduced Act 54 of 1994 with an amending clause to Sec.147 (1). Now, sub-section (1) is in relation to "any person" and "vehicle" a generic expression. The said sub-section does not relate to 'Goods Vehicle' alone. It relates to every class of vehicle. If so, it appears that a clever argument can be mounted that in any class of vehicle if a person was travelling as owner of the vehicle or as representative of owner of the vehicle then statutory coverage was offered. This may help the cause of victims who are travelling as pillion riders or gratuitous occupants in a private car, who are now held not covered under an 'Act Policy' vide the recent decision of Supreme Court in [(Tilak Singh's case) 2006 (2) CTC 661]. A clever argument can be built since the phraseology of "owner or representative of owner of goods" is not incorporated in a sub-section, which is confined in its application to Goods Vehicle; it would be held applicable to all classes of vehicles. The statute is silent as to how it is confined to Goods Vehicle. The amendment ought to have found its proper place in sub-section (2) and not sub-section (1).

The Madras High Court had earlier pronounced a verdict [in (United India Insurance Co. Ltd., Vs. Selvam) 2006 (1) MLJ 154] that in respect of accidents occurring after 6/1/2004 alone, the insurer can seek to avoid liability. In respect those judgments delivered prior to that date it has been held that insurers shall have to pay and recover only. This may not be a correct position. 6/1/2004 was chosen on the basis of date of judgment in Baljit Kaur case supra. The decision in (Asha Rani Case supra) reversing (Satpal Singh case supra) was delivered on 3/12/2002. The date chosen must have been this date. It was on 3/12/2002 that the verdict in Satpal Singh was overturned. If so, the legal position having been made clear on 3/12/2002, the Courts below are not supposed to continue reliance on [(Satpal Singh's Case). 2000 ACJ 1 (SC)].

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The applicability of doctrine of ‘pay and recover’ in this arena ought to be restricted to those judgments which were rendered until 3/12/2002 and in respect of judgments after 3/12/2002 the insurer ought to be exonerated completely.

But this concept of ‘pay and recover’ arose, in this area of coverage of such persons, primarily because of the legal position obtaining from the decision in [(Satpal Singh’s Case). 2000 ACJ 1 (SC)]. In the said decision it was held, “be it any class of vehicle, a gratuitous occupant carried in the vehicle would be covered on and from 1/7/89 under MV Act, 1988 in view of the deletion of proviso (ii) to Sec. 95”. By reason of this judgment, it meant that passengers carried in a goods vehicle, of whatever kind, were held covered and there were a spate of verdicts from the courts following the binding verdict of the Apex Court. Since the claimants had got the benefit of the awards as per judgment of the Supreme Court it was deemed appropriate by the Supreme Court that they cannot be denied the relief at this stage because of the changed legal position. Therefore, in that perspective it was held in [(National Insurance Co. Ltd., Vs. Baljit Kaur) – 2004 (2) SCC 1], [(Oriental Insurance Co. Ltd., Vs. Devireddy Konda Reddy) – 2003 ACJ 468 and [(Oriental Insurance Co. Ltd., Vs. Nanjappan) – 2004 ACJ 721] that notwithstanding no liability for insurer, they shall have to pay-and-recover. These decisions on pay-and-recover were exclusively in the context of the courts following [(Satpal Singh’s Case supra) 2000 ACJ 1] and granting relief. Since the claimants were given the benefit of awards, on the basis of a legal position obtaining from a judgment of the Supreme Court, it was felt that the claimants ought not to be denied relief based on a judgment of the Apex Court itself.

Under the 1939 Act, the insurer was not liable for a gratuitous occupant but shall have **to pay and seek recovery**. [Sujan Singh vs. Amar Singh 2007 (II) ACC 474 (P&H)]: It was held that in the absence of proof that the occupant had paid hire for his carriage in the goods vehicle, he would be a gratuitous occupant and a third party within the meaning of Sec.145 (g) and entitled to compensation. [(New India Assurance Co. Ltd. vs. Girvarnath) 2007 (II) ACC 493 (MP)] In a case where the person was accompanying

goods in a goods vehicle, in respect of accident prior to 1994 amendment, it was held that the insurer was not liable for the claim [(The New India Assurance Co. Ltd. vs. Sunita Mahto) AIR 2007 (NOC) 1535 (Jhar)].

Binding Case Law on the subject

Fundamentally, ‘pay and recover’, as a theme of action has to be in cases where the insurer is otherwise liable. In a case where the insurer has not covered the risk of the kind sought for, there is no scope for liability to be fastened on them. If so, to direct the payment against insurer and seek recovery from the insured would be improper.

An insurance company is on strong grounds in taking the stand against ‘passengers in a goods carriage’ as it amounts to breach of condition of ‘*Goods Carriage*’. Passengers carried in *Goods carriage*, be it for hire or reward or gratuitous passengers, contravenes definition of *Goods carriage* as per Section 2 (14) of 1988 Act and amounts to use for a purpose other than for which permit was issued. In a case where the victim was carried in a goods vehicle on 1/6/91, the date of accident, it was held that statutorily there was no cover for the insurer. The insurer was held not liable to meet the claim. [(Oriental Insurance Co. Ltd. vs. Pappu Servai) 2007 (2) TN MAC 73 (Mad)]. It was held elsewhere, that the date of accident would be relevant to fix the law applicable, and the insurer would not be liable for passengers carried in a Goods Vehicle [(Cholletti Bharathamm 2008 (2) LW 1 (SC): 2008 (2) TN MAC 29 (SC)].

As on date the binding case law on the subject would be [(Mallawaa’s case) 1999 ACJ 1 (SC)] in respect of claims arising under MV Act, 1939, and [(Asharani’s Case) 2003 ACJ 1 (SC)] in respect of accidents occurring under MV Act, 1988. As per [(Thokchom Ongbi Sangeeta and another vs. Oriental Insurance Company Ltd & Ors.) 2008 ACJ 6 (SC)], the insurer is not liable to pay and recover, where provisions of the 1988 Act do not enjoin any statutory liability on owner to get his vehicle insured for

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passengers travelling in Goods Carriage. [Refer 2003 ACJ 468 (SC) & 2003 ACJ 19331 (SC)]

The Insurance Company must take specific plea in the written statement quoting the aforesaid provision and Thokchom Ongbi Sangeeta case (*supra*) to exonerate company's liability absolutely. To substantiate the insurer's plea, positive evidence should be adduced like summoning through Claims Tribunal, the investigating officer who has prepared the charge sheet. The insurance company has to produce FIR, Charge sheet and the same should be marked through independent witness or company official. The company official may be asked to prove Section 2(14) and its purport, in the light of the case of Thokchom Ongbi Sangeeta (*supra*).

There was no requirement to cover the risk to passengers carried in a goods vehicle. [(New India Assurance Co. Ltd. vs. Vedwati) 2007 ACJ 1043 (SC)]. Following this decision in [NIC vs. Prema Devi 2008 (2) Supreme 205: 2008 (1) TN MAC 348: 2008 (5) MLJ 710 (SC): 2008 (5) SCC 403] the insurer was held not liable for gratuitous occupant carried in a Goods Vehicle. In [(NIC vs. Kaushalaya Devi) 2008 (4) Supreme 441] it was held that the insurer was not liable to pay for a passenger in Goods Vehicle. [(Babarao Tanbaji Dhale vs. Sk.Naseer Sk.Yakub 2007 ACJ 2285 (Bom)]: [(National Insurance Co. Ltd. vs. K.Kannan) 2007 (5) CTC 831 (Mad)].

In a motor accident case, the employees of the owner were being transported in the goods vehicle from their place of work. The claim was held not tenable against the insurer since the employees had nothing to do with the operation of the vehicle and had to be construed as unauthorized occupants only under the 'Act policy'. [(New India Assurance Co. Ltd vs. Gangavva Basaaneppa Sunagar) 2007 ACJ 1915 (Kant)]: [(United India Insurance Co. Ltd. vs. Hanumanthappa) 2007 (II) ACC 192 (Kant).] Where the deceased was the son of the Owner of the Truck and there was no proof that he was accompanying with the goods, he was held to be a gratuitous occupant in the goods vehicle and the insurer was exonerated from liability. [(United India Insurance Co. Ltd. vs. Hira

Lal 2007 ACJ 1398 (HP): Manibai vs. Mohd. Ismile 2007 (4) TAC 622 (MP): New India Assurance Co. Ltd. vs. Santosh 2007 (4) TAC 704 (Bom): United India Insurance Co. Ltd. vs. Neema Bhandari 2007 (4) TAC 722 (Utta). Where the victim **touched a goods vehicle touching an electric pole** and was electrocuted, the finding was that he was not a passenger and only a third party and therefore, entitled to the claim from insurer. [(Sushila vs. Ramphal Singh) 2007 ACJ 1958 (MP)]. Where the gratuitous occupant was **alighting from the goods vehicle** and had got down, he ceased to be an occupant and would only be a third party victim. [United India Insurance Co. Ltd. vs. Kurva Yeju Mallamma 2007 ACJ 1735 (AP): 2007 (II) ACC 607: Sanjeev Gautam vs. Surinder Kumar 2007 (II) ACC 132 (HP)].

The liability to a passenger in a goods vehicle was held to be non-existent under the MV Act, following the earlier decisions, unless such occupant was a workman whose liability was restricted under WC Act, 1923. [(Thokchom Ongbi Sangeeta vs Oriental Insurance Co Ltd) 2007 (4) TLNJ 256 (Civil)]: 2008 (2) LW 15 (SC): 2008 ACJ 6 (SC)]. Although the Insurer was held not liable, it was held by Apex court that if the amount was already withdrawn the decision shall not be interfered with. However, if the amount was not withdrawn the insurance company was allowed to withdraw the deposit [(NIC vs Bhukya Tara) 2008 (4) Supreme 203]. In a case the insurer denied liability for an unauthorized occupant carried in the goods vehicle. However, the insurer having failed to produce the policy of insurance and establish their defence were held liable but with liberty to seek recovery from the insured. [(New India Assurance Co. Ltd. vs. Smt.Banita Meher) 2007 (4) TAC 93 (Ori)].

Passengers in Tractor

In [(Oriental Insurance Co. Ltd vs Brij Mohan) decided on 15.05.07] the Supreme Court observed that the injured-claimant was merely a passenger travelling on the trolley attached to the tractor and the tractor is not even a goods vehicle or vehicle for carrying passengers. The Supreme Court, therefore, considered claimant as unauthorized or gratuitous passenger and held that the claim petition could not have been allowed in view of the decision of the

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Supreme Court in [Asha Rani's case] followed & reiterated in [(National Insurance Co. Ltd. vs. Ajit Kumar and Others) - 2003 (9) SCC 668]; [(National Insurance Co. Ltd. vs. Baljit Kaur and Others) - 2004 (2) SCC 1] and [in (National Insurance Co. Ltd. vs. Bommithi Subbhayamma and Others) - 2005 (12) SCC 243].

In respect of gratuitous passengers, there are various other classes of vehicles involved. In particular, persons travelling on a tractor are a class by themselves. There are decisions galore holding insurers liable for such persons, too. It is submitted that even if such persons were workmen carried on a tractor, legally, the insurer would not be liable for such persons, when they were travelling on the tractor.[(National Insurance Co. Ltd. vs. Chinnamma)-2004 (4) CTC 459 (SC)]. The Registration certificate permits seating capacity for only one person, namely driver. There is no physical space provided for carriage of any other person, other than the driver. If so, the insurer cannot be expected to cover any person other than the driver. As for coverage granted by the insurer to workmen associated with the tractor, it would mean that such workmen, when engaged in loading or unloading, when the vehicle was stationary would alone be covered. When the vehicle is in motion there is no scope or provision for coverage for such persons.

But this distinction has not been appreciated, or adverted to at all. The absence of seating capacity of physical space for carriage of persons other than the driver is not considered at all. Hence in respect of a tractor, when in motion, only a driver is required to be covered and none other.

Workman on Stationary Tractor

However, if the insurance policy has contemplated cover for workmen in addition to driver, it can only be seen as covered when the workmen were engaged in loading and unloading, while the vehicle was stationary.

Gratuitous Passengers in Tractor-Trailer

The insurer is not liable for persons carried on tractor-trailer, being

a passenger not covered. [2008 (2) LW 19 (SC)]. When the tractor-trailer was used other than for agricultural purpose [in (Oriental Insurance Co. Ltd. vs. Brij Mohan) - 2007 (2) TN MAC 66 (SC)], it was held that the insurer has to pay and recover the amount. [2008 (1) TN MAC 54 (Mad)]. In a case where the labourer was carried in a tractor-trailer, the trailer was not insured, and the purpose of carriage was for digging of mud for brick kiln, not an agricultural purpose. It was held that such person was not covered under the contract of insurance. But in exercise of discretion under Art.136 the insurer was directed to pay and recover [(Oriental Insurance Co. Ltd. vs. Brij Mohan) 2007 ACJ 1909 (SC)]. In another case the claim for a coolie carried in a tractor, the owner of the vehicle was held liable to meet the claim, on the grounds that risk to such a persons was not required to be covered, [(National Insurance Co. Ltd. vs. Sayyadama) 2007 (II) ACC 692 (Kant): Jai Bharat Stone Crushing Company vs. Ismile 2007 (II) ACC 901 (P&H)]. In another case a person was carried in a tractor-trailer, with the trailer un-insured, the insurer was exonerated of the liability as held [in (Oriental Insurance Co. Ltd. vs. D.Laxman) 2007 (II) ACC 905 (Kant)]: [(Wahidar vs. Raj Bahadur) 2007 (II) ACC 393 (Del)]: [(Kanakanagouda vs. Devaraddi) 2007 (II) ACC 615 (Kant)]: [(New India Assurance Co. Ltd. vs. Santra Devi) 2007 (II) ACC 73 (P&H)]: [2007 ACJ 2273] [(United India Insurance Co. Ltd. vs. Ramkunwar Bai) 2007 (II) ACC 779 (MP)]: [(National Insurance Co. Ltd vs. Ellammal) 2007 (3) TAC 885 (Mad)].

Even though the tractor-trailer would be construed as a goods carriage but the fact remains that there is no physical space for carrying persons, as such coverage to such persons may not arise. The victim was a gratuitous occupant carried on a tractor-trolley, the insurer was held not liable, but directed to meet the claim and seek recovery from the insured [(Sunjan Singh vs. Amar Singh) 2007 (4) TAC 111 (P&H)]. The Supreme Court itself has rendered a verdict [in (Nanjappan's Case) 2004 ACJ 721] that the insurer shall have to pay and recover only. This decision should be seen in the light of the applicability of the judgment [in (Asha Rani's Case) 2003 ACJ 1 (SC)] exonerating the insurer completely in view of no statutory liability enjoyed by him by the act of legislature.

Number of persons covered as gratuitous passenger

As to the number of such persons who could be carried in a goods vehicle, which also is breached more often than not, one has to refer to the seating capacity in the Registration Certificate. The insurer's liability would be restricted to such number of persons permitted, to be carried in the vehicle. The relevant Rules in each State provides for number of persons that can be carried in a goods vehicle. The liability of insurer would be restricted to such number only. The insurer would be liable only for the permitted number carried in Goods Vehicle. They would be liable for the highest of the 6 award amounts as held [in (NIA vs. Prabhu 2008 (7) MLJ 229)].

The Madras High Court [in (Branch Manager, National Insurance Co. Ltd., vs. Murugesh) 1998 (1) LW 59] concluded that since 6 persons were covered under TNMV Rules 236, the insurer's liability would be restricted to such number only. All claims in excess thereof would have to be borne by the insured. The liability for 6 persons' claims was fixed as being first six, chronologically in the absence of any other methodology available. This may not be the best solution but no other equitable solution appears possible in law. Although "overloading" is not a defence available to the insurer, they are entitled to restrict their liability to the permitted number. If so, it may be possible to conclude that the insurer may have to pay for all the claimants and seek recovery in respect of those claims in excess of 6 persons and that being decided chronologically, subject to the fact that the persons so carried are entitled to coverage in the first place.

Third Party and not Gratuitous Passenger

The persons going to pick up empty boxes are not passengers accompanying goods therefore, insurer was not liable [in (NIC vs. Kaushalya Devi)-CA No. 9910/2006 date of judgement. 13/5/2008].

Where labourers were travelling along with logs of woods the claim was held tenable [in (Patiraj Singh vs. National Insurance Co Ltd) 2007 ACJ 944 (MP)]. See [(Sujan Singh vs. Amar Singh) 2007 ACJ 1005 (P&H)]: [(United India Insurance Co. Ltd. vs. Sudha Lata Maithani) 2007 ACJ 1182 (Uttara)]: [(United India Insurance Co. Ltd. vs. Annapurna Shandilya) 2007 ACJ 1168 (MP)]: [(Kesari Bai vs. Dhanna) 2007 ACJ 1550 (MP)]: [(Oriental Insurance Co. Ltd. vs. Thukarama Adappa) 2007 ACJ 1497 (Kant)]: [(United India Insurance Co. Ltd. vs. Sudha Lata Maithani) 2007 (3) TAC 609 (Uttara)]: [(Saleeman vs. Brijesh Kumar Maheshwari) 2007 ACJ 2034 (Uttara)]: [(United India Insurance Co. Ltd. vs. Har Junwar) 2007 ACJ 2249 (All)]: [(National Insurance Co. Ltd. vs. Khuswant) 2007 ACJ 2155 (Uttara)]: [(Oriental Insurance Co. Ltd. vs. Raju) 2007 ACJ 2301 (Raj)].

In a case of a claim for the death of an owner of household articles being carried in the goods vehicle, it was held sustainable, as the insurer had failed to prove that the victim was only a gratuitous occupant [in (P. Annamma vs. N.N.A.Patrick) 2007 ACJ 830 (AP)].

In another case, mere carriage of a bag or two of grains in a goods vehicle would not amount to carriage "goods". Such occupant has to be construed, as gratuitous occupant only not entitled for statutory cover under the contract of insurance [in (United India Insurance Co. Ltd. vs. Smt.Lalithbai) 2007 AIHC 2063 (Kant): 2007 ACJ 2342 (Kant)].

The insurer having failed to establish that the victims were gratuitous occupants, as against the pleading that they were accompanying the fertilizer, they were held liable for the claims [in (National Insurance Co. Ltd. vs. Lakhuben Punabhai Vaghari) 2007 ACJ 2253 (Guj)].

'Pay and Recover' for Gratuitous Passenger risk in Goods Carriage

It has been clearly held that the power to direct pay and recover was exercisable by the Supreme Court only as held [in (NIA vs.

Vinayaga Moorthi) 2008 (7) MLJ 588]. In respect of passengers in goods vehicle the statutory provision of ‘pay and recover’ has been discussed after advertizing to a plethora of decisions [in (2008) (5) MLJ 391]. In one case a person was carried in goods vehicle but the insurer was held not liable (for claim). However, the claimant was permitted to retain the amount already withdrawn and for the balance of award the claimant was allowed to **proceed against the owner** [in (NIC vs. Chennaiammal 2008 (4) LW 495)]. In another case a person was travelling on the mudguard of a tractor belonging to 3 brothers, while the son of one of the brothers was driving the tractor without having a driving licence. The Apex Court invoked its discretion under Art.142 and the insurer was asked to pay and recover [in (2008) (2) Supreme 144 Darshana Devi]: [2008 (3) LW 28: 2008 (1) TN MAC 322].

Gratuitous passenger in a Private Car

The High Court of Gujarat decided that the insurance company was not liable to meet the claim for gratuitous occupant carried in a private car or as a pillion rider on a 2-wheeler unless the insured had paid additional premium for such coverage in [2008 ACJ 61 (Guj)]. Overruling the earlier verdict [in (United India Insurance Co. Ltd. vs. Appukuttan) 1995 ACJ 888 (Ker)] and holding that [(Oriental Insurance Co. Ltd. vs. Ajayakumar)] was no longer good law, it was ruled that payment of additional premium alone was the criteria to cast liability for such persons on the insurer. [(Mathew Joseph vs. Janaki) 2007 ACJ 912 (Ker): 2007 (II) ACC 140 (Ker) (FB)]: [(United India Insurance Co. Ltd. vs. Bhagyalakshmi) 2007 ACJ 1676 (Kant)].

The scope of ‘Act Liability only policy’ is restrictive as per Section 147 (b) (i), and does not cover occupants of the vehicle, although passengers are not carried for hire or reward. The word ‘any person’ in the section has been differentiated [in (Pushapati Parshottam Udeshi vs. Ranjit Ginning & Pressing Company) [1977 ACJ 343: AIR 1977 SC 1735: 1977 (2) SC 745], connoting restrictive meaning, as compared to word ‘third party’ in relation to damage to any property. In [(K. Gopalakrishnan vs. Sankaranarayanan) -

1969 ACJ 34] and [(National Insurance Co. Ltd., Vs. V. Vasanthan) 1987 ACJ 887] the High Court, Madras had held that the insurer was not liable to pillion riders carried on a 2 wheeler under an ‘Act Policy’.

The wording in Section II (a) relating to Third Party in ‘Package Policy’ covering Own damage and Third Party Liability has, however, been amended by the TAC to include “*Occupants carried in the Motor car provided that such occupants are not carried for Hire or reward*”, thereby, covering the occupants whether with or without knowledge of the insured.

1. In a case where the victim was travelling in the private car in his capacity as Regional Manager of the employer/owner of the vehicle, it was held that there was no coverage for such a victim under the contract of insurance. [(The Oriental Insurance Co. Ltd. vs. Meena Variyal) 2007 (2) TN MAC 9 (SC)]. The claim was not sustainable on the private car insurance policy, as the risk was not required to be covered and not covered also. [(Oriental Insurance Co. Ltd. vs. Meena Variyal) 2007 ACJ 1284 (SC)]. On a reading of the terms of the contract of insurance, a comprehensive policy, that insurer had offered cover to occupants ***carried in or upon*** the private car except those carried for hire or reward and in the absence of proof that the victim was carried for hire or reward, it was held that the insurer was liable to meet the occupant’s claim. [(Oriental Insurance Co. Ltd. vs. Nakirikanti Narendra Babu) 2007 ACJ 2069 (AP)]. In 2008 ACJ 61 (Guj) the risk to such persons under a ‘comprehensive policy’ was considered and the insurer was held liable.

The claim was preferred in respect of a fare-paying passenger carried in a private vehicle, where such carriage was not permitted. The defence of the insurer that such claim was not tenable more so under the ‘contractual Personal Accident liability’ was not maintainable before the Tribunal and was rejected as being technical. The risk to passengers carried having been covered the insurer was directed to pay. [(United India Insurance Co. Ltd. vs. Keludappa) 2007 ACJ 1241 (Kant)].

No cover for Pillion Rider or gratuitous Occupants

The liability of insurer to a pillion rider as a gratuitous occupant would depend upon the cover granted by the insurer under 'Act Policy' or 'Package Policy'. In respect of an Act Policy such persons are not required to be covered. It is only under a 'Package policy' that such persons are covered by the Contract of Insurance. Under the earlier dispensation in MV Act 1939 also the position was the same. In [(Pushpabai Parshottam Udeshi Vs. Ranjit Ginning & Pressing Co. Pvt. Ltd). – 1977 ACJ 343: AIR 1977 SC 1735: 1977 (2) SC 745], the Supreme Court had held that the insurer would not be liable to occupants carried in a private vehicle under a Policy.

The Motor Vehicle Act, 1988 came into being from 1/7/89. Sec.147 of the 1988 Act was distinct and different from Sec.95 of earlier 1939 Act. The removal of Proviso (ii) from Sec.95 (1) was noted by the Kerala High Court for the first time [in (United India Insurance Co. Ltd., vs Appukuttan) 1995 ACJ 888]. It was held that in view of the removal of the said clause, the insurers could no longer dispute liability to pillion riders or gratuitous occupants in a private car and since the cover was mandatory, it would be so under an Act policy too. Any distinction introduced or incorporated under the policy of insurance, by insurer, would have no effect. This was picked up [in (Satpal Singh Vs. New India Assurance Co. Ltd) 2000 ACJ 1 (SC)] which came into being on the same reasoning, in relation to passengers carried in a Goods Vehicle. There are decisions of various High Courts e.g., {[(New India Assurance Co. Ltd., Vs. Rajendra Singh) AIR 2000 Kant 202], [(Natarajan vs. D. Chandrasekaran) 2004 (1) CTC 284 (Mad)]} etc, which have ruled that under changed dispensation from and on 1/7/89, the insurers were liable for pillion riders and gratuitous occupants too under 'Act policy'.

This position of law has since been changed for good in the most recent decision of the Supreme Court reported [in (United India Insurance Co. Ltd., Vs. Tilak Singh) 2006 (2) CTC 661]. Following

the decision in [(Asha Rani's case) 2000 ACJ 1 (SC)] the Satpal Singh case supra came to be reversed. Based on the same reasoning [in (Asha Rani's case) 2003 ACJ 1] it has now been conclusively held that under 'Act Policy' insurer was *not required to cover persons carried as pillion riders or gratuitous occupants in a private car*. The position as obtaining in [(Pushpabai's Case) 1977 ACJ 343 (SC)] holds good even today notwithstanding the changed look of Sec.147.

The decision in Tilak Singh case reported in [2006 ACJ 1441] following in [(Oriental Insurance Company vs. K.V. Sudhakaran) in CA No.3634/2008 dt.16/5/2008] the insurer was held not liable for pillion rider under the 'Act Policy' now reported in [2008 (4) Supreme 329: 2008 (2) TN MAC 16 (SC): 2008 (6) MLJ 149]. Following the decision of the Supreme Court in [(United India Insurance Co. Ltd. vs. Tilak Singh) 2006 ACJ 1441: 2006 (2) ACC 1], it was held that the insurer would not be liable to a pillion rider under an 'Act Policy'. [(S.Lakshman Achary vs. P.Eshwara Bhat) 2007 (3) ACC 87 (Ker)].

In another case the claim was for death of a pillion rider under Sec 163 A. The defence of the insurer that the risk to such persons was not required to be covered, was rejected on the premise that for liability under Sec.163-A it was irrelevant to determine about the status of the deceased as pillion rider or a third party etc. [(National Insurance Co. Ltd. vs. Rukshanaben Salimbai Vora)]. Sec.163-A does not take away the right of insurer to dispute liability under the contract of insurance and it is not as if notwithstanding provision of cover, insurer would still have to pay. Sec.163-A only precludes a contest on negligence, if any.

Personal Accident liability to owner and other occupants

The claim for insured/owner of the vehicle [in (The Oriental Insurance Co. Ltd. vs. Chopri Devi) AIR 2007 Uttarakhand 62]: [2007 (4) TAC 303], while driving the motor vehicle, was held not sustainable under the 'contract of insurance'. However, a sum of

Rs.20,000/- contemplated under the ‘Contractual Personal Accident’ cover was held tenable and directed to be paid to the claimants. In [(United India Insurance Co. Ltd. vs. Sunanda) 2007 ACJ 1715 (Bom)], where the deceased was owner/driver of the 2 wheeler, the Personal Accident cover of Rs.1,00,000/- was held liable under the contract of insurance.

Position as per TAC provisions

One very interesting fact needs to be highlighted. The decision in [(Pushpabai’s Case) 1977 ACJ 343] was delivered on 25/3/77. By reason of this decision the insurers were held not liable for gratuitous occupants carried in a private vehicle under a Policy. The Tariff Advisory Committee in its wisdom deemed it fit to issue a Circular dated 17/3/78 to the effect that insurers shall offer cover to gratuitous occupants carried in a private car, which shall take effect from 25/3/77; the date on which Supreme Court delivered its verdict. It was made clear that such cover was available under ‘Comprehensive Policies’ of insurance [in (Minor Harshvardhatiya Rudradithya vs. Jyotindra Chimanlal Parikh) – 1981 ACJ 277 (Guj)].

Subsequently in respect of pillion riders also the Tariff Advisory Committee dated 1/6/96 issued a circular that “**persons carried in or upon** pillion, except those carried for hire or reward” for inclusion for coverage under a ‘Comprehensive Policy’ of Motor Insurance.

Hence the insurers, under the present dispensation, be it the MV Act, 1988 or the new Tariff regime as of 1/7/2002, have been consistent in projecting that under an ‘Act Policy’ they have not offered cover to pillion riders or gratuitous occupants in a private car. They have, however, offered cover to such persons under a ‘Comprehensive cover’. This position of law has been vindicated in the most recent decision. However, it is eminently possible that the Courts in the land may continue to hold that notwithstanding the absence of such liability, the insurer may still have to pay and seek recovery only. The possibility cannot be ruled out though it would be erroneous, since there is no statutory liability attaching to the insurer and so it cannot be considered akin to a breach of condition of policy.

Limit of liability

When there is limit of liability, the insurer cannot be asked to pay and seek recovery. [2008 (1) MLJ 501 (SC)}: {2008 1 TN MAC 1}]. In a case where the victim was a Third Party to a goods vehicle, and no additional premium was paid, it was held that the insurer's liability was as per 1939 Act only. [(The Oriental Insurance Co. Ltd. vs. Jeevan Janga) 2007 AIHC 2483 (All)]. In respect of an accident occurring on 22/6/87 involving a goods vehicle, it was held that the liability of the insurer was restricted to Rs. 1,50,000/- only under the insurance cover, but the insurer was directed to pay and seek recovery of the excess from the insured. [(Gurdev Singh vs. Gurmit Singh) 2007 ACJ 2518 (P&H)]: [(Sayra Devi vs. National Insurance Co. Ltd) 2007 ACJ 2686 (Raj)].

The 'Act policy' of insurance was brought on record, but no official was examined to prove the same. Thereby, benefit of doubt was made available to the Third Party and the insurer was directed to bear the entire liability and not the contractual limit thereof. [(New India Assurance Co. Ltd. vs. Smt. Nirmala Devi) 2007 (3) TAC 414 (Del)]: [(Rajesh Kumar vs. Gurnam Kaur) 2007 (3) TAC 501 (P&H)].

Procedure for Filing and Defending

This chapter deals with procedures and powers of Claims Tribunals, extent of provisions of CPC, IPC, Cr PC applicable to Claims Tribunal, filing of written statement and additional written statement, framing of issues, submission of evidence and exhibits, leading defence and arguments by insurers, right to appeal & letters patent appeal, and applicability of section 170 for protection of insurers interests.

Procedures and Powers of Claims Tribunals

Section 169 (1) of Motor Vehicle Act 1988 stipulates that the tribunal can in the exercise of own decision grant adjournment.

Section 169 (2) : Tribunal can recall and re-examine the witness. In the absence of rules providing for the applicability or ORDER 18 of the Civil Procedure Code (hearing of the suit and examination of the witness) to acclaimed application the Claims Tribunal can adopt as per the circumstances of a case, its own procedure to attain the ends of justice and pass orders for re examination of fitness of both parties. (AIR 1977).

Section 169 (3) Minor claimant: Compromise – when any compromise is made on behalf of the minor in a claim, the safe guard provided in ORDER 323, Rule 7, CPC will apply, (AIR 1975).

Provisions of CPC

Under Sec. 169 (2) of the MV Act 1988, MACT shall have all the powers of a Civil Court for the purpose of taking evidence, enforcing attendance of witnesses, and compelling the discovery and production of documents etc. The Claims Tribunal is deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973. Therefore one should be familiar with some of the important Sections of Code of Civil Procedure 1908, which governs the powers of the Civil Courts.

Provision of CPC relevant to MACT

SECTION 28 : Service of summons where defendant resides in another state: The Court may issue summons to another state where the defendant resides.

SECTION 30 : Power to order discovery and the Like : Court on application of any party may make orders, delivery, answering, admission, of documents and facts, return of documents, inspection, discovery, issue of summons, order any fact to be proved by affidavit.

SECTION 32 : Penalty for default : Court may compel the attendance of any person, can issue warrants, attach or sell his property, impose fine, not exceeding Rs.500/- to furnish security, in default commit him to civil prison.

SECTION 35 A : Compensatory cost in respect of false or vexatious claims or defence excluding appeal or a revision. The compensatory cost shall not exceed Rs.3,000/- or exceeding the limit of its pecuniary jurisdiction, whichever amount is less.

SECTION 51 : Execution decree : —The Court may on the application of the decree holder order execution of the decree :

- (a) By delivery of any property specifically decreed; and
- (b) By attachment and sale or by sale without attachment etc.

SECTION 75 – Power of Courts to issue commission to examine any person, local investigation, to examine or adjust a/c, to make partition, hold technical or expert investigation, sale of property subject to natural decay, any ministerial act.

SECTION 76 – Commission to another Court : Where the person is a resident beyond the local limit of its jurisdiction, the Court may issue commission.

SECTION 77 – Letter of request : – In lieu of commission the Court may issue letter of request to examine the witness residing at any place not within India.

SECTION 94 – Supplemental proceedings : – In order to prevent the ends of justice from being defeated the Court may issue warrant to arrest, direct defendant to furnish security, grant a temporary injunction, appoint a receiver, make such other inter-locutory orders.

SECTION 95 – Compensation for obtaining arrest, attachment or injunction on insufficient grounds such amount not exceeding Rs.1,000/- or subject to the limit of pecuniary jurisdiction of the Court.

SECTION 132 – Exemption of certain woman from personal appearance where according to custom a countrywoman cannot to be compelled to make personal appearance.

SECTION 133 – Exemption of time : President of India, Vice-President of India.

SECTION 148 – Enlargement of time : The court may in its own discretion extend the time fixed by it for doing any act under this Civil Procedure Code, even though the period originally fixed by the court may have expired.

SECTION 148A – Right to lodge caveat : Here an application is made or one appears before the court on the hearing of such application: he may lodge a caveat in respect thereof. The caveat shall not remain in force after 90 day from the date of filing. A

Procedure for Filing and Defending

caveat is an application to a court requesting the court to give the notice of any proceedings against the applicant before deciding the matter. Caveat makes it mandatory for the court to serve notice to a caveator before passing any order.

SECTION 151 – Inherent power of Court – The court may make such orders for the ends of justice.

SECTION 153 – General power to amend - The court for any purpose of determining the real question or issue may amend any defect or error in any proceeding.

ORDER 1 – Non-joinder of necessary party

ORDER 6 – Amendment petition can be filed

ORDER 8 – Defines written statement

ORDER 13 – Production, impounding and return of documents.

ORDER 16 – Summoning and attendance of witness.

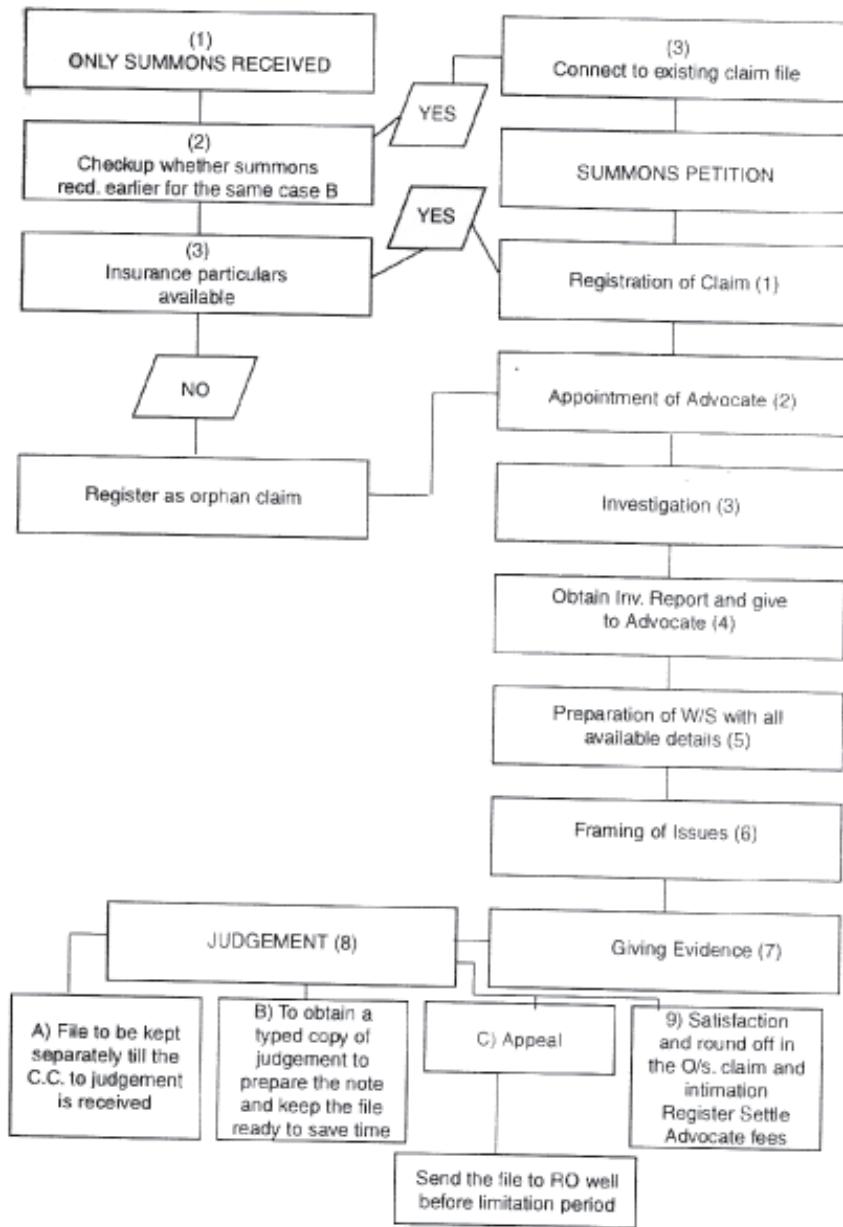
ORDER 18 – Hearing of the suit and examination of the witness.

ORDER 21 – Execution of decrees and orders.

ORDER 41 – Appeals from original decrees. Additional evidence can be produced at the appellate stage

The proceedings in the Motor Accidents claims tribunal are summary in nature without following technicalities of code of Civil Procedure or strict compliance of evidence Act. Therefore it is necessary to know the stages in MACT claims proceedings.

Motor TP Flow Chart



Procedure for Filing of Claim

First the applicant inwards the claim application in ‘Registry’ for availing compensation as envisaged under Motor Vehicle Act 1988. The registrar of Claims Tribunal after making initial scrutiny allots the Court for admission hearing. The date of in-warding the application determines when the application was filed.

Notice / Summons

The Claims Tribunal to whom the claim is allotted, passes the order of issue notice i.e., issues summons to the opponent. All supporting documents produced by the applicant are required to be accompanied with the Summons. If the requirement as per rule 254 is not received, a letter should be written to MACT Judge. Therefore, before the matter is listed for hearing, the petitioner’s advocate should prepare his own short notes, which would be helpful to him in narrating the facts. The points, which are to be urged at the Bar, should be jotted down precisely and the strongest point should be argued first.

Appearance of defendant

The opponent has to appear on the scheduled date personally or through his advocate. The panel advocate’s primary role is to use his professional skills to protect the interest of Insurance Company, besides protecting insurance company from the apathy of insured owner / driver and at times collusion by insured owner / driver with the Third Party claimants.

The advocate is required to initially move an application to obtain comprehensive **search report** after having details of documents filed by petitioner. The copies of such documents are given to the insurer to trace insurance particulars and expedite the process of satisfying the liability of the insured as envisaged in Motor Vehicle Act 1988. On submission of ‘search report’ by the Advocate and on the basis of confirmation of the Insurance and coverage for insured vehicle in the said accident, the panel advocate submits a

'**Say Report**' to registrar. In case insurance is not accepted or not confirmed '**No Say Report**' is submitted.

Regarding Negligence

The defence of contributory negligence and composite negligence also needs to be verified before finalising 'written statement'. Many times if there is no statutory defence available, the defence of negligence is helpful in reducing quantum. The contributory negligence is the negligence wherein victim is also contributing to the occurrence of the accident, and this fact can be adjudged by spot panchnama and statement of witnesses. The investigator has to forward the statement of the driver, if recorded, to help in defending the case. The composite negligence is negligence where the victim is not directly contributing to the accident i.e., death or injury is caused due to no fault of the victim e.g., if there is a collision of two vehicles, an occupant in a car or pillion rider of a two wheeler is not contributing to the accident, but is a victim in that accident. Hence, before finalizing 'written statement' one has to verify under which category of negligence the case is to be pleaded.

Regarding quantum

The Information regarding quantum is also to be procured through the investigator. The Income tax return, salary slip etc are helpful in reducing the quantum or at least conclusion can be drawn regarding genuineness of the claim. Therefore, 'written statement' is the only document where in all the defences are to be pleaded without fail. Necessary care should be taken that pleading in written statement without proving and establishing defence is of no use.

Claims under structured formula

Section 163 A is based on statutory 'structured formula' wherein negligence is not to be pleaded i.e., the claim is to be contested on, income and age of the deceased. Thus when u/s 163 a claim is inwarded, one has to take care about the income of deceased and his age, without pleading negligence.

Filing of Written Statement by Insurer

There are normally two types of defences. One is statutory defence provided in the statute itself where as the other is factual defence which is made out in a written statement. If a case is fit to contest, the written statement is a crucial document for pleading in court by the opponent. The purpose of written statement is to let petitioner know the defences pleaded by the contesting defendant insurer. Pleadings taken by panel advocate in ‘written statement’ should be precise and adequate.

Written Statement (Order 8 Rule 1 CPC)

The Order 8 of CPC defines written statement. The written statement is required to be filed either by admitting or denying liability within 90 days from the date of service of summons. However, considering the procedure before Claims Tribunal, the aforesaid rule is not meticulously followed. The written Statement should not be filed on general denial basis. The denial should be specific and not evasive. The following measures are to be taken while scrutinising the written statement :

1. There must be specific pleading in the written statement, either denying or accepting liability.
2. Defence points and new facts must be pleaded specifically.
3. Insurance Company must deal specifically with each allegation of fact which it does not admit.
4. “Not admitted” is no denial and “no knowledge” is worse than not admitted and these words should be avoided in the Written Statement.
5. It is legally necessary to file the documents along with written statement on which the defence relies, before the Tribunal Court.
6. Written Statement is to be filed before the first hearing, and the insurance company should cause no undue delay in filing the written statement.

Non-joinder of necessary party (Order 1 Rule 9 and 10 of CPC)

In the Third Party liability cases the insured owner, driver of the insured vehicle, as well as owner, driver and the insurer of the other vehicle, in case of collision are generally necessary parties to the proceedings. Further, all legal heirs of the victim are also necessary parties. Wherever, such necessary parties are not impleaded in the proceedings, a contention can be made in the written statement that the suit is bad for non-joinder of necessary parties.

Owner is not a Third Party

Where an applicant himself was driving the vehicle, and was hurt in the accident, he cannot be accepted as a third party as he is a joint tortfeasor. See [(Oriental Insurance Co. Ltd. vs. Hansraj Kodala & others) 2001 (5) ACJ 827 (SC)]. The Gujarat High Court has laid down a principle that application under Section 140 of MV Act 1988 alone is not maintainable. The applicant must file an application under Section 166 also. As the application for no fault liability under Section 140 is a part of application u/s 166, for fault liability.

As Section 166 requires the person at fault to pay compensation, how can one claim compensation for his own fault? hence driver is not entitled to get relief under Section 140 for his own negligence. The definition of liability under Section 146 includes Section 140 also. When the insurer is not liable to pay compensation under Section 166 how can liability under Section 140 be passed on to insurance company?

Driver is not a Third Party

A driver cannot claim compensation in MACT for his own negligence because he is liable to pay compensation. [2001 (7) ACJ 1329 (MP)] In TN SRTC vs. Natrajan & others, [II (2003) ACC 1 (SC)]

the claimant himself was driver of TNSRTC Bus and he was found negligent to the extent of 50%. The Corporation was held vicariously liable for negligence of claimant himself. In [2001 (5) ACJ 998] it was held that owner is liable to pay compensation to the third party and the driver is not a third party.

Mis-joinder of necessary party

In other situation, wherever a person who is not a necessary party but has been made as a party, contention can be made in the written statement to the effect that the suit is bad for mis-joinder of necessary parties viz. GIC does not issue Motor Policy, GIC has been made a party hence there is mis-joinder of necessary party. In a case where the widow filed a claim application, though the deceased left behind six children, it was non-joinder of necessary parties.

Right to file Additional Written Statement before hearing

It is necessary to reserve the right for filing additional written statement as and when fresh facts come to our notice at a subsequent stage. Additional written statement can be filed before commencement of the hearing. Our written statement should incorporate one paragraph reserving our right to file additional written statement. The tribunal has inherent power to permit the procedure for putting forward ground of law in defence by way of an additional written statement [1967 ACJ 153].

Amendment to Written Statement (Order 6 Rule 17)

It is essential that on receipt of the 'written statement' concerned insurance company's officer should scrutinise it properly before signing the same. At the time of scrutiny it is necessary to ensure that frivolous pleas and pleas of general nature are avoided.

The Written Statement can be amended as per the above provision of the CPC at any stage before completion of evidence. If it is necessary to amend a particular contention in the written statement, an amendment petition can be filed under Order '6' Rule 17 of CPC seeking amendment. This provision can be invoked to amend particular contentions on receipt of fresh facts or contrary facts based on documentary evidence.

Leading Defence by Insurers

Section 147 of 1988 Act provides for the mandatory Motor Policy. The Policy is a basic document; hence the defences available on Motor Policy are especially on the issue of third party liability, and limit of liability for third party property damage. When these types of defence pleas are used in a case, the respondent must submit Policy terms and conditions, other details regarding time of Policy, period of policy, registration number of vehicle etc. If the defence of Policy is pleaded, then the dealing advocate should be instructed specifically regarding limits of liability in the Policy, premium cheque dishonour if any, and additional premium, if paid.

Section 149(2) of 1988 Act provides defence which statute has provided. Therefore, these two sections are crucial while finalising the written statement.

Pleading, proving and establishment

There is ample difference in the three concepts of pleading, proving and establishing i.e., before proving defence one has to plead the defence, after pleading defence efforts should be made to explore how it can be proved by way of documents. After providing proof of the document, one has to satisfy the court that defence is established, e.g. the if defence pleaded is non-holding of licence by the driver is pleaded, we have to first plead about the non holding of licence, next parties to prove in charge sheet section 3(18) of M V Act 1988 whether it is levelled or not. To prove the said fact, the Insurer has to submit copy of notice issued through insurance company to produce driving license, certified copy of charge sheet to get driving licence exhibited, arrange summons

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against driver at the time of leading evidence on behalf of Insurance company, examination of investigator and finally to submit and get exhibited Policy terms and conditions. When all these documents have been proved by way of evidence, then only can we say that the defence is established and proved.

Filing of No-Fault Liability application

For filing no-fault liability application, the applicant has to undertake compliance of Rule 255 of Motor Vehicle Rules. If the Insurance Company admits insurance, No-Fault Liability order is passed and, thereafter, matter is posted for framing issues.

Retrospective Application of No-Fault Liability

Section 140 is retrospectively applicable to pending claim [1992 ACJ 977].

Out Of Court or Compromise Settlement

The investigation report helps in determining merits of the claim for compromise settlement or to take a decision whether to contest the case. When the claim is admitted based on documentary evidences and no statutory defences are available to the company to contest, adequate efforts should be made to reach a compromise on the claims through alternative forum like DICC/RICC/Conciliatory panels or as per individual Financial Authority according to the merit of each case.

Framing of Issues

Basically, 'issues' are the points on which Courts decide the case and arrive at the conclusion. Issues are of two types, such as issues on (i) facts, and (ii) law. Generally, issues are framed on material proposition of fact or law averred by one party and denied by the other party. The 'issue' means the points to be proved by the opponents who are contesting. When there are rival contentions,

the issues are framed to facilitate adjudication. The contesting parties accordingly have to lead and prove the said facts.

Need to frame Issues (Order 14 Rule 16 CPC)

After the filing of written statement, Claims Tribunal proceeds for trial on deciding the points involved. Accordingly ‘issues’ are framed on the vital points and on disputed points requiring decision. From the insurers ‘point of view’ it is important to ensure that the issues on the vital defence points are framed, so that the existing Court/Appellate court would become bound to decide on those points on ‘*analysis of evidence*’. If ‘issues’ on vital defence points are framed and decided in respect of production and proving of evidence, then the Insurance Company will be in a better position to file appeal challenging that point.

The panel advocates are required to be briefed properly about framing of ‘issues’ and in this regard necessary instructions are issued. The date fixed for framing of issues should be intimated to the dealing Office, so that officer/representative can attend the Court, if necessary. The issues framed in a particular case should be intimated to the office concerned by the advocate.

Leading Evidence in Claims Tribunal

The defences available to Insurer’s are limited as per Section 149(2) of the 1988 Act (as amended). Therefore, the Insurance Company contests the claim on very limited grounds as envisaged under the statutory provision.

Wherever, the insured and / or driver

- Remain ex-parte or
- Do not contest or
- Do not appear even after filing of written statement or
- There is collusion between the claimants and the insured.

the provision u/s 170 of 1988 Act can be invoked and an application can be filed before the Tribunal, seeking to take over all the defences available to the insured / driver so that insurance company may contest the claim on merits beyond the statutory provision. In these circumstances Insurance company can even challenge the quantum of compensation all alone.

The applicant has to produce evidence in order to prove his case and now a days '*examination in chief*' is filed by way of affidavit, after which the opponent's advocate has to cross examine the applicant. The said 'cross examination' has to be conducted on the basis of pleadings made in the written statement. Thus the cross-examination has to be conducted as per defence raised in written statement.

Evidence by Opponent Insurers

Production and proving of documentary evidence

Pleas taken in the written statement, issues framed on defence points of documents, require each and every document to be filed in support of defence, to be proved by production and proving of documents. Each and every document filed in support of defence plea has to be proved; other wise plea taken but not proved will not have any evidential value in the eyes of law as per the provision of the Evidence Act.

It is a settled position of law that pleas taken but not proved have no evidential value as per the provision of the Indian Evidence Act. Therefore, it is of utmost importance to prove the documents on which our defence relies, by summoning the concerned persons, who have issued the documents; e.g., when we take the plea regarding fake driving licence and also breach of specified policy conditions, it is required that concerned RTO should appear before the Claims Tribunal to prove the validity of driving licence while policy conditions should be proved through Insurance company's representatives.

Compelling Discovery & Production of Documents

Wherever certain documents are in possession of the other party and in spite of our best efforts the same could not be procured, Section 169(2) of the M.V. Act 1988 may be invoked compelling discovery and production of documents; e.g., for production of driving licence particulars this provision will be of help.

The opponent has to lead evidence as per stand/defence pleaded in written statement and thereafter, defence of opponent if any has to be adduced and evidence gets proved.

Appointment of Local Commission for Obtaining Evidence

Wherever the concerned Road Transport Authority (RTA) is situated far away or in other States or beyond 300 KM from the place of trial, and inspite of the repeated attempts the attendance of RTA is difficult for adducing evidence, application may be filed for examination of RTA through Local Commission. Accordingly the courts appoint commission, who visits the RTA and records his statement, and such reports of the commission are admissible as evidence.

Evidential value of Investigation Report

Generally much credence is not given by the Claims Tribunals to the investigation report obtained through Insurance Company's investigator. It is, therefore, necessary that the investigation report should corroborate facts along with other evidences to make it acceptable in the Court.

The investigators should be specifically advised to submit the investigation report along with supporting documents/evidences. Mere detailing of facts and circumstance in the investigation is not enough for being admitted as evidence.

Revision Petition for interim orders (Section 115 CPC)

Claims Tribunal is a court subordinate to High Court and a revision under Section 115 CPC is maintainable [1991 ACJ 150(SC)]. The provision is for filing revision petition challenging interim or introductory order if any. For example, in case of rejection of any amendment petition, or petition for additional evidence or of '**suggestive issues**' by the Tribunal, revision can be filed challenging that particular rejection order before the High Court.

Arguments during Proceedings

The arguments are advanced on the basis of pleadings, exhibited/proved documents, and on the basis of admissions in cross-examination. Where the case requires that an Advocate present his point, he should not give up merely because of an unfavourable expression of opinion by the Judges. The business of an advocate is to convince or persuade the Judge to his point of view. Therefore, unless the advocate combines tact with knowledge of law and facts, he can not succeed in the case.

Citation of Case Laws

During arguments, case laws are to be referred to and then comes the last stage – the pronouncement of judgement. Selected citation of the cases, which lay down the law in support of the contentions of an advocate, is more effective.

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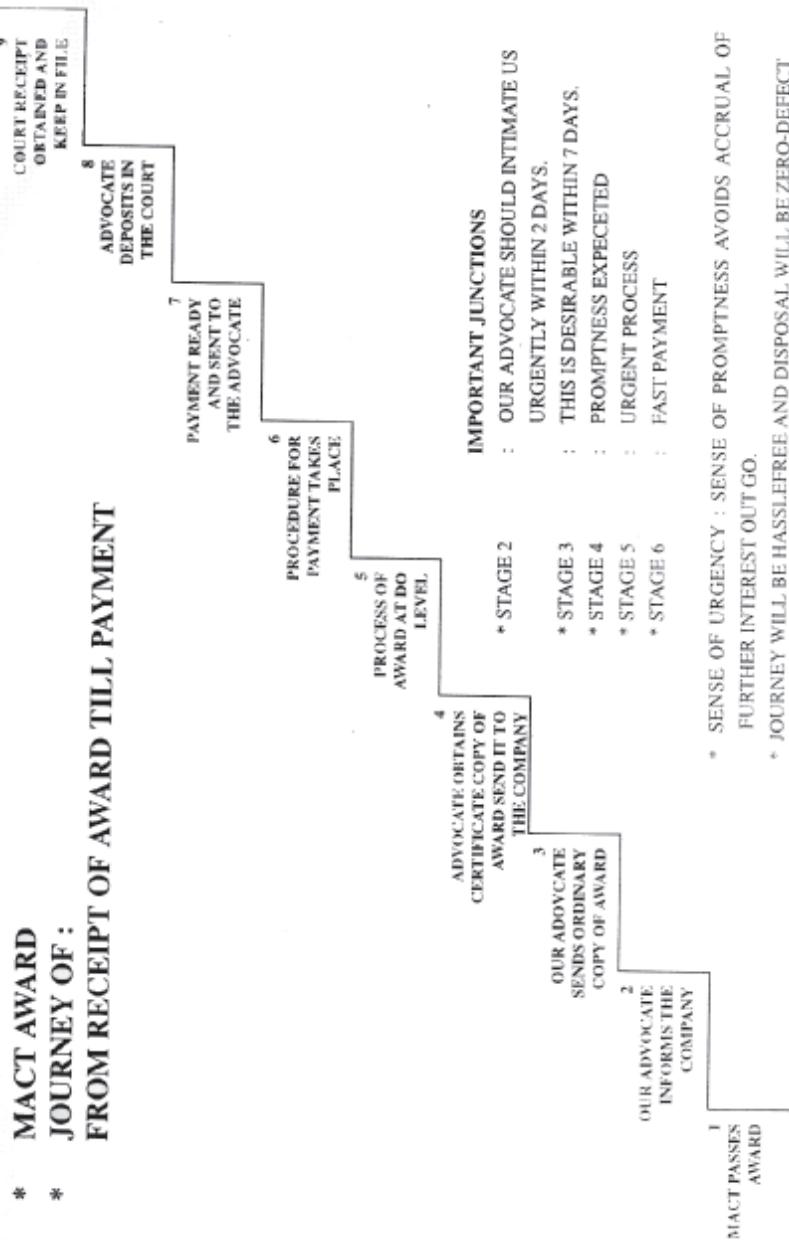


Fig. MACT Journey

Award by the Claims Tribunal

After the evidence is completed, the court passes an award deciding on each issue involved on the basis of issues so framed. As per Section 168 (2) a copy of the award can be delivered to the parties concerned within a period of 15 days from the date of award and as per Section 168(3) the award should be satisfied within 30 days from the date of award unless it merits appeal.

Intimation of Judgement and deposit of award

The Hon'able court delivers judgement on the basis of available evidence and documents. The Supreme Court [in (Rajasthan State Road Transport Corporation. vs.. Poonam Pahwa & otrs) CA no. 435/97] held that mere deposit of the amount is not enough. It has to be intimated to the decree holder by the judgement debtor so as not to attract further interest liability. Therefore, it is necessary to intimate to the claimants regarding satisfaction of awards in compliance of the Apex Court decision

Review of Order

1. The claims tribunal was held to have all the trappings of a Civil Court by virtue of Sec.169 (2) also and in order to do justice it could invoke such powers. While following the decision [in (1997 ACJ 778 (Ker)] the decision in [2005 ACJ 1563 (Ker)] was overturned in [(Asmath Khan vs. Chadrabasa Bangara) 2007 ACJ 1071 (Ker)]: [(Parashram Mahadev Divate vs. United India Insurance Co. Ltd) 2007 ACJ 1438 (Kant)].
2. In the context of IT Act, 1961 in [2008 (6) Supreme 653], it has been held that passing an order in ignorance of a High Court judgment would be “ apparent error on the face of record”.
3. The Tribunal cannot stretch its inherent power so as to include the power of reviewing its own order [1967 ACJ192].

Appeal against award

If the aggrieved party desires, it can file an appeal. The petitioner has to take due care in inwarding the application for obtaining a certified copy of the award, so as to avoid delay and other complications at the time of preferring appeal. An appeal can be filed within 90 days from the date of award, if the awarded amount is excessive, inappropriate to age, income status of the victims and any other point of law is involved. At the time of filing of appeal, 50% of the awarded amount or Rs.2,500/- whichever is less has to be deposited in the manner directed by the High Court.

Additional evidence in appeal (Order 41 Rule - 27 CPC)

In case, certain important/vital evidence in support of our defence plea could not be produced before the Trial Court in spite of reasonable efforts, additional evidence can be produced at the appellate stage under ORDER 41 Rule 27 of CPC. Here the burden lies on the Insurance Company to explain non-production of the evidence at the Tribunal/Trial stage.

In the case of National Insurance Company Ltd vs. Jugal Kishore, Policy copy in support of limited liability contention was admitted at the Supreme Court stage.

Revision Petition at High Court

In a case, where the insurer had satisfied the interim award under protest, and the claim petition came to be withdrawn after compromise with the owner of the vehicle. But the insurer subsequently challenged the same by a writ petition, as there was collusion and fraud. The High Court allowed the relief and remitted the matter for disposal on merits. [(National Insurance Co. Ltd. vs. Mohan) 2007 ACJ 1321 (Raj)]. In a case where a claim was laid under Sec.166 and converted into a claim under Sec.163-A, the

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challenge to this order was scotched in appeal, as not illegal. [(Ravinder v Subash Chand) 2007 ACJ 1365 (P&H)].

To compute the amount in dispute for considering maintainability of the appeal, interest, costs, compensatory costs etc have to be included in arriving at the sum. It was held in [1984 ACJ 408 (Ker)]. [(Ajesh Alex vs. John) 2007 ACJ 1481 (Ker)] that, the debtor having to pay the entire liability the amount in dispute would include all the said sums.

In [(National Insurance Co Ltd vs. Duwas Ram Yadav) 2007 ACJ 763 (P&H)] it was held that when no appeal was provided for under Sec.173 as the amount in dispute was less than Rs.10,000/-, a revision cannot be introduced.

A revision under Art. 227 were also held not maintainable in [(Jabir vs. MACT) 2007 ACJ 885 (All)]. See [(New India Assurance Co. Ltd. vs. Charubala Das) 2007 ACJ 1146 (Gau)] in which it was held that since the Tribunal had committed a jurisdictional error the insurer could seek correction of the same in revision. In another case it was held that a revision under Sec.115 CPC would not lie [(Oriental Insurance Co. Ltd. vs. Manju) 2007 ACJ 1538 (All)].

The insurer had not availed permission under Sec.170 of MV Act, 1988. In its absence, they sought to file a revision petition against the award. It was held that such revision was not tenable, as it would enable them to circumvent the statutory obligation and make the provisions thereto nugatory. It was so decided in [(Oriental Insurance Co. Ltd. vs. Liansangpuii) 2007 ACJ 801 (Gau)]: [(Calcutta State Transport Corporation vs. Sudama Ghosh) 2007 (3) T A C 793 (Cal)] relying primarily on [(Sadhana Lodh vs. National Insurance Co. Ltd.) 2003 ACJ 505 (SC)].

First Appeal (Single Judge)

In the first place, an appeal is generally heard by a Single Judge which is called the first appeal. On disposal of the first appeal there is a provision for filing of appeal before the Division Bench.

Letters Patent Appeal (LPA)

The appeal before the Division Bench challenging the order of the Single Judge is called the “Letters Patent appeal”. The Letters Patent appeal can be considered meticulously and very carefully at the RO level. Letters Patent Appeal challenging an order passed by a single judge of the High Court under Section 140 of the act is maintainable. Refer Chandra Kant Sinha vs. Oriental Insurance company Ltd and others [2002 ACJ 210 (SC)]

Section 100 A of the code of Civil Procedure (inserted by Amendment Act 22 of 2002)

The full bench of Andhra Pradesh High Court held that the right of appeal available under letters Patent has been taken away by Section 100 A of the code of Civil Procedure (inserted by amendment Act 22 of 2002) in respect of matters arising under the special enactment or other instruments having the force of law .{Gasndla Pannala Bhulaxmi vs. Managing Director A.P. SRTC & ors [2003 ACJ 2004]} {P.S. Sathappan (dead) by LRs vs. Andhra Bank Ltd., [2005 1-LW 218 (SC – CB)]}

Special Leave Petition (SLP)

There is a provision to file Special Leave Petition before the Supreme Court within 90 days from the date of Judgement challenging the order of the Division Bench as and when necessary depending on the merit of the case.

It may be noted that all appeals have to be considered at the Regional Office level and all SLPs have to be considered at Head Office level irrespective of the amount involved.

The Insurance Company now a days instruct the advocate to add the pleadings regarding Section 170 of 1988 Act. However, Sec. 170 is a matter of procedure wherein application is made if insured fails to contest the claim, hence S. 170 can't be a part of pleadings as such in anticipation.

Role of Police Officers in Motor Accident Claims

Under Section 166 of Motor Vehicle Act, 1988, an application can be moved for compensation arising out of an accident involving death, bodily injury to persons arising out of the use of motor vehicle(s), or damages to any property of a third party so arising or both. Under Section 133 of 1988 Act, it is the duty of the owner of a motor vehicle, the driver of which is accused of any offence under the Motor Vehicle Act, to give all information regarding the name and address of and the driving licence held by the driver. Section-134 of 1988 Act makes it an obligatory duty of the driver to provide information to the Police when any person is injured or any property of a third party is damaged involving an accident by a motor vehicle.

Section-136 provides for inspection of vehicle involved in the accident by RTO and removal of the vehicle for inspection. Further, Section 158 (6) of 1988 Act puts police under a statutory obligation to inform the owner and insurer about the happening of the accident within 30 days. The compliance can be enforced through State Governments Home (Police) department, or else MACT may be pointed out the lapse on the part of the police, resulting in undue increase in interest liability on Insurers. Refer State of Haryana vs. Chandra Mani [1996 SC 1623]

The Motor Accident Claims Tribunal vide Section 156(8) is under an obligation to deliver copies of the award to the concerned parties within 15 days from the date of award and consequently the parties are required to pay compensation within 30 days from

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the date of giving copies of the award under Section 156(8) of the Motor Vehicle Act 1988

It is clear from the reading of aforementioned provisions that Motor Vehicle Act 1988 envisages :

- (a) It is mandatory to inform to Police Authorities, whenever an accident involving a motor vehicle takes place.
- (b) Efforts to be undertaken to provide medical help to the injured by removing them to the nearest hospital. There is no provision in IPC, CRPC or Motor Vehicles Act 1988 which prohibits removal of the injured for medical help before arrival of police (refer judgement by the Supreme Court dated August 8, 1989).
- (c) Duty of the owner of the vehicle involved in road accident, to cooperate with the police and furnish details of the driver driving the vehicle at the given time and also the description of the accident.

Response from Police

In order to help police to discharge their duties mandated by Motor Vehicle Act, 1988 and Motor Vehicle Rules, 1989, in motor accident cases, several other provisions of General law apply viz., Indian Penal Code 1860, Criminal Procedure Code 1973, Civil Procedure Code 1908, Evidence Act, Law of Limitation, etc.

Indian Penal Code

Indian Penal Code 1860 (45 of 1860) covers various sections as here under:

- Cognizable Offence: A Police Officer may arrest without warrant such as in case of Motor accident.

Role of Police Officers in Motor Accident Claims

- Section 149 Offences committed by any member of unlawful assembly
- Section 177 Knowingly furnishing false information to public
- Section 201 Destruction of evidence
- Section 279 Rash and negligent driving
- Section 302 Murder
- Section 337 Minor injuries
- Section 338 Major injuries
- Section 304 II Causing Death of Third Party by rash and negligent driving
- Section 304-II “Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”.
- Section 323&337 Voluntarily causing hurt
- Section 325&338 Voluntarily causing grievous hurt which endangers safety to human life and
- Section 406 Criminal breach of trust,

Section 161 of the Motor Vehicle Act 1988 provided powers to Police to examine witnesses

Information to Police and power to investigate as per Criminal Procedure Code

Chapter XII – Information to the Police and their powers to investigate

Section 154 – Information in cognizable cases

Section 154 (1) : Every information relating to the commission of a cognizable offence, if given to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant. And every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information in writing and by post, to the Superintendent of police concerned who if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by this Code and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

NOTES

Statutory obligation to supply copy offer- Two important changes have been made in the old section 154 to which this section corresponds. Under the previous provision, the FIR had to be reduced in to writing and the informants' signature had to be obtained thereon. The informant however was not entitled to get a

copy of the report then and there. In some of the States police rules required a copy of the FIR to be given to the informant. The Law Commission considered it a healthy practice and recommended its placing on statutory basis. New sub- section (2) has therefore been added.

New sub-section (3) has been added to check the refusal of the Police in recording FIR. In such an eventuality the aggrieved person has been given the right to send his information by post direct to the S.P. for investigation.

155 (1) - Information as to non-cognizable cases and investigation of such cases

Section 156 - Police officer's power to investigate cognizable cases,

Section 156 (1) - Police officer's power to investigate cognizable case.

Any officer in charge of a Police station may without the order of a jurisdiction over the local area within the limits of such station, would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of Police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Complaint to Magistrate in the event when concerned Police Station refuses to accept FIR on pretext of delay. It may be noted that delay in F.I.R. is permissible for a period of 3 years from the date of offence / event. Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

Section 157 (1) If from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence to which the Defence and internal Security of India Rules is attracted an accused person cannot be enlarged

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on bail merely on the ground that the period of sixty days has expired since the date he was taken in custody. He can however be enlarged on bail if the Court concerned is satisfied on hearing the parties and on the materials on record that there are reasonable grounds for believing that he is not guilty of contravention of the Rules against him- Subha Narayan Jha vs. State of Bihar ILR1976 page 131.

In Surinder Kumar vs. State of Punjab AIR 1977 P &H 245, it has been held that where the proviso (a) to section 167(2) comes into operation, the detention cannot be allowed to continue even after the period of sixty days in view of the provisions of section 184 of the Defence and Internal Security of India Rules, 1971. There is no provision in the Defence and Internal Security of India Act or the Rules framed thereunder, enacting any procedure relating to investigation of cases concerning the contravention of the Rules. That being so, section 167 applies in the case of detention for contravention of Rules. Any remand to police or judicial custody by the Magistrate will be in the exercise of his powers under section 167.

Section 157 (4) states that the officer in whose presence the bond is executed shall deliver a copy thereof to the persons who executed it, and shall then send to the magistrate the original with his report.

Section 168 : Report of investigation by subordinate Police Officer. When any subordinate Police Officer has made any investigation under this Chapter he shall report the result of such investigation to the officer in charge of the Police station.

Section 169 : If upon an investigation under this Chapter, it appears to the officer in charge of the Police Station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall if such person is in custody release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Role of Police Officers in Motor Accident Claims

Section 170 : Right of exhibiting evidences, powers to reopen cases in the event of accidental deaths, enquiry by magistrate into cause of death etc.

Section 170(1) : - Cases to be sent to Magistrate when evidence is sufficient : If upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid such officer shall forward the accused under custody to Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

Section 170(2) : When the officer in charge of a Police Station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complaint (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear, before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

Section 170(3) : If the Court of the Chief Judicial magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

Section 171. Complainant and witnesses not to be required to accompany Police officer and not to be subjected to restraint: No complainant or witness on his way to any Court shall be required to or inconvenienced or required to give any security for his appearance other than his own bond: Provided that if any complainant or witness refuses to attend or to execute a bond as

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directed in section 170, the officer in charge of the police station may forward him in custody until he executes such bond, or until the hearing of the case is completed.

Section 172 : Diary of proceedings in investigation :

Section 172(1) : Every Police officer making an investigation under this chapter shall put forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Section 172(2) : Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court; and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

Section 172(3) : Neither the accused nor his agents shall be entitled to call for such diaries, nor shall they be entitled to see them merely because they are referred to by Court; but, if they are used by the Police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police Officer, provisions of section 161 or section:145 ,as the case may be, of the Indian Evidence Act 1872 (I of 1872), shall apply.

NOTES

Protection to witness : Sections 168 to 172 incorporate the provisions contained in sections bearing the same respective numbers as in the old Code with one significant change only in section 171 and substitution of "Chief Judicial Magistrate" for "DM and SDM" in Section 170(3).

According to old Section 171 no complainant or witness could be required to accompany a police officer on his way to "the Court of the Magistrate". In the opinion of the Joint Committee of Parliament. the protection given to witnesses under this (section), should not be confined to those attending courts charge-sheet, was submitted in a hurry because the accused wanted to plead guilty the court,

acceding to prosecution's request for further time to complete the investigation and submit a final charge-sheet as the accused had resided, held that there was nothing in the Code to prevent the court from granting such a request. Refusal of such a request would lead to injustice as held in State of Maharashtra vs. AL.K Bora [1976-77 Mah.Cr.R.213]

Section 173 : Report of Police Officer on completion of investigation

Section 174(1) : Power to reopen cases in the event of accidental/ incidental death: Police to enquire and report on suicide, etc. When the officer in charge of a Police Station or some other Police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the district or sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

Section 173(2) : The report shall be signed by such police officer and other persons or by so many of them as concur therein and shall be forthwith forwarded to the District Magistrate or the Sub divisional Magistrate.

Section 173(3) : When there is any doubt regarding the cause of death, or when for any other reason the Police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other

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qualified medical man appointed on this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

Section 173(4) : The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Section 175(1) : Power to summon persons: Police officer proceeding under Section 174 may, by order in writing summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend Magistrate's Court.

Section 176-178 INFORMATION TO THE POLICE AND THEIR POWERS

Section 176(1) Inquiry by magistrate in to cause of death — When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174 any Magistrate so empowered may hold an inquiry in to the cause of death either instead of or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

Section 176(2) : The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

Section 176(3) : Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Section 176(4) : Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry .

Explanation: In this section, the expression “relative” means parents, children, brothers, sisters and spouse.

NOTES

Magistrate's obligation – Sections 174 to 176 correspond to sections 174 to 176 of the old Code respectively. They do not make any change of substance in the old provisions. Sub-section (4) has, however, been added to section 176 to cast an obligation on the Magistrate to inform, as far as practicable, the relatives of the person whose dead body is the subject matter of the inquest.

As per Indian Evidence Act, witnesses do not sign statements recorded by Police / Investigating Officer

General Diary

Significance of Charge Sheet / Primary Treatment Records and Form No. 54 establishes involvement of vehicle, helps in establishing disability percentage, helps in deciding contribution to negligence.

General Diary: It relates to significance of prefix I & II before F.I.R. clubbed with sections of IPC,

EXAMPLE NO. 1 — F.I.R. no. (I) 333/03 C read with I.P.C Sections 279 rash and negligent driving, Section 337 minor injuries to TP, Section 338 major injuries to TP, Section 304A Death of TP.

Check for (i) Private vehicle plying for Hire or reward. (ii) Presence of passenger in commercial vehicle. (iii) T.P. Injury/ Death

EXAMPLE NO. 2 — F.I.R. No. (I) 333/03 C read with I.P.C
SECTIONS 279 rash and negligent driving, - Clean Case

At present, local police staff, supervised by an officer in-charge of the Police Station, carries out investigation of all accident cases. All Police Stations are required to provide to insurance authorities following documents expeditiously:

- Copy of First Information Report,
- Copy of Punchnama,
- Form 54
- Accident Report from RTO,
- Medical Certificate and Post Mortem notes.

Ambiguity in Licensing & Enforcement

While licensing is the responsibility of the Transport Department, enforcement has been entrusted to Home (Police) Department. As a result there is role ambiguity and known problems take unduly long time to be understood in the right perspective and be corrected.

As record-keeping for motor vehicle accidents conviction needs considerable improvement, a person convicted for rash and negligent act is successful in obtaining a fresh licence from some other Regional Transport Authority by furnishing false information. Although Traffic Police department collects huge amount as penalty, the reason for imposing fine is not mentioned on the Registration Book of motor vehicle or driving licence of the offending vehicles driver, allowing the violators to repeatedly break the rules and get away.

Licensing restrictions

Licensing rules prescribe that a licence shall not be given till a person has attained the age of majority. Similarly 'Learner's Licence's holders as per definition are not qualified to drive the vehicle and require to follow certain rules in respect of driving 4 wheelers / transport vehicles carrying goods or passengers.

The regulatory machinery including Police or RTA are not able to cope with the large scale breaches taking place day in day out. At present one sees a mockery of the legal provisions which are observed more in breach.

Medical Aid to the Injured

Although it is obligatory for the vehicle driver to inform police about an accident involving fatality or damage to life and property of the third party, there are numerous incidents in which the drivers preferred to avoid doing so rather than inviting trouble for themselves while trying to become Good Samaritans. To ensure successful investigation and prosecution of the offender, police needs the help of eyewitnesses who can depose in the court of law. The Supreme Court in its ruling given in 1989 has prescribed that medical aid should be provided to the injured on priority to save a precious life and consequently reduce the legal liability.

The Hospital authorities insist on depositing hefty amounts, before any accident victim is admitted in the Hospital for settling the medical bills. As a result the good Samaritans who may wish to carry the victim to the Hospital shy away.

Comparison with similar situations in other developed countries broadly indicates that the insurance authorities settle the claims in less than 48 hours and provide real help to the victims.

Some suggestions to mitigate the hardships

There is urgent need that the insurers in India to review the existing procedures and create confidence amongst its policyholders that their claims will be settled without delay.

The compensation for death and other medical disability is payable from Solatium Fund under Hit and Run cases, even if the vehicle remain untraced. Similarly Section 140 envisages no fault liability payments. Therefore, insurance companies can come forward to reimburse medical bills up to a fixed limit, which would facilitate quick medical aid by the hospitals. Since the insurers settle the claims in the Motor Accident Claims Tribunals for no fault liability, it would be possible to adjust the dues of the hospitals from the compensation awarded under Section 140/Section 166 from the No Fault Liability and/or final compensation.

Analysis of Cause of Accident

It is no matter of surprise that though India's motor vehicle population is hardly one per cent of world's population, her share of traffic accidents is nearly six per cent. There is an accident every two minutes in India and every 10 minutes one person dies. The involvement of Commercial Vehicle in accidents is very high-around 15-30% of the total road accidents and 20% in the deaths. The National Highways, comprising two per cent of the entire national network accounts for as high as 20% of accident and 26% of deaths on the roads. Nearly 60% of accidents take place in 23 metropolitan cities. Nearly 60% of the total road accidents take place during the night, though night traffic is hardly 15% of the 24 hour volume, which means that the probability of an accident in India during night is almost eight times higher than that in the daytime traffic.

The analysis of causes of accident shows that the road accidents in India cannot be attributed merely to increase in the number of vehicles. The causes of accident can be attributed to several reasons (not exhaustive) as given below :

Role of Police Officers in Motor Accident Claims

- Traffic Congestion in Metro and large cities
- High speed vehicles on city roads
- Poor road conditions
- Driving of unworthy vehicles
- Lack of traffic education
- Lack of adequate driving skills
- Lack of proper enforcement of various rules by concerned authorities
- Overloading of Goods and Passenger vehicles
- Encroachment of footpaths by hawkers and hutment resulting in spillage of pedestrians on the carriageway
- Unauthorised development along highways
- Heterogeneous traffic in cities
- Vehicles being driven by learners and unauthorised persons not having effective driving licence
- Overtaking on highways
- Carrying passengers in goods vehicles
- Carrying excess passengers in private vehicles used for commercial purpose
- Driving with defective accessories during nighttime
- Parking /abandoning vehicles on highways without due precaution

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- Carrying over dimensional goods in vehicles without due precaution
- Driving two wheelers including scooters/cycles in wrong lanes particularly when there are long distance dividers
- Lack of proper rest and sleep to drivers
- Express way Hazard to save precious lives of innocent inhabitants near express ways
- Lack of parking space and minor repair facilities on the express way
- High speed driving and no possibility of assistance through periodical patrolling
- Lack of communication
- No prohibition on plying of three wheelers, two wheelers and tractors on the expressway
- Serious potential hazard for road side inhabitants and need for monitoring fencing on expressway to check breaches by inhabitants.

In the current era of increasing urbanization, the commuters who are forced to travel long distances for employment / business purposes have to necessarily resort to public or private transport. It is significant that in advanced countries like USA, Japan, Europe etc. the accident and fatality rates have declined despite a phenomenal increase in the number of vehicles and also the increased travel. Streets in London as well as Japan are as narrow as in any other developing countries including India, but pedestrians walk only on footpaths and the entire road is available for the vehicles to ply on. Indiscipline among Indian citizens also contributes to accidents, be it sleeping pavement dwellers or haphazard driving on unmanned traffic signals. According to traffic experts accident management rests on following remedial measures :

- Education
- Enforcement
- Engineering
- Evaluation

The first two are the prime responsibility of the Police Department but automobile manufacturers / insurance companies / Insurance Regulators can jointly come forward to educate public for prevention of road accidents through interactive compact disks, media advertisements and other more focussed appropriate methods, to save their avoidable liabilities. They can fund driving simulators and arrange training programmes with certification to attract discount in premium under their 'Accident Prevention Programmes' and cultivating more responsible driving.

Police in collusion with driver and Owner

If after due investigation the police do not register any crime against the driver, and no criminal case is registered against the driver under I.P.C & Motor Vehicle Act 1988, although the accident results in grievous hurt it makes the accident seem doubtful. But it could be a case of injury by some other means, that has been converted into a vehicular accident. However, if there is no F.I.R., no charge sheet, the driver will not face any criminal proceedings and the applicant will get compensation in collusion with driver and owner. Hattangadi vs. Pest Control (Para 7) [1995 ACJ 366 (sc) R.D.] As per General Motor Vehicle Rules 231 filing of F.I.R. is mandatory requirement for obtaining the interim award under Section 140 of the Motor Vehicle Act 1988 and failure to file F.I.R. will result in no interim compensation as well.

Effect of Station Diary entry (JANVA JOG entry)

In Gondall Case No. 66 / 2001 the Claims Tribunal observed that the practice of recording Station Diary entry (JANVA JOG entry)

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and not recording F.I.R. in pursuance to the enquiry of Janav Jog entry was being adopted by the complainant & police authority, with a view to saving the driver of the offending vehicle from criminal prosecution and the injured person gets the compensation from the Claims Tribunal under the provisions of the Motor Vehicle Act 1988.

JANAV JOG entry or Station Diary entry is information given to Police Station. After receiving the information an investigating police officer is deputed to investigate the matter who lodges complaint against accused under section of IPC & MV Act. If the FIR is not lodged, Police will not care to seize Driving Licence, and driver will not bother for a valid and effective driving licence, nor will he take care to renew it, and defences of insurance company under section 149(2) will have no meaning causing huge loss of insurance revenue.

It has been observed by the Supreme Court that the money of Insurance Company is Public money that cannot be wasted in such cases, by encouraging such unlawful activities. Further, with the driver not facing any criminal prosecution due to lodging Janav Jog entry, the provisions of IPC Section 279, 337, 338, 304 A will have no meaning.

In another MACT Case No 984 / 2000 there was no F.I.R & no Charge sheet was filed by the police against opponent no.1 merely because the Doctor issued Disability Certificate which Claims Tribunal refused to rely and No-Fault Liability application was dismissed. Suggestion: This amply demonstrates the need to amend Section 140 to keep check on these practices of subverting law to gain some advantage.

Role & Functions of Panel Advocates

This chapter deals with role of Advocates their professional skills, formulation of defence strategy, functions of advocate.

An advocate has a crucial role to play in third party claims management as almost 99% of the third party claims are represented in Motor Accident claim Tribunals through advocates from both party.

Use of Professional Skills

A panel advocate's primary role is to use his professional skills to protect the interests of the Insurer in the Third party plaints, besides protecting the apathy of the insured owner / driver and at times their collusion with the petitioners. The courts interpret the law in favour of third party, in the name of benevolent legislation; exerting pressure on Insurance companies, forcing Insurers to pay and recover where the contract does not subsists despite the fact that insurance companies represent the interests of only those who have paid the premium. In India almost 70% of the vehicles remain uninsured, creating undesirable burden on those who insure (uninsured vehicle causing hit-and-run liability) to bear the brunt in the form of higher premium payouts and also on Insurance companies, other customers whose money is used to subsidise losses, due to such benevolent legislative approach and stricter interpretations by judiciary.

Monitoring, Coordination and Vigilance

An advocate's role is to monitor opposite party's moves, coordinate with insurers, and be vigilant to enable insurers to defend their cases effectively by submitting a "**search report**" giving details of following documents submitted by the complainant :

- Document of Insurance cover, Policy copy, Cover note, Certificate of insurance
- Police Papers, FIR, Charge Sheet, Form 54
- Disability certificate
- Post Mortem Report on which MACT has relied upon
- Exhibited documents
- Depositions relied upon while passing the award to facilitate insurer's legal officer to decide future course of action and enable High Courts Advocate to argue our case effectively
- Apply for certified copy of judgement and submit ordinary / Photo copy of judgement to save interest out go
- Receipts for any deposits made in Court.

Streamline Defence Strategy

Insurance companies admit liability and agree to pay compensation in Third Party claims through legal channels to vouchsafe fairness, equity and transparency in their business obligations to avoid any adverse publicity. The role of panel advocate begins with the allotment of summons by the insurer, to be followed by Advocates appearance on the fixed date and applying for comprehensive search report, to seek details of documents filed by petitioner. The copies of such documents are handed over to insurer, for locating

insurance particulars and expediting the process of satisfying the liability. On submission of “search report” by the Advocate and on the basis of confirmation of the Insurance particulars and extent of coverage for insured vehicle involved in the accident, the panel Advocate submits a ‘**Say Report**’ with registrar. In case insurance of the vehicle is not accepted or not confirmed, ‘**No Say Report**’ is submitted. Accordingly no fault proceedings u/s 140 for interim compensation take place in the Claims Tribunal.

No Fault liability proceedings

After the no-fault proceedings are over, the panel advocate can examine the case, to see if the case is fit for compromise settlement for which confirmation of Policy with Section 64 VB compliance is essential. Once No-Fault liability proceedings are completed and prima facie there is no indication of availability of statutory defences under section 149(2) for compliance of provisions of Section 3 (pertaining to effective driving licence) and Section 66 & Section 192 (relating to breach or absence of permit) the compromise settlement can be initiated.

Compromise

Proceed in Claims Tribunal for contesting cases, which are not settled through compromise due to apathy of complainants and their advocates and unwillingness on the part of insurers to take a decision.

Contest

In the contested cases written statement is a crucial document for pleading by defendant / opponent. The purpose of written statement is to know the defences pleaded by the contesting insurer. Pleadings taken by panel Advocate should be precise and adequate.

Admission of liability

In MACT cases admission of liability is of prime significance, quantum aspect comes later. The term 'admission of liability' is manifold and can be ascertained as hereunder:

- Genuineness of occurrence of accident (Insured owner/ driver of vehicle admitting accident, FIR gives an idea of the accident)
- Identify vehicle and its involvement (Panchnama)
- Nexus between accident and resultant injury / death (inquest / Panchnama / PM report gives identity of deceased person, age and cause of death)
- Existence of Policy Contract and confirmation of Section 64 VB of Insurance Act 1938 (insurer's liability)
- Prima facie proof of negligence (Panchnama)
- Valid and effective driving licence/ RTO papers (Charge sheet)

On receiving summons an investigator should be appointed, requesting him to investigate facts of accident and submit his own observations in response to details given in petition, FIR, Panchnama, and other records/ statements/affidavits collected by the investigator. The investigator should concentrate on the following areas :

- Cause of accident
- Involvement/identity of vehicle
- Genuineness of claim
- Age/income/financial status of the deceased person and his legal representatives/ heirs

- For injury case primary inquiry from the hospital where the injured took initial treatment / subsequent hospitalisation, if any/ checking of medical papers / bedside ticket (BST) of injured/ scrutiny of disablement certificate etc
- In case of collusion, inflated and exaggerated claim, fraud, breach of terms as to limitation on use, the investigator should collect documentary proof as a fact finder, so that the evidence so collected may stand judicial scrutiny.
- Investigator should make inquiries with RTO / Police / Government agencies as well.

The investigator has no mandate to assess the amount, even in case of Third Party Property damage. He can do so, through the assistance of Surveyor and Loss assessor as and when Third Party Property Damage loss is reported [1994 ACJ p 647 (MP)]

Investigation Report

The Advocate should formulate a strategy to contest the case in the light of investigation report. The contents of the report should be ***proved by examining the investigator.*** The investigation report should be produced in the court as an exhibit. The Advocate must decide who all are to be produced as witnesses for proving the Policy Contract, Driving Licence, route permit, load challan, Age and Income of the victim e.g., through experts like Doctor and other relevant legal representatives.

Registered Notice to insured / RTO

At the outset, attending Advocate should give a Registered A.D. Notice to the insured under Section 134 (c) (i to iv) to driver calling him to send RTO/ Police papers, and also the insurance particulars. The Advocate is also required to issue a letter to RTO to confirm Driving Licence and Registration certificate particulars

Application for Form 54 and Charge Sheet

Similarly attending Advocate must submit an application under Order 6, Rule 5 of C.P.C read with Section 151 of C.P.C. Simultaneously, the Advocate should submit an application to MACT seeking directions to Police authority for statutory compliance of Section 158(6) of 1988 Act for **submission of Form 54** and that the Police authority should give a report in Form 54 read with [See Rule 253 (c) (iii), 254 (8), 255 (1) and 255 (A)].

Application for charge sheet

The Advocate must insist on **submission of charge sheet**, as the charge sheet is a summary of Police investigation, wherein Police comes to the conclusion that the driver was rash and negligent in causing the accident. A charge sheet gives the details about the name of the offending driver, while F.I.R gives narration of the accident and involvement of the vehicle. Therefore, a charge sheet establishes the identity of the driver who caused the accident as per police investigation.

Sensitivity of submission of written statement

The written statements are filed by insurers on **general denial basis**, without any specific knowledge and without specifically denying the allegation put forward by the claimants in their claim petition. Bare denial does not serve any purpose where an allegation of fact needs to be specifically denied. It may be noted that '**not admitted**' is no denial, while '**no knowledge**' is 'no denial' by implication. Each and every allegation should be dealt specifically either by admission or denial while drafting of written statement.

Although specific rules of pleadings as per CPC need not be adhered, but it is necessary for the claimant to lead evidence for each item of compensation, so that there is sufficient material for the Claims Tribunal to assess full compensation on a rational basis, following rule of equity.

Contentions raised and pattern of defence taken by the insurer seal the fate of third party claim in the Claim Tribunal; hence submission of written statement is a sensitive stage in contesting the case. At times, the Tribunal rejects the prayer for amendment to written statement, therefore, it should be the endeavour of Insurer's to file written statement taking all the contentions together and avoid taking a chance or risk by submitting a '**general denial**' written statement. The written statement must include citations by authorities and decisions of Apex Court / High Court in support of their arguments as regards quantum or negligence or any statutory relief. The written arguments should also be supported by several authorities/ case law.

Stages of Defence in Written Statement

In filing written statement the precise reason of defences is essential as per the stages envisaged hereunder.

Complainants undertaking on Affidavit

The Advocate must seek specific defence in written statement that the applicants be directed to give undertaking on affidavit that they have not filed a claim case in any court of India except the present court.

Complainant put to strict proof

The Advocate must contend in the written statement, that the claimant must be made to show that there was a connection between death/ injury and that of the accident.

Non-insurance

The Advocate must specifically plead non-insurance and prove or else RTO information may be believed [2005 ACJ 117 (Mumbai HC)].

Dishonour of cheques

The cheque dishonour has to be specifically pleaded and proved by documentary evidence. To prove cancellation of the policy of insurance advocate must submit postal acknowledgement showing intimation thereabout, which was served to the insured and a copy of the letter issued to the R.T.O. and the memo issued by the Bank as regards dishonour of the cheque etc., and policy cancellation endorsement. In terms of sub-section (5) of Section 147 and sub-section (1) of Section 149 of the Act, the Insurance Company is liable to satisfy awards of compensation, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium thereon had not been honoured. In *Oriental Insurance Co. Ltd. vs. Inderjit Kaur and Ors.* [(1998) 1 SCC 371] it was ruled that a policy of insurance, which is issued in public interest, would prevail over the interest of the insurance company.

Distinction between statutory Liability vis-à-vis a Third Party

The Supreme Court held in *Deddappa & Ors vs. National Insurance Co. Ltd.* [Appeal (Civil) 5829 of 2007 (Arising out of SLP (C) NO.7746 of 2006) Date of judgment: 12/12/2007] that “*We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim*

The Supreme Court in its observation said that a beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In *Regional Director, Employees' State Insurance Corporation, Trichur vs.*

Ramanuja Match Industries [AIR 1985 SC 278], this Court held: “*We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.*”

A contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, Presutoposes reciprocal promise. The drawer of the cheque promises the insurer that on presentation the cheque would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. Under Section 25 of the Contract Act 1872 an agreement made without consideration is void. **The corollary is that the insured cannot claim performance from the insurer in such a situation.**

Application for enhancement of claim

In case of application for enhancement of claim, subsequent to filing of claims petition by claimant, an ‘additional written statement’ towards enhanced claim should invariably be filed on the extent of suitability of contention for the enhancement. In case of defence with regard to driving licence, the written statement will depend on whether the driver had no licence or whether his licence was not valid and effective in respect of the vehicle insured. The breach of policy condition in respect of disqualification of the driver or invalid driving licence of the driver, as contained in Sec.149(2) (a) (ii), has to be proved to have been committed by the insured for avoiding

liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver from driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. **Therefore, appreciation of driving licence still appears to be ‘pay and recover’ in view of Supreme Court Case [2004 ACJ 843, 2007 ACJ 1067 & 2008 ACJ 776].**

Defence for occupants

The occupants of a private car are not covered in Act only policy as per Supreme Court Judgement [2006 ACJ 1441] while comprehensive Policy covers risk of occupants.

In goods carriage, the owner of goods is permitted to travel but the risk off passengers is not covered. Therefore, the defence in written statement should be that the passenger liability in goods carriage is not covered as per provisions of Section 147 of the Motor Vehicles Act [2004 ACJ 721, 2005 ACJ 1801]

Pleading for Negligence

The pleadings should be precise and based on the version of the accident, if available from the insured. The evidence of the driver should be produced without any confusion of contributory or composite negligence.

Computing Quantum

The facts in each case shall differ in respect of general denial and putting the claimants to strict proof of income and dependency. Appropriate multiplier will be taken on the basis of age of the deceased or parents if dependents, and also the amount to be considered for reduction towards personal use, based on direct dependents as described in detail in the chapter of quantum fixation.

Duty of Advocate to advise Insurer to seek permission under Section 170

The insurance company alone, without insured owner / driver, is not permitted to challenge the point of negligence and quantum of compensation in appeal, if permission had not been given in writing by filing a petition under connivance clause i.e., Section 170 of the 1988 Act. [1993 ACJ p 1087 (Madras)] Written statement is not the correct place to reserve the right to invoke Section 170 of 1988 Act as the insurer is impleaded to safeguard the legal liability of the insured owner / driver at the outset. It is the duty of the Advocate to advise the insurer, whether to undertake defence of insured owner / driver as per Section 149(2) by invoking Section 170 and obtaining permission of Tribunal through a separate application.

Satisfaction of award

It is the duty of the 'judgement debtor' to inform 'decree holder' about deposit of award in MACT. The satisfaction of award should be communicated to the claimants relying on the compensation payment as described in [1997 ACJ 1049]. The Advocate while depositing the cheque of awarded amount in the court must get the endorsement of claimant's side, so as to bring within their knowledge that the deposit had been made.

Strict Proof of Pleadings

The contention regarding breach of Policy/Permit/Collusion or any other legal issue must be proved beyond doubt by exhaustively pleading and advancing proofs. Using stereotype manner to prove the contentions must be avoided, as pleadings in written statements are required to be proved thoroughly.

The attending advocate must produce all evidence as High Courts are generally not inclined to allow additional evidence simply to fill up the lacunae.

Framing Issues

If two or more vehicles are involved all the joint tortfeasors should be impleaded as party to proceedings by an application. The Advocate must examine the insured and the driver to fasten negligence on opposite parties' driver to plead contributory or composite negligence. The Advocate must ensure that proper issues are framed to obtain findings of MACT particularly when the insurer alleges contributory or composite negligence.

The issues are framed by the Claims Tribunal on important points of decision based on the pleadings of both parties. Utmost care should be taken by the panel Advocate to ensure that all defence points find place in the issues on our behalf. Wherever vital defence points like fake driving licence, breach of policy condition or any other statutory defences are available the panel Advocate must take appropriate care to frame these points as 'issues' for Tribunal's decision. If 'issues are framed' both on factual and legal aspects, the Claims Tribunal will be under an obligation to decide such issues and thereafter, if there is '*non appreciation of evidences*' on those points, the insurance company will be on a sound footing to challenge the issue in appeal.

Admission of Opponent's Document

The advocates must remain very careful and cautious while '*admitting the documents*' of the petitioner. The admission of any document to be exhibited or putting endorsement "No objection for exhibition" or "may be exhibited" seals our chances forever.

Cross Examination of Applicants/ Witnesses

The advocate should thoroughly '*cross examine*' the 'applicant' and his/ her 'witnesses' on the point of age, income, occupation, income status, legal heirs etc.

Common Judgements for Group Cases

The advocate must insist on consideration of ‘group cases’ arising out of the same accident, to be disposed off by common judgement, to avoid legal complications, administrative problems, besides insurer’s internal issues in exercising financial authority.

The Advocate has to analyse the award and critically examine the merits while submitting their recommendation for suggesting appeal. They should give specific points or area to be challenged, giving the award with detailed working explaining the variance and disproportion. The Advocate must forward all important exhibited documents and depositions while sending certified copy of judgement and award to facilitate our appellate Advocate to argue on the issues with added weight and force in his presentation.

Appeal

The remedy of appeal should be availed in the *rarest of rare cases*. Application for permission to avail defences under Section 170 is mandatory as per Supreme Court [{2000 ACJ777}; {2002 ACJ1950}, {2006 ACJ 862} and {2007 ACJ 359 (Mumbai High Court)}]

Appeal on legal issues

Generally, the decision regarding filing of appeal on quantum or legal issues is very crucial. The insurance company alone cannot file an appeal on quantum, though the insurer can file appeal on legal issues all alone.

Appeal on quantum

The issue of quantum without vakalatnama of insured/ driver before Appellate Courts registry will remain ‘**on objection board**’ and it should be remembered that Court’s registry permits barely 3-4 weeks for filing vakalatnama. Any failure to submit vakalatnama attracts rejection / dismissal of appeal by registry. The permission of Tribunal under section 170 dispenses the requirement of vakalatnama of the insured / Driver at appellate stage.

Reference of Current Supreme Court Cases

Liability under Goods Vehicle

1	2008 ACJ6	Thokchom Ongbi Sangeeta and another vs. OIC LTD AND ORS.	Insurer not liable to pay and recover, where provisions of the Act do not enjoin any statutory liability on owner to get his vehicle insured for passenger travelling in Goods Carriage. (ref 2003 ACJ 468) (SC) & 2003 ACJ 19331 (SC)
	2008 (4) Suprême 441]	National Insurance Company Ltd. vs. Kaushalaya Devi	Not liable for a passenger in Goods Vehicle
	2007 ACJ 1043 (SC)]	New India Assurance Co. Ltd. vs. Vedwati	No requirement to cover the risk to passengers carried in a goods vehicle
2	2005 ACJ 1801	MV Jayadevappa vs. OIC	Passenger Risk
3	2005 ACJ 721	National Insurance vs. Bommithi Subbayamma	Gratuitous Passenger
4	2005 ACJ 1	Dhanraj vs. New India Assurance Co. Ltd.	Injury to Owner

Reference of Current Supreme Court Cases

5	2004 ACJ 1909	National Insurance vs. Chinnama	Vendor carrying Vegetables in trolley on hire Held -No
6	2004 ACJ 1903	Promod Kr Agarwal vs. Mushtari Begum	Passenger carried for hire or reward, Pay & recover
7	2004 ACJ 428	National Insurance vs. Baljit Kaur	Gratuitous passenger definition of "Any Person"
8	2003 ACJ 1550	Ramashray Singh vs. New India Assurance	"Any Person" & Any Passenger differentiated
9	2003 ACJ 1931	National Insurance Co. vs. Ajit Kumar	Khalasi can not be termed as Conductor or Passenger
10	2003 ACJ 1	New India Assurance vs. Asha Rani	Goods Vehicle – Passenger risk
11	2003 ACJ 468	Oriental Insurance vs. Devireddy Konda Reddy	Gratuitous passenger – Goods vehicle

Breach of Purpose/Use/Valid Permit

1. The Tractor was in use in a field, when it turned turtle and caused injuries to a labourer helping in the field. The claim was held maintainable against the insurer as the vehicle was used for agricultural purpose. [Ganesh Bai vs. Sobran Rai 2007 ACJ 1942 (MP)].
2. Where the **driver on his own without knowledge and consent of owner permitted passengers for hire**, the insurer was held liable to meet the claims. [(Rashma Bai vs. Darshanlal) 2007 (II) ACC 342 (MP)].
3. The vehicle was registered as a private jeep but was found **in use as a commercial vehicle** to carry passengers for hire or reward. Following the verdicts in {2004 ACJ 1 (SC)}, {2004 ACJ 428 (SC)} and {2003 ACJ 611 (SC)}], it was held that the

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The insurer was liable to pay to the victims and seek recovery from the insured. [(Radhabai vs. H.K.Siddiqui) 2007 ACJ 991 (MP)]: [(United India Insurance Co. Ltd. vs. Annapurna Shandilya) 2007 ACJ 1168 (MP)]: [(New India Assurance Co. Ltd. vs. Sri Kant) 2007 ACJ 1058 (HP)]: [(United India Insurance Co. Ltd. vs. Balbir Kaur) 2007 ACJ 1455 (Uttara)].

4. The tractor was used without a valid **permit** within the State of Maharashtra, it was held that the insurer was not liable. [(Anil Tukaram Patil vs. Vishnu Tukaram Shinde) 2007 (3) TAC 661 (Bom)].
5. The vehicle was a tractor-trolley but the trolley was not insured. The victim was travelling on the vehicle he was a gratuitous occupant, as the vehicle was being used contrary to permitted use. The insurer was held not liable for the claim but invoking the jurisdiction under Art.136 and 142 the insurer was directed to pay and seek recovery from the insured. [(The Oriental Insurance Co. Ltd. vs. Brij Mohan) 2007 (2) TN MAC 66 (SC): 2007 (5) MLJ 312].
6. The tractor-trolley was used to carry materials for laying a road, while the vehicle was meant for use for agricultural purposes only. The insurer was held not liable to meet the claim for the person carried on the vehicle. [(Kuleshwar @ Raju vs. Firanta Sahu) 2007 AIHC 2386 (Chatt)].
7. The victim was travelling on the mudguard of a tractor, meant for agricultural use. It was held that the insurer was not liable to meet the claim and there was no question of the insurer being asked to pay and seek recovery also because it would be a case of no insurance policy and not a case of mere breach of the terms of policy of insurance [(United India Insurance Co. Ltd. vs. Kamodi Bai) 2007 ACJ 2031 (MP)].
8. Tractor meant for agricultural use was used for carrying a person, and as such the insurer was held not liable. [(New India Assurance Co. Ltd. vs. Sudesh Kumari) 2007 (3) T A C 895 (HP)].

Reference of Current Supreme Court Cases

9. The tractor meant for agricultural purpose was used to carry, not such a purpose. It was held that the insurer was not liable for the claim. [(Mithlesh vs. Brijendra Singh Baghel) 2007 (3) ACC 248 (MP)].
10. The goods vehicle was carrying cylinders and as such carriage of passengers alongside was violative of the rules. Hence the insurer was held not liable to meet the claim of a passenger in such circumstances. [(New India Assurance Co. Ltd. vs. Mangal Ram Machhua 2007 (4) TAC 492 (Jhar)].
11. If there was no proof of carriage for hire or reward, the insurer cannot avoid liability. [(Ramjan Khan vs. Khuman) 2007 (II) ACC 315 (MP)].
12. The insurer **having failed to prove that the private car was used for hire or reward cannot avoid liability** to the passenger carried in the private car. [(Oriental Insurance Co. Ltd. vs. Nakirikanti Narendra Vabu) 2007 ACJ 2069 (AP)].
13. It did not matter whether the victim travelled for hire or gratuitously, but to meet the ends of justice, the insurer was asked to pay and seek recovery. [(National Insurance Co. Ltd. vs. Prakash) 2007 (II) ACC 325 (Bom)].

Principle of Assessment

1	Appeal (civil) 3988 of 2007 date of judgment: 30/08/2007	A.P.S.R.T.C. vs. M. Pentaiah Chary	Selection of multiplicand and multiplier
2	1996 ACJ 1148 DATE OF JUDGMENT:07/05/1996	U.P. State Road Transport corporation and others vs. Trilok Chandra & Others	Assessment of compensation in fatal cases explained. Multiplier 5 to 18 highest multiplier 21 to 25 lowest 60 to 70
3	[(1994) 2 SCC 176]	Kerala State Road Transport Corporation,	Interest low multiplier to be raised

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		Trivandrum vs. Susamma Thomas (Mrs) and Others	
4	2005 ACJ 1441	TNSRTC vs. S. Rajapriya	Choice of multiplier / assessment of multiplicand / reduction of award
5	2005 ACJ 1131	New India Assurance vs. Charlie	Principles of computations of compensation reduced award taking source into consideration (agricultural)
6	2005 ACJ 99	Manju Devi vs. Musafir	"Just Compensation"
7	2004 ACJ 699		Principle of assessment-Determination of dependency
8	2004 ACJ 448	Asha vs. UIIC	Principle of Assessment, maintainability of Joint Appeal
9	2003 ACJ 1557	Shakuntala Balkrishna vs.	Principle of Assessment
10	2003 ACJ 1775	KSRTC vs. Mahadeva Shetty	"Just defined"
11	2003 ACJ 1800	State Of Haryana vs. Jasbir Kaur	Just – means equitable, fairness & reasonableness & non-arbitrariness
12	2003 ACJ 2152	Gyanchand Jain vs. Parmanand	Principle of assessment
13	2003 ACJ 12	Nagappa vs. Gurdyal Singh	Just compensation reasonable on the basis of evidence on record. It should be neither arbitrary, fanciful nor unjustifiable

14	2003 ACJ 680	Arati Bezbarua vs. Geological Survey of India	Differing dependency
15	2004 ACJ 53	Municipal Corporation of greater Bombay vs. Laxman Iyer	Just compensation (reduction in multiplier)
16	2003 ACJ 1577		Quantum of compensation

A Fatal Claims

1. Settlement by Lok Adalat cannot be a judicial order. It can only be conciliatory award. Enforced settlement is not binding. The lok addalat award was set aside and matter remitted for disposal on merits. [2008 (1) TN MAC 244 (SC)].
2. The award should be liberal and not abysmally low- [2008 (4) MLJ 1130].
3. Guesswork and estimation unavoidable in assessment of compensation – [1997 (2) LW 543, AIR 1999 SC 2260, 2008 (2) Supreme 91].
4. The Court cannot mechanically direct deposit of entire award sum and permit withdrawal of 50% by claimant. It was held that reasoned order was necessary. The matter was remitted to High Court. [(UPSRTC vs. Compotar) 2008 (2) TN MAC 53 (SC)].
5. Permission to withdraw even while appeal pending permissible. [2008 (5) MLJ 287].even though liability was in dispute.
6. Family Pension cannot be deducted from compensation [(Lal Dei) 2007 (8) SCC 319]. Also in [2008 (7) MLJ 613]
7. IT returns filed by wife after death of her husband – not reliable. [2007 4 ACC 172 (MP) (DB)].

8. Till remarriage for a year, the widow was entitled for dependency – [2007 (4) ACC 54 (Kant)].
9. In an appeal filed by the insurer on liability/technical defence, reduction in award under Or.41 R.33 CPC was held improper. [Samundra Devi vs. Narendra Kaur- 2008 (6) MLJ 1046 (SC)]

Multiplier while in employment / business

1. For an 18 year old tutor in a teacher training institute award of Rs.3,84,000/- with interest at 7% p.a. [(BMTC vs. Sarojamma) 2008 (5) SCC 142].
2. An award of Rs.1,50,000/- was passed for a labourer aged 18 years earning Rs.50/-per day at the instance of his parents in [(Ramchandra vs. Shivnarayan) 2007 ACJ 1661 (MP)].
3. For the death of a 20-year-old bachelor who was running a business and was survived by his mother, an award for Rs.3,20,000/- with interest and costs was passed. [(TNSTC Ltd vs. Kamal Kishore Tewari) 2007 (4) TLNJ 584 (Civil) (Mad)].
4. For the claim by widow and posthumous daughter of deceased aged 22 years, a mechanic earning Rs.3,000/-p.m, the award of Rs.95,068/- was enhanced to Rs.1,82,000/- [(Sushila vs. Ramphal Singh) 2007 ACJ 1958 (MP)]
5. For a deceased bachelor aged 22 years an award for Rs.2,36,436/- was affirmed for father aged 55 years using multiplier of 8. [2008 1 TN MAC 157 (SC)]. For bachelor aged 22 years and parents aged 52 and 55 years, multiplier of 8 was upheld. [(Ramesh Singh vs. Satbir Singh) 2008 (3) MLJ 94 (SC)]. For 22 year old Poojari it was held only 1/3 should only be deducted for personal expenses and not 50% and multiplier should have been 12. [CA No. 2460/2008 dt.3/4/2008 (SC in Kamla Sharma vs. OIC)]
6. For a deceased clerk aged 23 years earning Rs.2,308/- p.m.,

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on a claim by his mother, an award of Rs.3,25,956/- was upheld [(National Insurance Co. Ltd. vs. Virendra Singh Negi) 2007 ACJ 1823 (Uttara)]. On claim by parents aged 45 and 50 years for the death of their 23-year-old bachelor the award of Rs. 2,76,500 was reduced to Rs.2,22,000/- reducing the multiplier to 12 from 17. [(T N S T C Ltd. vs. Anjali) 2007 (2) TN MAC 162 (Mad)].

7. For deceased aged 24 years with Dip.in Mech.Engg fixation of Rs.5,000/- p.m. as dependency and award of Rs.5,30,000/- was upheld in [CMA No.831/2008 dt.3/3/2008].
8. Widow of the deceased aged 25 years, a driver earning Rs.1,500/-p.m., an award for Rs.2,30,000/- was passed Sanno Devi vs. Balram 2007 ACJ 1881. The claim was by widow, 3 minor children for the death of a 25-year-old labourer earning Rs.125/- per day. The result was an award for Rs. 3,80,000/- adopting a multiplier of 18 [Rajukmar vs. Nands 2007 ACJ 1549 (MP)].
9. For a 25-year-old labourer earning Rs.50/- per day and leaving behind his widow, minor daughter and parents, the compensation assessed was for Rs.1,90,000/- only. [(Ramchandra vs. Shivnarayan) 2007 ACJ 1661 (MP)].
10. The claimants were widow and parents of the deceased aged 26 years, a Senior Engineer earning Rs.15,469/- p.m., the Tribunals' award of Rs.10,02,144/- was enhanced to Rs.16,24,320/- by adopting a multiplier of 18 and a multiplicand of Rs.7,520/- p.m. [(Sumithra Sana vs. Ramsakka Chourasia) 2007 ACJ 1718 (MP)].
11. For the death of a 26 year old electrician an award of Rs.4,55,000/- was upheld in CMA No.267/2008 dt.30/1/2008.
12. For deceased aged 26 years and employed on probation earning Rs.7,697/- p.m. the award of Rs.2,50,000/- for parents aged 50 and 45 years, was enhanced to Rs.8,36,500/- adopting a multiplier of 13 and dependency of Rs.64,000/-

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p.a. [(Swapan Kumar Sarkar vs. United India Insurance Co. Ltd.) 2007 ACJ 1853 (Cal)].

13. The award of Rs. 2,04,000/- the Tribunal for the death of 28 year old Assistant Manager in a Private firm earning Rs. 2500/- for widow, 2 minor children and parents was enhanced to Rs.3,70,000/- 2007 ACJ 1555 (All)
14. The award of Rs.7,25,000/- with interest at 7.5% p.a. was upheld for the death of a 28-year-old bachelor earning Rs. 9,440/- P.M. as Senior Service Engineer in a Limited Company, on appeal by his father and sister. [(M T C Ltd vs. R.Thanga Nadar) 2007 (2) TN MAC 469 (Mad)].
15. The assessment of Rs.3,73,361/- in favour of the widow and minor children for the death of an agriculturist and social worker was enhanced to Rs.6,80,000/- based on multiplier of 17 and earnings of Rs.60,000/-p.a. [(Pachki Bai vs. Mansha Ram) 2007 ACJ 1513 (MP)].
16. After reduction due to contributory negligence an award of Rs. 5,44,000/- was fixed for Rs. 3,50,000/- for the death of a 30-year-old shopkeeper earning Rs. 4,000/-p.m. on appeal by the widow and children the finding on contributory negligence was set aside and the ultimate award refixed at Rs.5,69,000/- adding Rs.25,000/- towards funeral expenses, loss of love and affection and loss of consortium to widow. [(Gitesh vs. Badri Prasad) 2007 ACJ 1519 (MP)].
17. The deceased was cotton and silk merchant dealer aged 31 years; an award for Rs.17,70,000/- at Rs.1,50,000/-p.a as earnings was reduced to Rs.14,50,000/- in all adopting a multiplier 17 and earnings of Rs.1,20,000/- p.a. [(The Oriental Insurance Co. Ltd. vs. A.Shanthi) 2007 (4) TLNJ 324 (Civil) (Mad)].
18. For a deceased aged 32 years engaged in business and earning Rs.3,000/-p.m, the award of Rs.96,000/- was enhanced to Rs.3,31,800/- payable to the widow and children.

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[U.P.State Road Transport Corporation vs. Sarat Tyagi 2007 ACJ 1515 (Del)].

19. For the death of a 32 year old agricultural labourer owning 5 acres of land, an award for Rs.2,18,500/- to his widow and children. [Ganesh bai vs. Sobran Rai 2007 ACJ 1942 (MP):
20. For a 32 year old mason leaving behind widow, minor child and parents, the award of the tribunal for Rs.2,83,200/- was enhanced to Rs.3,76,700/- adopting a multiplier of 17 following the decision of the Supreme Court in [Supe Devi vs. National Insurance Co. Ltd.) in [2002 ACJ 1166 (SC)]. [(Mariammal vs. Angayarkani) 2007 (4) CTC 696 (Mad)]: [2007 (2) TN MAC 239.]
21. For a 33 year old businessman assessed to income tax, on the basis of the IT returns, the High Court ruled that future increases in income at 10% per year may be in order, while construing just compensation. [Delhi Transport Corporation vs. Ravi Kanta Nagpal 2007 (2) TN MAC 421 (Del)].
22. Detailed discussion on multiplier in such claims: The deceased was aged 34 years and an appropriate multiplier of 17 was determined computing at salary of Rs.5,418/-p.m. the compensation of Rs.7,81,848/- was fixed. [(Usha vs. TNSTC) 2008 (1) TN MAC 370 (Mad)].
23. The award was for Rs.3,70,000/- for a 34-year-old earning Rs.35,000/-p.m. plus allowances as tractor driver. [(Devdas vs. Kalyan) 2007 ACJ 1756 (MP)].
24. For a 34 year old earning Rs.5,773/- p.m. and widow aged 26 and child aged 7 and mother aged 55 years, a multiplier of 17 was justified and award of Rs.5,15,000/- was enhanced to Rs.7,81,848/-.[2008 (2) TLNJ 53 9 (Civil)]
25. The award of Rs.4,32,000/- for the death of a 35 year old coolie on a claim by his parents aged 55 years and 53 years

was reduced to Rs.3,33,000/- [(S.Sridhar vs. Kannupaiyan) 2007 ACJ 1820 (Mad)].

26. The deceased was aged 35 years and employed as Field Officer in Indian Oil Corporation earning Rs.29,906/- p.m. as salary. The Tribunal fixed the dependency at Rs.21,315/- p.m. and multiplier of 16 to arrive at a total compensation of Rs.27,28,320/-. On appeal, with the consent of claimant, the multiplier was reduced to 15 and an award for Rs.25,82,800/- was passed. [(National Insurance Co. Ltd. vs. Bharti Solanki) 2007 ACJ 2644 (Raj)].
27. For a tax practitioner aged 35 years with steady increases in taxable income, the award in favour of widow and 3 minor children for Rs.4,68,000/- was enhanced to Rs.5,77,500/- [(Sulochana Marwah vs. Rama Gupta) 2007 ACJ 1758 (Raj)]. [(R.J.Foujdar Bus Service vs. Ganpat Singh) 2007 ACJ 1591 (MP)].
28. The deceased, a 35 year old ONGC employee was earning Rs.6,419/-p.m. It was held that prospective future prospects couldn't be read into the present earnings to fix dependency. Instead it took the earnings at Rs.8,609/- at double the basic pay plus DA and less 1/3 arrived at dependency of 5,738/-. p.m. Adopting a multiplier of 13, it fixed the compensation at 8,95,128/-. [(OIC vs. Jashuben) 2008 (3) MLJ 33 (SC : 2008 (3) LW 40: 2008 (1) TN MAC 338]
29. For a 35 year old the claimant sought multiplier of 16 as per [2007 ACJ 1972 (Kataria)]. The insurer sought 12 as per [2007 ACJ 1076 (SC)]. The High Court fixed it at 15. [(P.Vijayakumar vs. Shanmugham) 2008 (2) TLNJ 572 (Civil)].
30. For a 35 year old, multiplier of 14 was held proper and rate of interest was granted at 6% p.a.- [(Laxmi Devi vs. Mohammad Tabbar) 2008 (5) MLJ 469 (SC)] : [2008 1) TN MAC 290]. In [CA No.4704/2008 dt.25/7/2008 Ashok vs. UIIC Ltd. (SC)] rate of interest granted was only 6% p.a.

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31. On a claim by his widow, 2 minor sons and parents, an award of Rs.26,49,600/- was upheld for the death of a teacher in a government school earning Rs.10,725/- p.a. adopting a multiplier of 16 and dependency of Rs.13,800/-. [(Oriental Insurance Co. Ltd. vs. Rama Gupta) 2007 ACJ 1758 (Raj)].
32. The deceased was aged 38 years and carrying on occupation as Mistry. The award of Rs.1,80,000/- to widow and minor children was enhanced to Rs.3,55,100/- adopting a multiplier of 16. [(R Vijayalakshmi vs. M.Chandrasekaran) 2007 (2) TN MAC 34 (Mad)].
33. The deceased was aged 39 years and working as warder earning Rs.2,277/-p.m. the award of Rs.1,65,600/- was increased to Rs. 3,80,600/- with interest. [(Uma Maheswari vs. T N S T C Ltd) 2007 (2) TN MAC 170 (Mad)].
34. The deceased aged 40 years was earning Rs.9,332/-p.m. in a Limited concern left leaving behind his widow, children and mother. The award of Rs.9,33,080/- was enhanced to Rs.14,08,000/- adopting a multiplier of 14 and dependency of Rs.8,111/-p.m. [(National Insurance Co. Ltd. vs. Nalini U.Mallya) 2007 ACJ 1595 (Kant)].
35. An award for Rs.1,80,000/- for the death of a 40 year old Power loom Worker was enhanced to Rs.3,82,000/- with interest at 7.5% p.a. adopting Rs.3,000/- p.m. as income, considering that even coolies would earn such sums and adopting a multiplier of 15. [(Sundarambal vs. United India Insurance Co. Ltd.) 2007 (6) MLJ 679 (Mad)]:
36. For the death of a 40 year old Lecturer in Arts College earning Rs.9,635/- p.m. and whose salary would have increased to Rs.21,223/- p.m. as per Pay Commission recommendations, the court adopted a multiplier of 12 instead of 10 and dependency on earnings fixed at Rs.20,148/- p.m. and enhanced the award of Rs.18,30,000/- was enhanced to Rs.22,90,000/- with interest and costs, in an appeal filed by the insurer, on the basis of cross-objections filed by the

claimants. [(United India Insurance Co. Ltd. vs. Sulochana) 2007 (3) ACC 50 (Mad)].

37. The award of Rs.9,33,080/- for the death of a 40 year old earning Rs.9,33,080/- was enhanced to Rs.14,08,000/- by reading future increases in income of the deceased for assessing the dependency. [(National Insurance Co. Ltd. vs. Nalini U.Mallya) 2007 (3) ACC 185 (Kant)].
38. For a 40-year-old, 10 was adopted as multiplier for earnings of Rs.3,000/-p.m. Rs.2,60,000/- was awarded with interest 9% p.a. [2008 (3) MLJ 276 (SC)].
39. For the death of a 40 year old painting contractor said to have been earning Rs.4,000/-p.m., Rs.3,600/-p.m. was considered and multiplier of 17 was adopted and award for Rs.5,14,600/- was upheld.[2008 (2) LW 1099].
40. The deceased was a 42 year old teacher in the Government School drawing a salary of Rs.9,266/-p.m. The award to the claimants widow and children was Rs.8,86,000/-. Fixing a multiplier of 15 and dependency of Rs.6,070/-p.m, the award was enhanced to Rs.11,17,100/- [Deepa Singh vs. Madhya Pradesh State Road Transport Corporation 2007 ACJ 1577 (MP)].
41. An award for Rs. 28,47,400/- was passed for a 43 year old with multiplier of 12 and earning Rs.19,600/- p.m. as salary. [2007 4 ACC 281 (Guj) (DB)].
42. The award of Rs.24,60,000/- for the death of a 44 year old ex air force man, serving in the Police Department and earning Rs.17,040/- p.m. plus pension of Rs.2,432/-p.m., was reduced to Rs.17,65,000/- adopting a multiplier of 14 and dependency of Rs.1,23,600/- p.a. [New India Assurance Co. Ltd. vs. Soma Devi 2007 ACJ 1670 (HP)].
43. For a deceased transporter aged 44 years, the award of Rs.6,15,850/- after reduction of 50% for *contributory*

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negligence, was set aside and recomputed to give credence to future prospects of the earnings of Rs.2,500/-.

44. The award was enhanced to Rs.3,750/-p.m. for a 45 year old selling jute bags and the award of Rs.3,12,000/- was increased to Rs.4,67,000/- [(Vishan Das vs. Suwa Lal) 2007 ACJ 1477 (Raj)].
45. The deceased was a jeweller aged 44 years. On the basis of evidence such as purchase of properties and Fixed Deposit Receipts, adopting a multiplier of 15 and earnings of Rs.5,000/- pm, the award of Rs.5,89,600/- was enhanced to Rs.6,78,000/- with interest and costs. [(R.Kumudhini vs. Public Works Workshops) 2007 ACJ 2494 (Mad)].
46. For a 45 year old UDC earning Rs.9,123/- p.m. on appeal by his widow and 3 children, the award of Rs.7,27,752/- was reduced to Rs.6,96,955/- [(New India Assurance Co. Ltd. vs. G.Sailaja) 2007 ACJ 2098 (AP)].
47. An award for Rs.16,85,300/- for the death of a 45 year old person earning LIC commission, as well as said to be engaged in Tamarind Business as partner, with earnings fixed at Rs.15,700/-p.m. was slashed down to Rs.10,50,000/- adopting a multiplier of 13 and fixing the earnings at Rs.6,500/-p.m. with interest at 9% p.a. [(TNSTC Ltd vs. Meenatchi Sttanathan) 2007 (2) TN MAC 211 (Mad)].
48. For the death of a fruit vendor aged 45 years, a multiplier of 13 was adopted and earnings fixed at Rs.4,000/-p.m., for an award for Rs.6,10,120/- with interest at 9%p.a. It was reduced to Rs.4,81,200/- with the same rate of interest. [(TNSTC Ltd. vs. Rajalakshmi) 2007 (4) TLNJ 355 (Civil) (Mad)].
49. For a 45 year old worker earning Rs.13,000/-, an award for Rs.11,32,748/- was passed. (PF not deductible) [2008 ACJ 36 (MP)].

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50. For a 45 year old agriculturist with 4 acres of land income of Rs.6,250/-p.m. was reduced to Rs.4,500/-p.m. and multiplier of 12 was upheld and award of Rs.6,50,000/- was reduced to Rs.5,17,000/ with 9% p.a. interest liability. [2008 (1) TN MAC 205 (Mad)].
51. For a 45-year-old Railway worker Rs.3,000/-p.m. wages were fixed and a multiplier of 15 was adopted and award for Rs.4,10,000/- was passed. [2008 (2) TN MAC 93 (Mad)].
52. The award of Rs.22,10,000/- for the death of a 46-year old operator in a reputed firm drawing Rs.15,000/-p.m. adopting a multiplier of 8 and dependency of Rs.14,000/-p.m., was reduced to Rs.13,90,000/- only [(National Insurance Co. Ltd. vs. Ramilaben Chinubhai Parmar) 2007 ACJ 1565 (Guj)].
53. For the 47 year old earning Rs.2,857/-p.m., including the future increase in salary, promotional avenue, adopting a multiplier of 11, an award for Rs.3,26,000/- with interest at 12% p.a. was passed. [(Meenakshmi Ammal vs. N. Karunanidhi) 2007 (5) CTC 258 (Mad)]: [2007 (6) MLJ 1540].
54. The deceased was aged 48 years and earning Rs.9,416/-p.m. as Assistant in Chennai Corporation. The evidence disclosed that he may have gone onto earn Rs.16,308/-p.m. Relying upon the verdict in [(New India Assurance Co. Ltd. vs. Kala Devi) 1996 ACJ 16] in relation to *future is increases in income and promotional avenues*, the earning was construed at Rs.12,000/-p.m. and 1/3rd dependency was computed. On multiplier, the decision in [(TNSTC Ltd vs. S.Rajapriya) in 2005 (4) Supreme 87] was relied upon to fix it at 12. Thus the award of Rs.9,34,800/- was enhanced to Rs.11,82,000/- with interest at 7.5% p.a. [(M.Kathyayani vs. V.Mahendran) 2007 (3) TLNJ 354 (Civil) (Mad)]: [2007 (4) MLJ 815]:[2007 (4) CTC 792]: [(M.Kathyayani vs. V.Mahendran) 2007 (2) TN MAC 269]
55. An award for Rs.7,27,000/- for the death of a 52 year old General Manager of H. P.State Financial Corporation earning

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Rs.24,253/-p.m. was enhanced to Rs.12,41,000/- [(Arun Gupta vs. Sansar Chand) 2007 ACJ 1954 (HP)]. The deceased was aged 52 years earning Rs.11,684/-p.m...The proper multiplier was held to be 8 and not 13 and award was passed for Rs.7,73,500/- plus interest. [(The New India Assurance Co. Ltd. vs. Shanti Pathak) 2007 (2) TN MAC 84 (SC)].

56. An award for Rs.7,92,400/- for the death of a 52 year old Assistant Sub-Inspector of Police drawing Rs.9,641/-p.m. was upheld, for his claimant widow, adopting a multiplier of 11. [(Jagrati Devi vs. Gulfan) 2007 ACJ 2066 (Del)].
57. For a 52 year old TNEB employee earning Rs.17,745/-p.m. a multiplier of 6+5 was adopted and award passed for Rs.13,00,000/- as against Rs.15,91,500/- in [2008 (2) TN MAC 22 (Mad) (DB)]: [(NIC vs. Tasneem Kowser)]. In [(NIC vs. Shanthi Pandian) 2008 (2) TN MAC 73 (Mad)(DB)]
58. For a 52 year old Manager in Indian Bank earning Rs.25, 879.68p after a split multiplier of 8+3 was adopted an award for Rs.14, 60,000/- was passed as against Rs.17,46,300/-.
59. A staggering award of Rs.98,64,428/- for the death of a 53 year old fleet operator and agriculturist on a claim by his widow and 5 grown up sons was reduced to Rs.22,50,000/-. It was observed that the entire business and earnings of the deceased having devolved on the family, the loss of dependency had to be computed in terms of deprivation of services and expertise of the deceased at Rs.3,00,000/- p.m. at best. The award was thus reduced to Rs.22,50,000/- only [(United India Insurance Co. Ltd. vs. Bhagyalakshmi)].

Low Multiplier

1. The deceased was aged 51 years and employed with Canara Bank earning Rs.24,400/- p.m. The High Court fixed a **service multiplier** of 6 and adopted a dependency of Rs.18,800/- after increasing the earnings by 30% for future prospects. An award

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for Rs.15,99,000/- was reduced to Rs.14,36,000/- plus interest and costs. [2008 (1) TLNJ 683 (Civil)]: [2008 (5) MLJ 580: 2008 (4) CTC 609 (Mad)(DB)].

2. The deceased was aged 52 years and a Government servant earning Rs. 20,065/- p.m. The award of Rs.7,33,248/- was enhanced to Rs.9,50,000/- with a multiplier of 8 being adopted. [(Noor Asisha Khatoon vs. Surjit Singh) 2007 (4) TAC 503 (Jhar)].
3. The deceased was a 56-year-old government teacher whose son was provided compassionate employment, earning Rs.7,646/- p.m. as salary. With a multiplier of 6 and dependency of Rs.61,168/-p.a. the award was enhanced to Rs.3,67,008/- from Rs.2,57,672/- only.
4. For the death of a 56 year old goldsmith, the High Court adopted only Rs.3,000/-p.m. as income in 2002, following 2004 (1) TN MAC 337 and 2004 (1) LW 1 (SC), and awarded Rs. 2,34,000/-.
5. The deceased was aged 49 years, the multiplier of 9 was fixed by the Tribunal. It was reduced to 6 and award reduced from Rs.8,94,000/- to Rs.55, 220/- [2008 (3) TLNJ 410 (Civil)].

Injury Claims

1. Even if the Tribunal had not adopted proper heads or approach, if the ultimate award was otherwise in order, High Court would not interfere in appeal. [2008 (2) TLNJ 570 (Civil)].
2. Only for a claim under Sec.163-A, reference to WC Act, 1923 was relevant- and not to a claim under Sec.166. Marking of the certificate of disability without examining the doctor was not proper. [Rajeshkumar @ Rajy vs. Yudhvir Singh 2008 (4) Supreme 291]
3. **Basic principles** of Sec.163-A- [BMTC vs. Sarojamma 2008 (5) SCC 142].

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4. The Supreme Court has now clarified the **net pay concept** in [(NIC vs. Indira Srivastava in CA No.5830/2007 dt.12/12/2007).: [2008 1 TN MAC 166 (SC)].
5. For assessed disability of 40% due to fracture of tibia for an office-going person, an award for Rs.2,69,567/- was awarded, including Rs.1,44,000/- towards loss of earning capacity at Rs.1,000 x 12 x 12 . [(Shaikh Parvej Qamar vs. Bajaj Auto Ltd) 2007 (4) TAC 99 (Bom)]. It was ruled that for fixing compensation on the basis of earnings abroad, the **exchange rate on the date of judgment was relevant**. [Fathima vs. Sulaikabi 2007 (4) TAC 132 (Ker)].
6. Injured aged 5 years -35% disability arising from fracture of hip bone/shortening- award for Rs.42,500/- enhanced to Rs.75,000/- plus interest for enhanced sum at 7.5%p.a [2008 (1) TN MAC 228].
7. For 15% disablement with medical expenses of Rs.42,818/- for tibia fracture of a 19 year old, an award for Rs.1,00,000/- was allowed- [2008 (2) TLNJ 370 (Civil)].
8. For *compound fracture* in one knee and dislocation of the other knee, a young girl was awarded for Rs.2,75,000/-, was passed in CA No. 3575/2008 dt.14/5/2008 in [(Sapna vs. UIIC): 2008 (3) Supreme 735: 2008 (6) MLJ 124 (SC)].
9. For 43% disability arising from compound fracture of both bones of right leg including medical expenses of Rs. 34,135.89, an award for Rs.3, 04,335/- was reduced to Rs. 2,34,895.89. [2008 (3) TLNJ 18 (Civil)]- *Age of victim has to be taken as per deposition in the absence of any documentary proof.*
10. Award for simple injury- reduced by High Court- Rs.12,500/- only granted. [2008 (5) MLJ 1150].
11. The disability was assessed at 55% for fracture of both legs for a 27-year-old Medicine distributor. The award of

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Rs.2,63,000/- including medical expenses of Rs.79, 000/- was found in order. [2008 (5) MLJ 189].

12. For a 37-year-old milk vendor assessed to 43% disability with medical expenses of Rs.34,135.89p, a total award for Rs.2,34,895.89/- was passed adopting multiplier method. [2008 (2) TN MAC 1].
13. The injured suffered head injury and was paralysed. 100% disability as agriculturist- *it cannot be as if entire output from agriculture would be lost* to the injured/family. [(Ponnumany @ Krishnan vs. V.A.Mohannan) 2008 (1) TN MAC 313 (SC)].
14. In a case of **injury leading to impotency/loss of testes**, an award for Rs.2,44,000/- was enhanced to Rs.5,00,000/- in excess of the claim for Rs.4,00,000/- [(Saravanan vs. M.Sankaran) 2008 (4) MLJ 1193].
15. The injured was compelled to avail leave, but was *not on loss of pay*. The claim for loss of salary during the said period was disputed. However, following the verdict in [(B.Anandhi vs. R.Latha) 2002 ACJ 233 (Mad)], it was held that the defence was not tenable. That the injured claimant *was forced to avail leave* when he was not inclined to, would amount to loss of leave. This could be compensated in terms of the salary of the injured during the period. [(TNSTC Ltd vs. T.Selvaraj) 2007 (3) TLNJ 262 (Civil) (Mad)]:
16. The claim of disablement of 60% for injuries to *right hand was discounted on the grounds that it was not in the context of whole body* and accordingly it was slashed down to Rs. 60,000/- only from Rs.1,72,800/. [(National Insurance Co. Ltd. vs. Rajeev Verma) 2007 ACJ 1643 (HP)].
17. The award of Rs.2,13,000/- for the 44 year old Liason Officer who had suffered 45% disablement due to fracture of the right hip, right thigh and right patella and compound injury on right knee was reduced to Rs.1,88,000/-. [(MD, Zoological Park vs. S.Kalyana Raman) 2007 ACJ 1572 (Mad)].

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18. The injured was a practicing lawyer aged 50 years. He had suffered injury of the right thighbone necessitating hospitalization in 3 hospitals and 3 surgeries, leaving behind 70% disablement. The award of Rs.13,03,320/- was reduced to Rs.10, 87,000/- while assessing Rs.5,04,000/- towards *loss of earning capacity*. [(New India Assurance Co. Ltd. vs. Ranglal Punju Nikam) 2007 ACJ 1483 (Bom)].
19. The injured was a MBA student who had suffered amputation and had incurred a sum of Rs.7,00,000/- towards medical expenses. The ultimate award of Rs.10, 95,000/- passed by the Tribunal was upheld in appeal. [(Pradeep Negi vs. Uttaranchal State Road Transport Corpn) 2007 ACJ 1559 (Uttara)].
20. The fracture was to the shaft of the femur resulting in *shortening and disability of 30% for the whole body*. The award of Rs.93, 864/- was increased to Rs.1,74,800/- on appeal. [(United India Insurance Co. Ltd. vs. Devaiah) 2007 ACJ 1659 (Kant)].
21. The award was to a cleaner for fracture of the shoulder and forearm was Rs.1,56,600/- for disability of 5%. In appeal, it was reduced to Rs.86,400/- only. [(Oriental Insurance Co. Ltd. vs. Ananda) 2007 ACJ 1459 (Kant)].
22. The injured mechanic for spinal injuries leading to inability to move fingers was awarded Rs.4,65,880/-for 100% disablement, later reduced to Rs.3,26,116/- due to contributory negligence. [(Dastagir vs. Shivanand) 2007 ACJ 1561 (Kant)].
23. The appeal was filed by the transport corporation against an award of Rs.3,26,440/- including medical expenses of Rs.1,87,440/- and 85% disablement arising from fracture of the right hip leading to urinary track damage and requirement of alternate track being provided for. The appeal came to be dismissed. Instead the cross-objections filed by the claimant seeking enhancement was allowed holding that the Court was duty bound to *award for loss of amenities, future medical expenses etc separately*. The award was enhanced to Rs.5,12,440/- with interest and costs as well. [(Metropolitan

Transport Corporation Ltd vs. V.R. Gopal) 2007 (4) MLJ 717 (Mad)]: [2007 (4) CTC 545].

24. The injured was a tailor who had suffered 75% disablement due to fracture of the femur, left clavicle, and avulsion injury, for which an award for Rs.2,38,893/- inclusive of medical expenses of Rs.43,892.98 as medical expenses was made. [(TNSTC Ltd vs. Zarina) 2007 (2) TN MAC 79 (Mad)].
25. The 27 year old had suffered 40% disablement arising from fracture of the right femur; was in-patient for 22 days and underwent a surgery also. It was observed that Rs.1,000/- to Rs.2,000/- per percentage could be considered depending upon the age of the victim and the nature of injuries. An award of Rs.1,10,000/-. [(TNSTC Ltd vs. S.Kannappan K) 2007 (2) TN MAC 1 (Mad)].
26. In [2008 (2) TN MAC 78] it was been held that per percentage between Rs.1,200/- to Rs.2,000/- could be awarded and for 55% disability Rs.1,30,000/- was passed.
27. The disability assessed at 50% for head injuries was accepted at 25% only and award for Rs.84,000/- was passed referring to grant of Rs.1,000/- to Rs.2,000/- per percentage. [MTC vs. N.Shanmugham 2008 (5) MLJ 1439] where Rs.2,000/- per percentage was granted. [R.Senthil Kumar vs. P.Palaniswamy 2007 (4) CTC 642 (Mad)].
28. For head injuries and disablement of 40% suffered the award of Rs.2,50,000/- in favour of a lady was upheld in appeal. In 2008 (2) TN MAC 10 for 37% disability of radial fracture, it was taken at 31% and at Rs.1,500/- per percentage, an award for Rs.90,000/- was passed. [(K. Nanjundan vs. C. Murugammal) 2007 (2) TN MAC 46 (Mad)].
29. For a Police officer assessed to have suffered 25% disablement arising out of fracture of fibula on the left leg, the award of Rs.4,50,000/- towards *loss of earning power, was set aside with the observation that he had resumed duty and restored*

to his income level. [(New India Assurance Co. Ltd. vs. Amitava Das) 2007 ACJ 2058 (Cal)]

30. The injured was a 38-year-old carpenter who had suffered grievous injuries to his limbs, which required a surgery and insertion of plate as well. The Tribunal's award of Rs.85,000/- was enhanced by Rs.1,62,800/-. While dealing with the appeal by the Transport Corporation it was ruled that while adopting the multiplier as per second schedule, discretion was permissible though for good and strong circumstances. The *continued suffering of the disabled and the rate of interest were relevant factors while assessing the compensation.* [(APSRTC vs. Pentaiah Chary) 2007 (6) Supreme 237] : [2007 ACJ 2468] : [2007 (2) TN MAC 152] : [2007 (4) TAC 43].
31. In a case where the disability arising out of injury to eye and lungs was 50% and 35% for a 35-year-old auto driver, the High Court applied the multiplier method construing the loss of earning power at 50% and awarded a sum of Rs.2,85,400/- with interest at 7.5% p.a. [(G.Balakrishnan @ Balachander vs. V.Kesavan) 2007 (2) TN MAC 149 (Mad)].
32. To a 35 year old housewife, assisting her husband in a grocery shop, for 70% disability arising out of amputation below left elbow an award for Rs.2,00,000/- was passed, reducing the award from Rs.13,62,500/- of the Tribunal [(TNSTC Ltd vs. A.Revathy) 2007 (2) TN MAC 158 (Mad)].
33. An award for Rs.5,77,000/- for the grievous injuries to a vegetable vendor who had suffered nervous break down and suffered 90% disability and now had no control over even her urinary acts etc, was upheld as being fair and just. [(V.P.Thangavel vs. Manimegalai) 2007 (2) TN MAC165 (Mad)].
34. In respect of amputation of leg, for which disability was assessed at 60% an award for Rs.1,25,000/- was enhanced to Rs.2,25,000/- plus interest at 12% p.a. from date of accident 2/11/96. [(A.Munusamy vs. United India Insurance Co. Ltd.) 2007 (2) TN MAC 168 (Mad)].

35. The victim, an Assistant Engineer with PWD had suffered amputation with 70% disablement and claimed *loss of promotional opportunities*. On a combined consideration of the factors involved, an award for Rs.3, 96,403/- with interest at 7.5% p.a. and costs was passed. [(TNSTC Ltd vs. N.Balachandran) 2007 (4) LW 312 (Mad)].
36. The injured claimant was Professor and Head of the Department of ENT in Thanjavur Medical College, who had suffered fractures on the right elbow and shoulder. *He being a surgeon was immobilized from carrying out his profession.* Including medical expenses incurred for Rs.3,08,500/, towards loss of earning capacity, future medical expenses etc, an award for Rs.8,88,500/- with interest at 12% p.a. was passed in favour of the victim. [(TNSTC Ltd vs. Dr.S.Rajendran) 2007 (4) LW 290 (Mad).]
37. An award for Rs. 86,000/- for disablement assessed at 45% due to fracture on the hand for record keeper-cum-cashier in a bank was upheld in appeal. [(TNSTC Ltd vs. Y. Selvaraj) 2007 (2) TN MAC 208 (Mad).]
38. The injured was a coolie aged 30 years who was assessed to be suffering from 36% disability clubbing 28% on the left hand and 8% on the hip. *It was held such arithmetical clubbing was not proper.* Instead, the formula recommended by 'Manual for Doctors to Evaluate 'Permanent Physical Impairment', based on expert Group Meeting on Disability Evaluation, and National Seminar on Disability Evaluation & Dissemination under D.G.H.S.-W.H.O.-A.I.I.M.S., for clubbing disability was adopted. The disability was assessed at 34% as against the Doctor's assessment of 35%. An award for Rs. 55,500/- stood enhanced to Rs.77,000/- with interest at 9% p.a. [(Selvaraj vs. S.Ramesh) 2007 (2) TN MAC 249 (Mad)].
39. The injured was an 18-year-old student who had suffered head injuries. The Doctor had suggested 25% for cerebral damages, 15% for mild deafness, and 10% for loss of handgrip. In the absence of any CT scan mere reliance on

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clinical test was held improper. The disability assessed at 50% was accepted at 25% only. An award for Rs.84,000/- was passed with interest at 9% p.a. [(R.Senthil Kumar vs. P.Palaniswamy) 2007 (2) TN MAC 257 (Mad)].

40. The claimant was a soldier aged 35 years earning Rs.7,000/- on an average and he had suffered 100% disablement arising head injuries and injuries to the limbs. An award for Rs.11,56,400/- was passed, including a sum of Rs.7,84,000/- towards loss of income adopting a multiplier of 14, on the average income and deducting 1/3rd as well. [(Oriental Insurance Co. Ltd. vs. Mohan Lal) 2007 (4) TAC 220 (J&K)].
41. A 39 year old had suffered amputation of both the legs. The award for Rs.96,000/- was enhanced to Rs.7,00,000/- with interest at 6% p.a. [(Manzar Afaque vs. Md. Wasi Ahmad) 2007 (4) TAC 252 (Jhar)].
42. An award for Rs.1,00,000/- only for 26-year bachelor sepoy in Indian Army drawing Rs. 45,445/-p.m. as salary, who had suffered paralysis of the left side of the body and 100% permanent disability, was enhanced to Rs.6,08,604/- with interest at 7.5% p.a. [(Virender Singh vs. Shri Anand Prakash) 2007 (4) TAC 284 (Del)].
43. A 17 year old cleaner earning Rs.2,700/-p.m. had suffered amputation of left leg above knee. The award of Rs.1,65,000/- was enhanced to Rs.5,00,000/- with interest at 7.5% p.a. [(Sevak Ram vs. Ashok) 2007 (4) TAC 609].
44. The injured was a qualified stenographer aged 32 years and earning Rs.8,362/-p.m. and was *assessed to have suffered 44% functional disability*. The assessment of pecuniary loss as impacted by the disability and justification for grant of loss of earning capacity was gone into and fixed at Rs.7,52,000/-. The High Court went into the question of *identifying the nature of injuries and the need to focus on the consequence of disability on earning capacity*, which was

proof based. [(Oriental Insurance Co. Ltd. vs. Rajinder Kumar) 2007 (3) ACC 19 (Del)].

45. For amputation of hand suffered by a 17-year old cleaner, the award for Rs.1,65,000/- with interest and costs was enhanced to Rs. 5,00,000/- with interest and costs. [(Sevakram vs. Ashok) 2007 (3) ACC 27 (MP)].
46. In a claim by a Government servant, where an award was passed for Rs.20,90,000/- for disablement of 100% including medical expenses of Rs.4,10,000/- it was contended that *he was still in service and would have had the benefit of reimbursement of medical expenses as well*. To deal with this issue, the matter was remitted to the Tribunal. [(New India Assurance Co. Ltd. vs. Dinseh Nautiyal) 2007 (3) ACC 136 (Uttar)].
47. In the case by a 26 year old who had suffered 100% permanent disability due to head injuries, where the claim was for Rs.30,00,000/- was made the wife had deposed on behalf of the injured, since he was reduced to a vegetable and was not in a position to give evidence himself. The award given was for Rs. 21,15,000/- with interest at 12% p.a. was given. On appeal, the award was marginally reduced to Rs. 19,15,000/- with interest at 8% p.a. [(The Oriental Insurance Co. Ltd. vs. K. Balasubramanian) 2007 (2) TN MAC 399 (Mad): 2008 (1) CTC 142].
48. The injured was a 38-year old government contractor earning Rs.15,000/-p.m. The Tribunal's award for Rs.26,59,000/- *based on loss of vision in both eyes and total handicap to indulge in any economic pursuit*, was reduced to Rs.11,89,000/- by the appellate court. [(MPSRTC vs. Narendra) 2007 ACJ 2527 (MP)].
49. For a 28 year old earning Rs.5,000/-p.m. and suffering 100% disablement- an award for Rs.21,80,000/- was passed. [2007 4 ACC 312 (MP)(DB)].

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50. An award for Rs.2,22,000/- in favour of a 32 year old agriculturist who had suffered 50% *neuro-disability* leading to hearing impairment etc, was reduced to Rs.1,20,000/- the loss of earning capacity being assessed at 25% on an earnings of Rs.2,000/-p.m. [(United India Insurance Co. Ltd. vs. V.Rajavelu) 2008 (1) TLNJ 243 (Civil) 2008 1 TN MAC 161 (Mad)] and in [2008 (2) TN MAC 193] for 25% disability arising out of head injuries of a 60 year old, an award for Rs.1,92,059/- was reduced to Rs.97,559/- including medical expenses of Rs.20,059/-.
51. On the basis of 40% disability assessed by Medical Board for a driver, the Supreme Court granted loss of income based on multiplier method [(Sunil Kumar vs. Ram Singh Gaurd) 2007 (7) Supreme 450: 2008 2) MLJ 865 : 2008 (2) LW 18(SC) : 2008 ACJ 9 (SC)].
52. In yet another case in [(Raeesh Ahmad vs. UIIC Ltd) in CA No.2869/2008 dt.22/4/2008(SC).] an award for Rs.2,45,000/- for 30% disability due to fracture in leg leading to 2 surgeries was upheld included Rs.1,72,800/- based on multiplier method.
53. Central Government employee suffering 84% disability, amputation of right arm, 50 year old, in job, award for Rs.5,74,375/- including Rs.10,375/- as medical expenses. [2008 ACJ 53 (Cal)].
54. In a *WC claim loss of earning capacity has to be in relation to the nature of job* — unless the finding was perverse no interference. [2008 (1) TLNJ 384 (Civil)]. The contention that death was not due to injuries in a WC claim was not accepted. [2008 (1) TLNJ 305 (Civil)].
55. An award for Rs.10,03,250/- to a driver who had suffered 90% disability due to fracture of thigh bone in an accident in 1985, medical expenses Rs.56,575/- and transport to hospital Rs.64,675/-, pain and suffering Rs.75,000/-, loss of earning power Rs.4,91,400/- at Rs.3,500/- p.m. as income and multiplier of 13 and interest of 12% p.a. from a reduced award of Rs.7,29,650/-. [2008 1 TN MAC 151 (Mad)].

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56. The High Court has considered Rs.2,000/- per percentage for disability- [2008 1 TNMAC 8 (Mad)]. For 40% Rs.1,37,500/- and for 45% Rs.1,08,100/- were awarded. [(R.Pramanathan vs. MTC) 2008 (1) TN MAC 300] (50% disability tibia/fibula reduced to 40% and assessment made). Award for Rs.2,06,835/- after fixing actual compensation at Rs.3,44,725/- including medical expenses of Rs.1,94,725/-.
57. For 25% disability an award for Rs.1, 16,000/- was confirmed- [2008 1 TN MAC 17 (Mad)]. And in [2008 (1) TN MAC 69 (Mad)] also for 35% disability Rs.90,000/- granted.
58. Injured, a contractor, injuries to stomach and mouth- 40% temporary disability, including medical expenses of Rs.1,08,000/-, Rs. 2,08,500/- passed as against Rs. 3,26,500/- [2008 (1) TN MAC 83 (Mad)].

Satisfy & Recover

1	2008 ACJ6	Thokchom Ongbi Sangeeta and other vs. OIC LTD AND ORS.	Insurer not liable to pay and recover, where provisions of the Act do not enjoin any statutory liability on owner to get his vehicle insured for passenger travelling in Goods Carriage.
2	2004 ACJ 1	National Insurance vs. Swaran Singh	Doctrine of “ <i>Stare-decisis persuades</i> ”
3	2004 ACJ 1903	Promod Kr Agarwal vs. Mushtari Begum	Satisfy & Recover
4	2004 ACJ 420	National Insurance vs. Baljit Kaur	Satisfy & Recover
5	2003 ACJ 611	National Insurance vs. Challa Bharathamma	Satisfy & Recover
6	2004 ACJ 2094		Satisfy & Recover

Driving License

1	2008 ACJ 1	UIIC LTD vs. Davinder Singh	Renewal of Fake licence can not take away effect of fake licence [2007 ACJ 721 (SC) mic vs. Lakshmi Narain Datt & 2007 ACJ 1284 (SC) OIC vs. Meena Variyal Relied and 2004 ACJ 1* Distinguished
2	2005 ACJ 1544	National Insurance vs. Kanti Devi	Plying vehicle without DL – Breach of condition
3	2004 ACJ 1* 2003 ACJ 611	National Insurance vs. Swarn Singh	Absence, fake, invalid licence or disqualification of driver – not available as defence
4	2003 ACJ 1002	TN STC	Corporation as employer – drivers various liability – No.
5	2000ACJ 469	UIIC vs. Anbari	Photocopy of DL is not sufficient to prove valid DL
6	1998 ACJ 116	National Insurance vs. Santro Devi	Forged DL validly renewed would not become valid DL. Pay & recover.
7	1997 ACJ 1065	UIIC vs. Gyan Chanda	Insured guilty of Breach in entrusting vehicle to unlicensed person – no liability
8	1996 ACJ 1044	Sohanlal Passi vs. Sesha Reddy	Co. is Judgment debtor. The driver allowed cleaner to drive not holding valid D/L

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9	1996 ACJ 253	New India vs. Mantar Madhav Tambe & Others	Learner's licence – insurer not liable
10	1989 ACJ 1078	Kashiram Yadav vs. Oriental Insurance	Owner entrusted tractor to person without holding licence – co is exempted from liability
11	1987(1) ACJ 411	Skandia Insurance vs. Kokila Chandravardhan	Doctrine of "Reading down" main purpose rule.
12	1985 ACJ 397	Narchinva Kamath vs. Alfredo	Onus on Insurance Co. to prove that Driver had no DL.
13	1979 ACJ 496	Bishen Devi vs. Bakesh Singh	Insurer to prove vehicle driven by a person was not properly licensed

Contributory Negligence

1	2003 ACJ 24	Suresh Yallappa Patil vs. KSRTC	Crush Injury
2	2004 ACJ 53		Contributory negligence 75/25 Deceased from wrong side

Workmen Compensation

1	2005 ACJ 1323	National Insurance vs. Prembai Patel	Claim under MV Act Policy: Owner asked to satisfy remaining portion beyond Act liability of insurer.
2	2004 ACJ 452	P.J.Narayan vs. Union of India	No interest to be paid by insurer.

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3	1997 ACJ 517	Maghar Singh vs. Jaswant Singh	PTD 100% in course of employment, circumstantial evidence.
4	1998 ACJ 1	Ved Prakash Gard vs. Premi Devi	Interest liability imposed on employer. Insurance co. not liable to other
5	1910 3 BWCC 2234	Read vs. Smith	General employee lent to other for specific service, will amount to employee of sp. Employer.

WC Claims

1. Dispute between contractor and Principal employer, the case has to go to District Court of Law and not the Forum i.e., only Civil Court. [2008 (2) MLJ 694].
2. Claim by wife that her husband was employed with her, was disbelieved. [2007 ACJ 1025 (Gottumukkala)].
3. A worker hit by an elephant while resting in the **employer-provided residential quarters**- claim sustainable. 2008 (1) TLNJ 220 (Civil). The question of law arises as to when the course of employment will come to an end.
4. Workman not reporting to duty infers that the claim was not tenable, as the workman was not in the course of employment. [2007 (4) TLNJ 484 (Civil)].
5. The dead body of cleaner was found on beach and no nexus was found with the employment, hence the claim was not payable. [2008 ACJ 23 (Kant)].
6. Definition of workman, clarification as per [2008 (1) TN MAC 32] and would apply retrospectively for a centring worker in the portico for a house. [2008 (2) TN MAC 87 (Mad)].

7. Driver carrying 2 excess persons. The exoneration of insurer was found wrong in a WC claim. [2008 (3) MLJ 189] The defences under WC and MV Act different and distinct as held in [(NIC vs. Mastan in 2006 (1) MLJ 153 (SC) and 1998 ACJ 1 (SC) etc.)]
8. Assessed disability 40%; hence treating it as 100% was not correct as per [(Mubasir Ahmad's case) 2007 ACJ 845]. The Award of Rs.3,75,000/- for 40% disability upheld. [(Ramprasad Balmiki vs. Anil Kumar Jain) 2008 (7) Supreme 129)] It was held that deductions for pension, compassionate employment etc are relevant factors for assessment of compensation.
9. Accident in Indonesia - unless he was employed with an Indian Company or sent to the foreign country with a motor vehicle - such WC claim would not lie in India under sec.15-B of WC Act, 1923-2008 93) LW 846.
10. Suit for death in a foreign country of workman maintainable. [2008 ACJ 93 (Del)].
11. For a second driver the insurer is liable. [2008 ACJ 74 (MP)].
12. If the workman produces no evidence, he shall be entitled as per schedule sum. If he seeks higher sum, then he has to adduce evidence for the same. There must be proof of disability through a Doctor, to sustain a claim [2008 (1) TLNJ 427 (Civil): 2008 1 TN MAC 145].
13. Amputation- cannot work as before- 100% loss of earning capacity following 1976 (1) SCC 289) - in 2008 (1) TN MAC 92 (All)(DB).
14. The question that workman was working in the course of employment or not is not a substantial question of law. It is a finding of fact. No appeal would lie. [2008 1 TN MAC 134 (Mad)].

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15. Where the claimant is a driver/workman and he was guilty of contributory negligence, the insurer would still be liable under WC Act 1923.
16. GPA Policy, the matter was remanded for disposal on liability of insurance company by Civil Court. [2008 (3) TLNJ 337 (Civil)].
17. When the claimant was himself the driver, he can seek remedy before MACT also under WC Act 1923, [2007 4 ACC 806 (AP)].
18. The workman was a driver who had suffered amputation of right leg, the award of DCL - reduced to 60% loss of earning capacity by High Court. The Supreme Court restored it to 100% vide [1976 ACJ 141]: [1976 (1) SCC 289] [(Pratap Narain Singh Deo's case), CA No. 5831/2002 dt.9/5/2008] [(K.Janardhan vs. UIIC Ltd). 2008 (6) MLJ 147 (SC)].
19. Workman returning on scooter from work [1996 (6) SCC 1 (Francis da costa), AIR 2006 SCW 6009 (Shresti)], claim not sustainable. [2007 4 ACC 836 (Jhar)(DB)].
20. When the driver/workman was unloading goods and was bitten by a dog, it was held that a WC claim would lie 2007 4 ACC 893 (Ker) (FB).
21. Supervisor of employer riding motorcycle to see his wife- not a workman entitled to cover separately, as the risk is not covered. [2007 4 ACC 65 (Kant)].
22. WC claim filed for disappearance of driver after 7 years of his missing- claim not barred by limitation [2007 4 ACC 188 (ALL)]
23. Workman engaged to fetch a Thoranapalagai from a well suffered a fall and hence the claim. The work was not a work of casual nature. The trade and business concept clarified and claim held payable. [2008 (1) TLNJ 677 (Civil)].

24. Liberal construction of statute is the rule – A person died due to stress and strain [2007 ACJ 1: AIR 2007 SC 248] distinguished - insurer held liable - no substantial question of law to justify the appeal. [2008 (2) CTC 407 (Mad)] : [(OIC vs. Nagaraj) 2008 (2) LW 189] and in [(Mariyammal 2008 (1) TN MAC 253]. In [(S.Vijayalakshmi) 2007 (2) TN MAC 502] also it was so held for a driver distinguishing the Supreme Court judgment.
25. The conductor of the bus was acting as mechanic, but mere description of the workman as Mechanic cannot lead to denying him the claim while he was a conductor who was covered under the Motor policy. [(OIC vs. G.Elango) 2008 (7) MLJ 173].
26. The claim was for a schedule injury, viz. loss of 2 fingers on left hand and 20% disability is correct. The assessment as per certificate of Doctor at 55% was found wrong – [(NIA vs. Sundaram). 2008 (7) MLJ 963].
27. Accident in a sawmill, the claim was held to be in the course of employment. [(Natarajan vs. Kaliyaperumal) 2008 (7) MLJ 779].

No presumption of sustainability for happening in course of employment

1. The claim of the workman was opposed on the ground that death was due to natural causes. Per contra, it was suggested that the death was the result of stress and strain associated with the nature of the vocation. It was ruled by the Supreme Court in the following decisions that there was no presumption that the claims were sustainable under WC Act, 1923, merely because death arose during the course of employment. It was ruled that there must be medical evidence to link the employment to the death. [(Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali) 2007 (1) LW 601 (SC)]: [2007 ACJ 1]: [2007 (1) TLNJ 186 (Civil)]: [(Jyothi Ademma vs.

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Plant Engineer, Nellore Thermal Station) 2006 ACJ 2165 (SC): [(United India Insurance Co. Ltd. Kailash Chandra Pandey) 2007 (4) TAC 700 (Utta)]. Following such verdicts in similar circumstances the insurer was held not liable in [(The Oriental Insurance Co. Ltd. vs. Tmt. Chinnapillai 2007 (3) TLNJ 562 (Civil) (Mad): 2007 (2) TN MAC 136]. For contra view see [2008 (1) TN MAC 253]

2. Where the driver of the vehicle was forewarned not to proceed as miscreants were setting up to kill indiscriminately, he disregarded the warning, went ahead and 30 passengers were killed by miscreants. It was held that claims were sustainable as Motor accident though it was a murder, as it was a sudden and unforeseen occurrence for the victims. [(Oriental Insurance Co. Ltd. vs. Dongkholam 2007 ACJ 1973 (Gau)].
3. In a very peculiar case the same Police officer who had earlier recorded an accident, subsequently, endorsed that there was no such accident, seemingly at the behest of a superior officer. The finding of the Tribunal to dismiss the claim petition was set aside and matter remitted for fresh disposal on merits. [(Md. Abdul vs. Faruque Shaikh) 2007 ACJ 2112 (Gau)].
4. The accident had occurred in Nepal. The claims lodged in Andhra Pradesh were held tenable, as the claimant had the right to lodge claims where they were residing. [(Savara Pyadi Raju vs. T. Venkata Rao) 2007 ACJ 2246 (AP)].
5. The cleaner on a lorry died when during transit the cleaner came in contact with a container loaded, which in turn had come in contact with high tension electric wire. It was held that it was a Motor accident and the Motor vehicle was in use and the accident arose out of such use only. [(United India Insurance Co. Ltd. vs. Dharmarasu 2007 (2) TN MAC 280 (Mad)].

MACT & WC ACT

1. An award of Rs. 13,440/- under WC Act, 1923 for physical disability of 6% and loss of earning capacity of 5% was enhanced to Rs. 25,000/- under NO FAULT LIABILITY. [(Suresh vs. Nidish Trading Company) 2007 (II) ACC 161 (Ker)]:
2. Even if the claimant were at fault, he would still be entitled to statutory compensation permissible under No Fault Liability. [(Rajan Kuttill Nayar vs. TNSTC Ltd) 2007 (3) TLNJ 457 (Civil) (Mad)]: [(Durairaj vs. TNSTC Ltd) 2007 (2) TN MAC 87 (Mad)]:
3. A claimant who had already received compensation under WC Act, 1923 was granted an interim award in a claim before Motor Accident Claims Tribunal. It was held that such an interim award was not tenable, as the claimant cannot invoke two such remedies. [(Girija Devi vs. New India Assurance Co. Ltd.) 2007 ACJ 2056 (Jhar)]:
4. It has been held that when the victim is owner, a claim under No Fault Liability also does not lie. [(National Insurance Co. Ltd. vs. Krishna Biswas) 2007 (3) TAC 862 (Cal)]:
5. The dismissal of the claim petition even for the statutory No Fault Liability was held improper and it was ruled that claimants were entitled to Rs.50000/- which could be set off as against a possible WC claim they may lodge. [(Guguloth Swarupa vs. APSRTC) 2007 ACJ 2222 (AP)]:

Claims in MACT under WC Act

1. Where the claim was by the driver of the bus, which had turned turtle, it was held that it was open to the driver to seek remedy before Claims Tribunal to the extent of liability payable under WC Act, 1923. [(Oriental Insurance Co. Ltd. vs. Syed Yusuf) 2007 ACJ 1851 (AP)]

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2. The claim by parents of the deceased driver, who died in the course of employment was held sustainable before the Claims Tribunal for a sum payable under WC Act, 1923. [(Pandurang Dagdu Gayakwad vs. Prabhakar Devaji Mora) 2007 ACJ 1795 (Guj)].
3. A driver of the vehicle cannot himself lodge a claim before the Claims Tribunal except as a workman under WC. [(Saheblal Chandra vs. Bhudayal Chandra) 2007 AIHC 2388 (Chhat)].
4. NIC vs. Saraswathi Nambi- “occupant” is different from passenger- when driver is not a workman, is also covered under Package policy. [2007 (92) LW 192 (stay granted in SLP No.7399/2007)
5. The claim was for cleaner of the bus and the insurer denied liability on the ground that such cleaner was not provided coverage. However, it was found that at the time of mishap the cleaner was standing on the road and regulating the movement of the insured vehicle. Based on this fact and situation, it was held that the cleaner having been on the road was only a Third Party victim and therefore, entitled for compensation from the insurer. [(New India assurance Co. Ltd. vs. R.Thippeswamy) 2007 ACJ 1761 (Kant): 2007 (3) TAC 602].
6. The author feels that the cleaner was assisting the driver in operation of Bus and should have been treated as working in course of employment and should have been treated as covered under legal liability to workman under the relevant act.

Miscellaneous

1	Appeal (civil) 2291 of 2000 date of judgment: 04/04/2006	United India Insurance Co. Ltd., Shimla vs. Tilak Singh and Ors.	Transfer and transferee
2	2005 ACJ 1626		Travelling on roof top

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3	2004 ACJ 2094	National Insurance vs. Challa Bharathamma	No permit to ply vehicle
4	2004 ACJ 46	Maitri Koley vs. New India Assurance	Law prevailing on date be applicable
5	2004 ACJ 648	National Insurance vs. Keshav Bahadur	Limit of liability of TP Risk
6	2003 ACJ 1790	Jameskuty Jacob vs. UIIC	Act Liability limited
7	2003 ACJ 1595	P.P. Mohammed vs. K.Rajappan	Transfer of Owner
8	2003 ACJ 1999	New India Assurance vs. C. Padma	Limitation provision
9	2003 ACJ 2107	UIIC vs. Jyotsnaben Sudhirbhai Patel	Insurance Company "aggrieved person"
10	2003 ACJ 2112 (HC of Pun. Har)	Purnima Goel vs. National Insurance Co	Pillion Rider not in pursuance of contract of employment
11	2003 ACJ 227	Dolly Kanti bhai Patel vs. Balu Tukaram Auhad	Petition Transfer to another place
12	2003 ACJ 534	Rikhi Ram vs. Sukhrania	Transfer of Vehicle
13	2003 ACJ 505		Writ U/s 226/227 Held - No
14	2000 SC 235	New India vs. Satpal Singh	Insurance policy not required to exclude gratuitous passenger
15	1999 ACJ 1	Mallawwa vs. Oriental	Goods vehicle – passenger with goods or fare paying - Not liable
16	JT 1998 (6) SC 418	Helen C Rebello vs. MSRTC	Section 110B Money received from LIC not deductible from MACT award.
17	1998 ACJ 531	Amrit Lal Sood vs. Kaushali Devi Thapar	'Any person' to include gratuitous passenger for car insurance

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18	1998 ACJ 513 (SC)	Shankarraya vs. UIIC	Imp leading insurer u/s 170 to contest on merits – if insurer not moved can not have wider defences
19	1997(8) SCC 683 (SC)	Union of India Vs UIIC	Bus driver & Railways can be joint Tortfeasor. Claim will be on composite negligence
20	1996 ACJ 1178 (SC)	B V Nagraju vs. Oriental Insurance	Doctrine of reading down the “exclusion clause – main purpose rule”
21	1996 ACJ 1013 (SC)		Amending Act not applicable beyond limitation has been rejected.
22	1997SC 683 (SC)	Rajasthan State Roadways Transport Corporation vs. Kailashnath Kothari	Owner & Vicarious Liability discussed

Motor Insurance (Miscellaneous)

Compliance with MV Act and MV Rules

1. A circular issued by the Transport Commissioner stipulating production of Trade Certificate for financial institutions, Banks, and Finance corporations lending for Motor Vehicle, as “dealer” and seeking seizure of the vehicle under a Contract and requirement to pay the fee and duty thereon, was challenged as unconstitutional. The challenge was negated holding that the circular was only to seek and implement the existing statutory provisions and CMV Rules, 1989. [(Nagpur Vehicle Hire Purchase Association vs. Transport Commissioner 2007 AIHC 2161 (Bom):] [AIR 2007 (NOC) 1639 (Bom)].

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2. Where there was delay in seeking renewal of the permit, with 27 days' delay, it was negatived on the ground that 27 days was too late and in the absence of statutory provision also, such condonation was not permissible. [(A.Chinnasamy vs. RTA, Trichy) 2007 (6) MLJ 31 (Mad)].
3. Excavators fitted with chains like caterpillars and military tanks which move around only on work sites and not suitable or adapted for use on public roads was not a motor vehicle within the meaning of Sec.2 (28) of MV Act and therefore not liable for entry tax. It was so held following a Division Bench judgment in [2007-08 (13) TNCTJ] in (Shri Mangala Packs (P) Ltd vs. Commercial Tax Officer) 2007 (6) MLJ 693 (Mad)].
4. The application to renew the driving licence to run a Driving School was rejected, as being belated by 29 days and the rules did not provide for any condonation. Following the verdict of the Division Bench in W A No. 318/2005 dt.2/8/2005, the relief was granted directing the authorities to consider the application to condone delay on merits. [(P.Suyambu Narayana Das vs. Special Commissioner and Transport Commissioner, Chennai) 2007 Writ LR 1006 (Mad)].
5. The prayer was for permission to ply the Mini Bus on a different route than provided for till such time as road conditions improved. While granting the relief the High Court came down heavily on the failure of the Transport Authorities to deal with such cases on the administrative side and unnecessarily burdening the courts with such writ petitions, which would be avoidable if the authorities performed their duties. [(K.Ramaraj vs. RTA, Coimbatore South) 2007 Writ LR 1050 (Mad)].
6. A Trust forming an educational institution and the bus belonging to Trust are different. 2008 (1) TN MAC 280.

Second Claim Petition

1. The claimant filed a second claim petition upon dismissal of

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the earlier claim petition for default. The order of the Tribunal that the claimant had to seek restoration of the earlier claim petition and not to file a fresh claim petition was set aside in appeal. It was held that a second claim petition was maintainable since the earlier claim was dismissed for default without regard for merits. [(Hussain Pasha vs. Andhra Pradesh State Transport Corpn) 2007 (II) ACC 454 (AP)]. This decision may be incorrect in the light of the decision of the Supreme Court in [(New India Assurance Co. Ltd. vs. R.Srinivasan) in AIR 2000 SC 941]: {2000 (3) SCC 242]. In that decision relating to a consumer complaint the Supreme Court had held that since Order of CPC was inapplicable a second complaint was sustainable. But, the distinction was drawn to case where Or. 9 CPC would apply by holding that in such cases restoration was the only remedy and not a second claim petition.

2. In MACT claims Or.9 CPC is applicable. If so, a second claim petition would not lie vide the cited decision and the remedy for the claimant may only be to seek restoration of the earlier claim petition. The claim was filed before the claims tribunal, and the insurer meanwhile deposited compensation before the Workmen's Compensation Commissioner. The claimants withdrew the deposited sum. It was held that the claim before the Claims Tribunal would nevertheless lie because the conduct of claimants in withdrawing the sum deposited before the Commissioner couldn't be construed as an option exercised under Sec.167. [(New India Assurance Co. Ltd. vs. Rattu Devi (HP)].
3. On the death of widow of the deceased, while the claim was pending brother and sister can come on record and award for NFL would be payable. 2008 (1) TLNJ 397 (Civil).
4. On the death of the injured while the claim was pending NFL award is in order.2008 (1) MLJ 724.
5. In 2008 ACJ 40 (AP) it was held that loss to estate etc would survive on death of the injured unrelated to accident.

6. In 2008 (4) LW 293 it was held that when death was 3 years after the accident and there was no proof that death was due to injuries, award could be for Rs. 50,000/- as per NFL only.

Motor Accident

1. The deceased was a passenger on the Transport Corporation Bus. In an altercation with miscreants who tried to pick his pocket he was done to death. The claim lodged for the death against the Transport Corporation Bus was held to be unsustainable as there was no motor accident having nexus with the use of the Motor vehicle. [(Bangalore Metropolitan Transport Corporation vs. Ramu.C) 2007 ACJ 954 (Kant)].
2. Where, however, the driver of the vehicle was taken away to an isolated spot by five associates who had hired the Taxi and done away with, the claim was held tenable before the Claims Tribunal. [(The Oriental Insurance Co. Ltd. vs. Anita) 2007 ACJ 1357 (All)].
3. The injured was hit by a Jugar, which is an automobile manufactured locally and run with a diesel engine and ran with a belt. It was held to be a mechanically propelled vehicle, a Motor vehicle, the involvement of which would lead to a Motor accident claim, if laid. [(Dharam Vir vs. Inderjit) 2007 ACJ 2505 (P&H)].
4. The deceased was a mechanic who was repairing the vehicle which was stationary. Suddenly the driver drove the bus and in the mishap the mechanic died. The arguments of the insurer that there was no "use" of motor vehicle since the same was stationary, and that the claim ought to have been filed before the Workmen's Compensation were both negatived as untenable. [(Oriental Insurance Co. Ltd. vs. Kamlesh Sharma) 2007 ACJ 2562 (Uttara)].
5. Actio personalis moritur caus- death not due to injuries -only limited heads is available. [(NIA vs. S V Mani) 2008 (7) MLJ 725]

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6. In a case where a girl travelling as a pillion rider suffered a slit on the throat due to a string from kite flying, the claim was held tenable before the Claims Tribunal. It was not necessary for the claimant to proceed against the kite flyer. [(National Insurance Co. Ltd. vs. Rukshanaben Salimbai) Vora 2007 ACJ 1235 (Guj): 2007 (II) ACC 450 (Guj)].
7. In a peculiar case, an official who had the benefit of use of Jeep, used it for personal purposes for recovery of loans. In an altercation that came up, the driver of the vehicle was beaten to death. The claim against the insurer as a Motor accident claim was held untenable on the ground that there was no nexus with the vehicle to constitute accident. [(National Insurance Co. Ltd. vs. Mohindinbi) 2007 ACJ 1421 (Kant)].
8. In a case where the vehicle was stolen; the disowning of liability by the owner of the vehicle was negated as a defence in the claim. [(Sitaram Akinchan vs. Rajesh Sharma) 2007 ACJ 1639 (Jhar)].

Accident between Motor Vehicle and Train

1. In a case where the motor vehicle and a Train had collided, following the verdict in [2002 ACJ 721 (SC)], it was held that Claims Tribunal had jurisdiction to treat the claim as motor accident. [(Sanno Devi vs. Balram) 2007 ACJ 1881 (MP)].
2. In a case where a lorry loaded with wooden logs came to a saw mill for delivery and while the ropes were being untied negligently, a log fell on a victim nearby, it was held that the claim was sustainable as constituting use of the Motor vehicle. [(B.Fathima vs. S.M.Umarabha) 2007 (II) ACC 613 (Kant)].

Death of Owner/Insured

1. On death of owner/insured of the vehicle, it was held that the claim would not abate. Reference to Sec.155 MV Act1988 would demonstrate that the claim could survive against the

insurer directly. Following the verdict [in (R.Kamala vs. Shaik Mohd.Ghouse) 2004 ACJ 2112 (AP)] the decision was given. [(United India Insurance Co. Ltd. vs. Sakhamuri Venkayamma) 2007 ACJ 1085 (AP)].

2. In a case where the insurer was granted right of recovery from the insured, impleading the legal representatives of the owner of the vehicle on his behalf was necessary [(Bimla Devi vs. New India Assurance Co. Ltd.) 2007 ACJ 1652 (Del)].
3. Where the deceased was owner/driver of the 2 wheeler, it was held that the claim before Claims Tribunal was not tenable. However, the contractual cover under personal accident endorsement for Rs.1,00,000/- was held payable by the insurer. [(United India Insurance Co. Ltd. vs. Sunanda 2007 ACJ 1715 (Bom)]. Should MACT adjudicate the contractual liability under PA cover is a question, which needs clear legislation?

Registered Owner

1. Where the registered owner had sold the vehicle and the transferee had failed to get the change recorded in the Registration Certificate, it was held that the registered owner would still be liable but may have recourse against the transferee. [(Vipin Kumar Sharma vs. Jagwant Kaur 2007 ACJ 1249 (P&H)].
2. The claim was by a workman against the transferee owner, in whose name the insurance policy was not transferred. By virtue of deemed transfer the insurer was held liable to indemnify the transferee as well. [(National Insurance Co. Ltd. vs. K.Yadamma) 2007 ACJ 1343 (AP)].
3. In a case where the vehicle was sold by the registered owner on instalment basis and the vehicle was handed over to the transferee and it was in his possession, the driver and transferee alone were held liable. [(Brijlal Khilwani vs. Sohan) 2007 ACJ 1666 (MP)].

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4. Registration is a necessity to be deemed an owner and if minor, the guardian would be the owner. In case of hire-purchase agreement, person in possession may be the owner. [(Purnya Kala Devi vs. State of Assam 2007 (3) TAC 641 (Gau)].
5. If a person had purchased the vehicle but the registration was not transferred, for the purpose of Sec.168, he would not be the owner but only the registered owner. [(Lili Bora vs. Nishi Rani Hazarika) 2007 (3) TAC 707 (Gau)]: 2007 AIHC 2187]: [(Aaditya Khare vs. Jamuna Prasad Kahar 2007 ACJ 2085 (MP)].
6. The authorized dealer had handed over tractor-trailer to a customer for demonstration upon receiving a negligible sum against total price. There was no completion of sale and accordingly, in a claim arising when the vehicle was in use, it was held that the authorized dealer alone was responsible for the claim. [(Anil Kumar Kesarwani vs. Kr.Satyawati Kashyap) 2007 (3) TAC 620 (Chhatis)], [(M.P.State Road Corporation vs. Wahidan) 2007 (II) ACC 398 (MP)].
7. A tractor is not meant for carriage of passengers and is not a goods vehicle. Insurer was not liable for persons carried. [(New India Assurance Co. Ltd. vs. Sudesh Kumari) 2007 (II) ACC 386 (HP)].
8. The registered owner shall have to meet the interim award with liberty to recover from purchaser of his vehicle. [(S.S.Sidhi vs. Chander Vikas) 2007 (II) ACC 461 (P&H)]

Receipt of Premium

1. The deceased was a passenger in the auto rickshaw and an unidentified truck hit it from behind. The said owner and insurer were not impleaded. It was still held that the claim against the owner and the insurer of the auto rickshaw to the extent of no fault liability would be sustainable for the claimants. [(Tammineni Aswarthu vs. B.Fakruddin) 2007 ACJ 849 (AP)].

Appeal against such an award was held not tenable following the decision in [2004 ACJ 35 (Bom) in [(Dilip Namdeo Gaikwad vs. Ramchandra Dhondu Kshirsagar) 2007 ACJ 920 (Bom)].

2. In [(Ramvati vs. Yamin) 2007 ACJ 1221 (Del)] it was held that amendment to enhance the no-fault liability sum was not retrospective. And in New India Assurance Co. Ltd. vs. Poonam Nilesh Thakur [2007 ACJ 1032 (Bom)] it was held that technical objections of the insurer on the validity of cover note would have to be relegated disregarded for trial and would not be permissible at the interim award stage.
3. Where 44 persons were carried in a tractor-trailer it was held that since basic liability itself was not tenable, the insurer can't be directed to meet the interim award also. [(National Insurance Co. Ltd. vs. Yallawwa) 2007 ACJ 1081 (Kant)]. This decision has been affirmed by the Apex Court in [(Yallawwa vs. National Insurance Co. Ltd. in 2007 ACJ 1934 (SC): 2007 (5) 322: 2007 (2) TN MAC 114]: [2007 (3) ACC 268]. Following the verdict in Yallawwa it was held that Tribunal was duty bound to decide on issue of liability at the interim stage also. The High Court was directed to reconsider the the liability of the insurer in terms of Oriental Insurance Co. Ltd. vs. Brij Mohan 2007 (7) Scale 763 in the decision reported in United India Insurance Co. Ltd. vs. Serjerao 2007 (8) Supreme 25.: 2008 (2) LW 33.
4. The interim award shall become part of the final award and hence interest has to be computed on the final award till date of deposit of interim award and then this amount has to be deducted from the principal for the purpose of calculation of interest. [(Oriental Insurance Co. Ltd. vs. Nirmala) 2007 ACJ 1810 (Ker)]. If the final award was in excess of the interim award and the interim award was already deposited, then the same shall be adjusted against interest liability payable along with the final award. [(Ved Parkas vs. Bhupia) 2007 ACJ 1874 (HP)]: [2007 (4) TAC 85].
5. The distinction between Sec.140 and 163-A were gone into and explained in some detail in this decision. [(Haseena

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Sulhana vs. National Thermal Power Corp. Ltd) 2007 ACJ 1832 (AP)].

6. The interim award was passed against the insurance company in a case where 3 persons carried in a tractor-trailer had died. Ultimately, the final award was to the effect that the insurer was exonerated. Thereafter, the attempt of the claimants to have the interim award executed was held to be untenable since the interim award merges with the final award and as the insurer was ultimately held not liable, the interim award was no longer executable. [(National Insurance Co. Ltd. vs. Kalyan Singh) 2007 ACJ 1932 (MP)].
7. The compensation award under no fault liability was not taxable as income. [(Hansaguri Prafulchandra Ladhani vs. Oriental Insurance Co. Ltd.) 2007 ACJ 1897 (Guj)].
8. It was held that the insurer cannot raise a defence on driving licence at the stage of interim award and case raise it at the stage of trial. In case the insurer was ultimately exonerated they can seek recovery from the insured of such sum. [(Oriental Insurance Co. Ltd. vs. Misin Jena) 2007 (3) TAC 408 (Orissa)].
9. Determination of permanent disablement cannot be a ground to relegate interim award proceedings for final trial. [(Satish vs. Dharmendra) 2007 (II) ACC 668 (MP)].
10. Proof of negligence or default of owner was not relevant in interim award proceedings. [(Prabha Shanker Shukla vs. Shri Kant Tiwari) 2007 (II) ACC 853 (All)].
11. An award of Rs.13,440/- under WC Act,1923 for physical disability of 6% and loss of earning capacity of 5% was enhanced to Rs.25,000/- under no fault liability. [(Suresh vs. Nidish Trading Company) 2007 (II) ACC 161 (Ker)]:
12. The registered owner alone would be liable for interim award and he can seek recovery from the transferee. [(Niranjan Singh vs. Zeena) 2007 (II) ACC 453 (P&H)].

13. Even if the claimant was himself at fault, he would still be entitled to statutory compensation permissible under no fault liability. [(Rajan Kuttill Nayar vs. TNSTC Ltd) 2007 (3) TLNJ 457 (Civil) (Mad)]: [(Durairaj vs. TNSTC Ltd) 2007 (2) TN MAC 87 (Mad)].
14. The interim award under No-fault Liability should be immediately disbursed as otherwise the purpose of its award would be defeated. [(Sakunat vs. MACT, Deeg) 2007 AIHC 2370 (Raj)].
15. A claimant who had already received compensation under WC Act, 1923 was granted an interim award in a claim before Claims Tribunal. It was held that such an interim award was not tenable, as the claimant cannot invoke two such remedies. [(Girija Devi vs. New India Assurance Co. Ltd.) 2007 ACJ 2056 (Jhar)]:
16. It has been held that when the victim is owner, a claim under No Fault Liability also does not lie. [(National Insurance Co. Ltd. vs. Krishna Biswas) 2007 (3) T A C 862 (Cal)].
17. The dismissal of the claim petition even for the statutory no fault liability was held improper and it was ruled that claimants were entitled to Rs.50,000/- which could be set off as against a possible WC claim they may lodge. [(Guguloth Swarupa vs. APSRTC) 2007 ACJ 2222 (AP)].
18. Sec.140 MV Act, 1988 is not retrospective. [(State of Punjab vs. Bhajan Kaur) 2008 (3) Supreme 724].

Cover Note and Policy

1. The cover note was availed **subsequent to the occurrence of accident and time** of commencement was also mentioned. The Policy of insurance, following the cover note, failed to mention the time. On that premise it was ruled that insurer shall have to pay and recover from the insured. [(Oriental Insurance Co. Ltd. vs. Ruth 2007 ACJ 1226 (Kant)].

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2. Where in the policy of insurance, time was not mentioned but the cover note was from 3.15 P.M. it was held that **connivance between the owner and insurance official** can be inferred and the insurer shall have to meet the claim but have recourse to recovery against its official [(Oriental Insurance Co. Ltd. vs. Sunder Singh 2007 ACJ 1297 (HP))].
3. The dispute on whether the cover note related to the vehicle involved in the accident was decided against the insurer on the premise that **mentioning of the numerical chassis number** would suffice and non-mentioning of the alphabetical series was not detrimental to the interest of claimants. [(Deepa Singh vs. Madhya Pradesh State Road Transport Corporation) 2007 ACJ 1577 (MP)].
4. In a case where the tractor alone was insured but not the trailer, it was held that since the insured vehicle was involved, the insurer cannot refuse liability. [(New India Assurance Co. Ltd. vs. Kanta Rani) 2007 ACJ 1635 (HP)].
5. In a case where the earlier policy had expired on 28/4/97 midnight and the **next policy** was availed from 2.30 P.M. on 29/4/97 the accident which had occurred at 1 P.M. was held not covered. [(United India Insurance Co. Ltd. vs. Bhagyalakshmi) 2007 ACJ 1676 (Kant)].
6. Where an insurance policy was **renewed after 2 days of expiry of the cover**, the insurer was held not liable. 2008 (1) TLNJ 9 (Civil. Truck was shown as TVS 50. No suppression and insurer cannot deny claim. 2008 ACJ 48 (Mad)]. Following 1984 ACJ 345 (SC), it was held that there was no contract of insurance, when no policy was issued. [2008 ACJ 101 (Ker)].
7. In an appeal filed by the insurance company against the order fastening liability on them on the ground that there was no valid contract of insurance, it was held that the claimant was a necessary party and notice ought to go to him. [(National Insurance Co. Ltd. vs. Mam Chand) 2007 (5) MLJ 434 (SC)].

8. The insurer disputed liability on the ground that the cover note issued was taken back and cancelled since **no premium was paid or received for the issue of the same**. The exoneration of insurer was set aside in appeal at the instance of the insured on the ground that mere endorsement as cancelled was not sufficient and the **insurer was duty bound to record the reasons for such cancellation and follow procedure thereof**. In its absence, the insurer was held liable to meet the claim notwithstanding the defence of cancellation. [(Praveen Vaidya vs. Kailash) 2007 ACJ 2100 (MP)].
9. In a peculiar dispute between two insurers, it was found that a **vehicle was sold and transferred**. The existing policy was not transferred but a fresh policy was availed of by the purchaser. It was ruled that the insurer of the fresh policy would be liable, **as on availing the said policy, the earlier policy became extinct and inoperative**. [(National Insurance Co. Ltd. vs. The New India Assurance Co. Ltd.) 2007 ACJ 2332 (Jhar)]:
10. The insurer cannot be held liable without the insured/owner of the vehicle being held liable. In a case where the owner was not made a party, the award of the Tribunal against the insurer, on the ground that the insured's absence did not matter, was set aside and the insurer exonerated of any liability. [(Oriental Insurance Co. Ltd. vs. Dr.M.Mallesappa) 2007 ACJ 2386 (AP)].
11. It was held that merely because policy stood in the name of another person and not the actual owner, the insurer cannot avoid liability, as upon transfer also, automatic accrual of benefits will be available to the purchaser of the vehicle. [(Gurcharan Singh vs. Joginder Singh 2007 ACJ 2205 (P&H)].
12. Relying upon the decisions reported in [(New India Assurance Co. Ltd. vs. Ramani Bewa) 1993 (2) ACC 322: 1992 (2) TAC 576] and [(Oriental Fire & General Insurance Company vs. Raghunath Mudali reported in 1992 (2) ACC 653: 1992 (2) TAC 579], it was held that the **initial burden was on the owner of the vehicle** that compulsory cover for the motor vehicle

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was availed. The matter was remitted for such proof and liability on insurer without such proof, was set aside. [(National Insurance Co. Ltd. vs. Sarada Patra) 2007 (3) ACC 152 (Orissa)].

13. The insurer's plea was that there was **no valid insurance policy**. They had appointed two investigators to obtain details and in the said circumstances it was ruled that the burden cast on the insurer was discharged and the insurer cannot be fastened with liability. [(United India Insurance Co. Ltd. vs. Settur @ Periyaswamy 2007 (2) TN MAC 440 (Mad))].
14. Absence of RC is not a valid defence as held in [2008 ACJ 238 (HP)].
15. Tractor insured and not the trailer- insurer held liable. 2008 ACJ 243 (Kant).
16. Tractor alone insured but not the trailer – insurer not liable. 2007 4 ACC 722 (Kant).
17. Premium paid on 1/12/98. Policy issued from 2/12/98. Accident at 9 a.m. on 1/12/98. Insurer not liable. 2007 4 ACC 797 (Kant) (DB). 2004 (2) MLJ 296 including LPA No.190/99.
18. Precedent – what is [OIC vs. Raj Kumari 2007 4 ACC 761 (SC): 2008 (2) LW 19]-limit of liability- insurer cannot be mechanically asked to pay and recover.

Insured Himself the Victim

1. The claim in relation to the death of the owner himself was held to be untenable: it was held so following the earlier verdict in [(Dhanraj vs. New India Assurance Co. Ltd.) 2005 ACJ 1 (SC)]. The additional premium referred was not for the coverage of the insured himself. [(Oriental Insurance Co. Ltd. vs. Juhuma Saha) 2007 ACJ 818 (SC)]: {2007 (2) TN MAC 56}: {(Urmila Devi vs. Oriental Insurance Co. Ltd.) 2007 (3) T

A C 845 (Chhatis)}: {(National Insurance Co. Ltd. vs. Krishna Biswas) 2007 (3) TAC 862 (Cal)}]. The law reports are replete with similar decisions but there seems to be no dearth of such verdicts requiring decision by the Apex Court repeatedly as found in [New India Assurance Co. Ltd. vs. Meera Bai 2007 ACJ 821 (SC)] also [S.Dhanpal vs. A. Jerome 2007 (3) TAC 742 (Mad)] : [National Insurance Co. Ltd. vs. Sabitri Rani Devi 2007 (II) ACC 169 (Gau)]. Even while reiterating the decision in [(New India Assurance Co. Ltd. vs. Meera Bai) in 2006 (4) SCC 174] it was held that the insurer would not be liable to a victim who was himself the owner of the vehicle and insured under the contract of insurance.

Taking a sympathetic stance since the victim was the sole breadwinner of the family, the award against insurer was not disturbed even though the insurer was not liable to meet the liability. [(The New India Assurance Co. Ltd. vs. Kendra Devi 2007 (8) Supreme 174].

The author feels that sympathy leading to fixation of liability is not correct, as Insurers are not the flag bearers of MV ACT 1988, but merely Insurance Service providers to the public owning and using the vehicle within the contractual liability taken upon them under Insurance Principles and Law of contract.

2. In. [(OIC vs. Rajni Devi) 2008 (3) CTC 38 (SC)]: [2008 (5) MLJ 626 (SC)]: [2008 (5) SCC 736] the insurer was held liable for PA cover. The author feels that Motor Accident Claims Tribunals are unduly stretching their powers by adjudicating on civil matters, which do not fall within the purview of statutory provisions of MV Act by pronouncing judgements on liability of Personal Accident covers to owner.

Rider of 2 Wheeler/Driver

1. The victim was riding the employer's two wheeler. The claim was rejected on the ground that such risk was not covered, as

the vehicle was not a transport vehicle. [(National Insurance Co. Ltd. vs. Mumtaz 2007 ACJ 974 (Kant)].

2. Where the rider was a victim, it was held that such risk was not required to be covered under Sec.147 of MV Act, 1988. [(The Oriental Insurance Co. Ltd. vs. Smt. Mahabunni MFA No. 2488/2006 dt.19/7/2007 (Kant)].

Paid Drivers Liability is Statutory

1. In a peculiar case, the insurer took the defence that the driver of the goods vehicle was not covered as no additional premium was paid. The insurer's objection was overruled on the ground that the insurer failed to produce the policy to sustain the plea. **The coverage for a paid driver of any class of vehicle was statutory** and was covered under the basic premium itself and no additional premium was necessary. It is only for coverage of wider legal liability under common law in excess of WC cover that additional premium was required. Hence liability for a paid driver to the extent provided under WC Act was automatic. [(Chandra Bai vs. Bhagya Laxmi Saw Mills) 2007 ACJ 1895 (MP)].

Permit/Overloading

1. The case of the insurer was that Permit was surrendered before the date of accident and not renewed. The insurer was held liable with liberty to recover from the insured. [(Sankar vs. M.Ramasamy 2008 (6) MLJ 817)].
2. The defence on overloading was negated by the Tribunal. It was ruled that there was no proof that such overloading led to the occurrence of accident. Following the verdicts of the Apex Court in [1987 ACJ 411 (SC)] and [1996 ACJ 1178 (SC)] it was held that the insurer will have to meet the claims [(New India Assurance Co. Ltd. vs. Ratibai) 2007 ACJ 1119 (MP)]; [(United India Insurance Co. Ltd. vs. Annapurna Shandilya) 2007 ACJ 1168 (MP)].

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3. As against the capacity of 3 permitted in the vehicle; six persons were carried. It was held that the insurance company shall have to meet the 3 highest claims and directions were given for mutual adjustment between the claimants also. [(Maruthi Ramachandra Kumbar vs. Manohar Kallappa Chougale) 2007 (II) ACC 172 (Kant)].
4. The permitted number of passengers was only 42 but it was found that over 90 were carried. It was held that “any passenger” as used in the statute must be read in conjunction with the other provisions of the statute and the liability of the insurer shall not exceed such number as permitted to be carried as per the seating capacity and as per registration certificate and the Permit granted for the vehicle. The insurer would be required **to meet the highest of the claims** within such permitted number and the insured/owner of the vehicle would have to meet the rest of the claims. On deposit by the insurer of the highest claims in respect of the permitted number, it shall be apportioned by the Tribunal among all the claimants, in proportion to the respective awards and the claimants would be entitled to proceed against the owner of the vehicle for the balance sum to be paid for by the insurance company. [(National Insurance Co. Ltd. vs. Anjana Shyam) 2007 (5) Supreme 856] : [2007 (4) CTC 593 (SC)] : [2007 (5) MLJ 235] : [2007 ACJ 2129] : [2007 (2) TN MAC 193] : [2007 (4) TAC 48]. Anjana Shyam has been followed now in [2008 (3) MLJ 628 (Mad)]. When overloading was not proved to be the cause for the occurrence of accident the insurer cannot escape the claim. [(Gulab Singh vs. Shiv Prasad) 2007 (II) ACC 438 (Raj)]. It was held that carriage of 51 passengers as against the permitted capacity of 29 was not a valid ground to deny liability for the death of 17 persons in the accident. [(National Insurance Co. Ltd. vs. Jeet Singh) 2007 (3) T A C 773 (Uttara)]: [(New India Assurance Co. Ltd. vs. Pehlisha Bakai) 2007 ACJ 2388 (Gau)]: [T, Ramaiya vs. National Insurance Co. Ltd. 2007 (4) TAC 545 (Mad)].

The approach of the judiciary curiously tends to support overloading of the vehicle consciously, over and above the

registered seating capacity, letting off the owner / driver / conductor and passengers involved in this process, and allowing them to escape, despite contributory negligence of all on the face of it and collusion of all of them in not only mis using the vehicle but also risking their lives. It may sound a bizarre argument but it is true that overloading causes distraction to drivers resulting in accidents and needs to be curbed emphatically.

Transit Policy

1. A new Tempo Trax was being driven by an agent of the dealer. It was as yet unregistered as a public service vehicle. The claim by a person permitted to be carried by the driver was not entitled for the cover since the policy of insurance for the Tempo Trax was only a transit policy, not including the liability to such persons carried in the vehicle. The dealer alone was held liable to meet the claim with liberty to proceed against the agent for recovery. [(N.C. Chandrasekar vs. Sidda Gangamma) 2007 ACJ 1747 (Kant)].
2. In the absence of any proof/evidence to link the disappearance of driver and his employment/death, no presumption would arise. [(OIC vs. Sorumai Gogoi) 2008 (1) TN MAC 330 (SC)].
3. On transfer of Policy, WC claim is not tenable because of absence of privity of contract [(UIIC Ltd vs. M.Periyasamy) 2008 (3) TLNJ 466 (Civil)].

Limit of Liability

1. Where the policy was issued under the 1939 Act and the accident had occurred within 4 months of the coming into force of 1988 Act on 1/7/89, notwithstanding a statutory provision restricting the liability of insurer, it was held that it was not so, following the verdict of the Apex Court in [2000 ACJ 1 (SC)]. [(Oriental Fire & Genl Insurance Co. Ltd. vs. Santosh) 2007]

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ACJ 865 (P&H)]: [(Mahamod Fazlulla vs. New India Assurance Co. Ltd.) 2007 (II) ACC 699 (Kant)]:

2. In a similar verdict following the decision in [2000 ACJ 1428 (SC)], it was held that though the accident had occurred within 4 months of the date of 1988 Act coming into force, the insurer's liability was not limited as per 1939 Act. [(United India Insurance Co. Ltd. vs. Shanti Bai) 2007 ACJ 1738 (MP)].
3. Where under 1939 Act an 'Act Only' cover was issued, it was held that liability of the insurer would be limited to statutory liability only. [(Oriental Insurance Co. Ltd. vs. Saroj Gupta) 2007 ACJ 868 (Pat)].
4. The deceased, a pedestrian was hit by a minibus and the insurer's plea on limit of liability of Rs.50,000/- was upheld following the verdict in [(National Insurance Co. Ltd. vs. Laxmi 2005 ACJ 211 (Raj)] and in [(Sita Devi vs. Raghuvir Singh) 2007 ACJ 1531 (Raj)]. The order of the Tribunal directing insurer to pay the entire award, in excess of their limit of liability of Rs.15,000/- under the 1939 Act, was reversed holding that such direction was not proper. [(National Insurance Co. Ltd. vs. Pano Hansda) 2007 ACJ 1553 (Jhar)].
5. Merely because it was a comprehensive policy it did not mean that statutory limit of liability under the 1939 Act automatically stood enhanced.: The liability of the insurer under the 1939 Act for the Third Party victim was held to be Rs.1,50,000/- only, and in respect of the excess out of the award of Rs.6,10,000/- it was held payable by the / owner of the vehicle. [(Oriental Insurance Co. Ltd. vs. Jeevan Jangra) 2007 (3) TAC 443 (All)].

Claim for Death

1. The injured claimant was found to have died due to tetanus. The Tribunals' rejection of the claim was set aside by the High Court on the ground that tetanus would not have been possible

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but for the occurrence of accident and injuries. The claim was held sustainable for death. [(Jayarathnamma vs. Mukhtiar Singh) 2007 ACJ 1260 (Kant)].

2. In a case where the injured had suffered serious injuries and died after 11 months of the accident, the absence of post-mortem certificate was held to be of no consequence. The evidence of the widow, the physical condition of the deceased and the illiteracy and poverty were held to be eloquent enough to sustain the claim for death itself. [(Habibnur Khan vs. Govind Singh) 2007 ACJ 1329 (Raj)].
3. In a case where the claims for deaths of mother and sister washed away in floods was upheld, the denial of claim for death of brother/son on the ground that the dead body was not recovered was held to be improper. [(R.J.Foujdar Bus Service vs. Ganpat Singh) 2007 ACJ 1591 (MP)].

Permission Under Sec. 170

1. Where the owner was contesting the claim, the insurer sought permission to contest on merits, on the ground that the contest by the insured was not genuine and effective. The High Court ruled that in such a petition the claimants had no role to oppose and the very opposition may suggest collusive contest. It was within the discretion of the Court to grant the relief. The insurer was granted the relief sought for [(United India Insurance Co. Ltd. vs. Gorla Bondamma) 2007 ACJ 797 (AP)].
2. Where the Tribunal had rejected the petition of the insurer without assigning any reason, even though the insured and driver had not contested the proceeding, it was held that the insurer had a right to agitate on merits in appeal. [(Oriental Insurance Co. Ltd. vs. Manisha Chaturvedi) 2007 ACJ 1177 (MP)] : [(Oriental Insurance Co. Ltd. vs. Indrasani Devi) 2007 ACJ 1192 (All)] : [(New India Assurance Co. Ltd. vs. Phelisha Bakai) 2007 ACJ 2388 (Gau)].

3. Merely because an insurer is permitted to contest on merits, it cannot be presumed that they were so entitled in the absence of a specific order granting permission on an application. [(New India Assurance Co. Ltd. vs. Sandeep Chanuria) 2007 ACJ 883 (MP)] [(New India Assurance Co. Ltd. vs. Sri Kant) 2007 ACJ 1058 (HP)] : [(United India Insurance Co. Ltd. vs. Sudha Lata Maithani) 2007 ACJ 1182 (Uttara)]: [(Hemu Bai vs. Satish) 2007 ACJ 1159 (MP)]: [2007 (4) TAC 56] : [(New India Assurance Co. Ltd. vs. K.Kiran) 2007 ACJ 1153 (AP)]: [(Butha Prasad vs. Shaik Jafifulla 2007 ACJ 1428 (AP)]: [(New India Assurance Co. Ltd. vs. Kanta Rani 2007 ACJ 1635 (HP)]: [(United India Insurance Co. Ltd. vs. C.Mallikarjuna 2007 ACJ 1453 (AP)]: [(United India Insurance Co. Ltd. vs. Nirmala) 2007 ACJ 1848 (Bom)]. [(Oriental Insurance Co. Ltd. vs. Mst.Ukia Guru) 2007 (3) TAC 473 (Orissa)]: [(National Insurance Co. Ltd. vs. Fagni Bai) 2007 (II) ACC 814 (Jhar)]: [(Oriental Insurance Co. Ltd. vs. Manthi Devi) 2007 (II) ACC 522 (All)]: [(United India Insurance Co. Ltd. vs. Prem Lata) 2007 (II) ACC 253 (P&H)]: [2007 (3) T A C 894] : [(Hemu Bai vs. Satish) 2007 (II) ACC 503 (MP)]: [(National Insurance Co. Ltd. vs. Dinesh Kumar Arora) 2007 (II) ACC 807 (Uttara)]: [(Oriental Insurance Co. Ltd. vs. Maan Bahadur) 2007 (II) ACC 738 (Utara)]: . [(H.S.Chetan vs. Chandra Mouli) AIR 2007 (NOC) 1642 (Kant)]: [(National Insurance Co. Ltd. vs. Madhulika Lal) 2007 ACJ 2091 (All)].[(Oriental Insurance Co. Ltd. vs. Dongkhola_ 2007 ACJ 1973 (Gau)]: [(Oriental Insurance Co. Ltd. vs. Devi Prasad Gaur) 2007 (4) TAC 107 (Uttara)]: [United India Insurance Co. Ltd. vs. Sher Singh 2007 (4) TAC 190 (Utta)]: [(Oriental Insurance Co. Ltd. vs. Omkar Singh 2007 (4) TAC 259 (J&K)]. [(National Insurance Co. Ltd. vs. Javaid Ahmad Khan) 2007 (4) TAC 265 (J&K)].
4. When the insurer had not obtained such permission they cannot file cross-objections in the appeal of the claimant's also. [(Katoribai vs. Jagannath) 2007 ACJ 1637 (MP)].
5. In [(New India Assurance Co. Ltd. vs. Dharmanna) 2007 ACJ 1858 (Kant)] it was held that it was obligatory for the tribunal to pass a reasoned order on such application.

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6. In a case where permission was granted to the insurer in a connected claim, it was held that insurer was entitled to the relief in this case also. [(Oriental Insurance Co. Ltd. vs. Narayani Modi) 2007 ACJ 1723 (MP)].
7. In a case where the insurer was denied permission under Sec.170, it was held that appeal was not maintainable. **The Insurer can challenge the refusal by way of revision under Art.227.** [(Oriental Insurance Co. Ltd. vs. Manju) 2007 (3) TAC 456 (All)].
8. The insurer had filed a petition under Sec.170 before the Tribunal. But no orders were passed. On appeal, the High Court observed that the failure on the part of Tribunal was wrong and the insurer cannot be prejudiced on this premise. Hence, the application was allowed before High Court and appeal sustained. [(United India Insurance Co. Ltd. vs. Jenny Bai) 2007 ACJ 2493 (Kant)].
9. However, in this decision in similar circumstances where the Tribunal failed to pass any orders on the application under Sec.170, the insurer was denied the benefit of a contest on merits of the claim. [(Fulmoni Hemram vs. New India Assurance Co. Ltd.) 2007 ACJ 1521 (Cal)].
10. The relief under Sec.170 was denied by the Tribunal to the insurer on the ground the insured had filed a written statement, though he failed to contest the claim. On appeal, the order was reversed holding that mere **filing of the written statement would not be tantamount to a contest**, and instead it has to be construed as failure to contest by the insured, and as such entitling the insurer to seek the relief. [(National Insurance Co. Ltd. vs. Ramesh Kumar) 2007 ACJ 2542 (Del)].
11. Appeal by the insurer and insured, can be treated as appeal by insured alone. [(V.Subbulakshmi vs. S.Lakshmi) 2008 (2) Supreme 91]: [2008 (3) MLJ 70 (SC)]: [2008 (1) TN MAC 375]: [2008 (4) LW 15] following Cchinamma George in [2000 4 SCC 130]. Also held so in [(Asha vs. UIIC) 2008 (2) SCC 774].

12. In an appeal where the victim was himself was at fault, it was held that in the absence of permission under Sec.170 the appeal was not maintainable (it is pertinent to note that the issue was one of liability and absence of liability under Sec.147. If so, permission under Sec.170 may not be necessary) – [(NIA vs. Manimaran) 2008 (6) MLJ 777].

Remedy under Sec. 163-A

1. A claim under this provision would not lie if the income was more than Rs.40,000/- p.a. In [National Insurance Co. Ltd. vs. Jabbar 2007 ACJ 1371 (Ker): National Insurance Co. Ltd. vs. Annie Varkey 2007 ACJ 1827 (P&H):Oriental Insurance Co. Ltd. vs. Ved Pal 20007 (3) TAC 759 (P&H) It was held that the claim was not tenable if the earnings was more than Rs.40,000/-p.a., if the claimant chose to reduce the earnings by choice, the claim can be maintained. [(Haseena Sulthana vs. National Thermal Power Corp Ltd) 2007 ACJ 1832 (AP)].
2. It was further held that in the absence of proof of permanent disablement, such a claim would not be maintainable and the matter was remitted for fresh consideration. It was also ruled that simultaneous pursuit of remedies under Sec.166 and 163-A would not be admissible. [(Oriental Insurance Co. Ltd. vs. Meena Variyal) 2007 ACJ 1284 (SC)]: [(P.Krishna Vamsi vs. APSRTC) 2007 (3) TAC 695 (AP)]: [(New India Assurance Co. Ltd. vs. Bhavani Nanji Pachanbhai Patel) 2007 ACJ 2067 (Guj)].
3. Apportionment of liability between tort-feasors also would not arise in an application under this provision since negligence was not an issue to be considered at all. [(New India Assurance Co. Ltd. vs. Vappu) 2007 ACJ 1511 (Ker)].
4. Since negligence was not an issue to be decided the question of considering contributory negligence to reduce liability would not arise at all [(Gitesh vs. Badri Prasad) 2007 ACJ 1519 (MP)]: [(Thirumalainayagam vs. Dheeran Chinnamalai Transport) 2007 (2) TN MAC 202 (Mad)].

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5. It was held that a claim under this provision did not require any determination on the question of negligence and as such the **framing of the issue and even cross-examination of witnesses on this aspect was of no effect.** [(Fulmoni Hemram vs. New India Assurance Co. Ltd.) 2007 ACJ 2521 (Cal)].
6. Following the verdict of the Karnataka High Court in [Appaji's case in 2004 ACJ 1289] it was held that a claim under this provision was not maintainable where the victim himself was at fault. The distinction is that the victim in this case was owner and driver of the vehicle In any case, the personal accident cover of Rs.1,00,000/- was held payable by the insurer [(United India Insurance Co. Ltd. vs. Sunanda) 2007 ACJ 1715 (Bom)].
7. Relying upon [2004 ACJ 934 (SC)] it was held that a claim under Sec.163-A would be tenable, even where the victim himself was at fault. [(Chandra Singh vs. Gaytri Devi) 2007 ACJ 2355 (Gau)].
8. Where the driver died in the course of employment, when the vehicle hit a tree, the Tribunal allowed the claim under Sec.140 alone. The matter was remitted by High Court to the Tribunal to consider whether a claim under Sec.163-A was tenable in the light of the contract of insurance issued. [(Haseena Sulthana vs. National Thermal Power Corp. Ltd) 2007 ACJ 1832 (AP)].
9. Be it a claim under Sec.163-A or Sec.166 the multiplier as per second schedule would be appropriate to arrive at just compensation. [(Andhra Pradesh State Road Transport Corp vs. K.Andalu) 2007 ACJ 1807 (AP)]: [(New India Assurance Co. Ltd. vs. Nalla Boi Susheela) 2007 ACJ 1844 (AP)].
10. In [(Appaji vs. M.Krishna) 2007 ACJ 1289 (Kant)]: [2005 (II) ACC 591] a Division Bench of the Karnataka High Court had ruled that a claim under Sec.163-A would not lie where the victim was himself at fault. It was pointed out that while

under Sec.140 a victim at fault himself can claim, it was not so permissible under Sec.163-A. However, following the verdict of the Supreme Court in [(Deepal Girishbhai Soni vs. United India Insurance Co. Ltd.), it has now been ruled that though the observations of the **Apex court were in the nature of Obiter dicta** they cannot be ignored and were binding. Accordingly, it has been held that the decision in Appaji may not be right now. [(New India Assurance Co. Ltd. vs. Sunil 2007 (II) ACC 684 (Kant)]. At the same time, another Learned Judge has ruled that a claim under Sec.163-A was not tenable where the claim was for a victim who was riding a two-wheeler and the claim was against the owner and insurer of the said vehicle itself. [(The Oreltnal Insurance Co. Ltd. vs. Smt.Mahabunni) MFA No. 2488/2006 dt.19/7/2007 (Kant)]. Though a simultaneous claim under Sec.140 and 163-A was not possible, it was open to the claimants to seek amendment of a claim under Sec.163-A to one under Sec.140 etc. [(Sherifa Beevi vs. Komu) 2007 (II) ACC 568 (Ker) : [(United India Insurance Co. Ltd. vs. Anita) 2007 (II) ACC 620 (Kant)].

11. The accident having occurred on 30/7/93 before Sec.163-A came into the statute book, it was held Sec.163-A cannot be invoked and only Sec.140 would be available. [(Duraraj vs. TNSTC Ltd) 2007 (2) TN MAC 87 (Mad)].
12. The option to proceed under Sec.166 or Sec.163-A, in applicable cases, was with the claimants and if they invoke the remedy under Sec.163-A, they need not prove negligence. [(The Oriental Insurance Co. Ltd. vs. Meena Variyal 2007 (2) TN MAC 9 (SC)]: [(P. Krishna Vamsi vs. APSRTC) 2007 AIHC 2312 (AP)].
13. **When a claim is lodged under Sec.163-A the tribunal cannot treat it as an application under Sec.166.** In such a case the Tribunal would not be right to apportion liability on contributory negligence and as such finding on negligence was not called for. [(Ramkanyabai vs. Unav Transport Co (P) Ltd) 2007 ACJ 2003 (MP)]: [(New India Assurance Co. Ltd. vs. Phelisha Bakai) 2007 ACJ 2388 (Gau)].

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14. If the victim was earning more than Rs.40,000/- p.a. petition under Sec.163-A would not lie as it would be opposed to the purpose of the legislation itself. [(New India Assurance Co. Ltd. vs. Amitava Das) 2007 ACJ 2058 (Cal)]: [(Chandra Singh vs. Gayatri Devi 2007 ACJ 2355 (Gau)].
15. In a claim for injuries, the court was duty bound to follow the structured formula. [(Amar Singh vs. Samsher Khan) 2007 ACJ 1983 (Raj)].
16. It was held that in an injury claim where no part of the body was severed, the court can not apply the structured formula in conjunction with the provisions of WC Act, 1923 for assessment. [(New India Assurance Co. Ltd. vs. Amitava Das) 2007 ACJ 2058 (Cal)].
17. Where the claimants had pleaded the income at Rs.3,500/- p.m. under Sec.163-A, the view of the tribunal upholding the claim by adopting Rs. 3,000/-p.m. was upheld. It was pointed out that more than the pleading it was ultimate finding of the Tribunal on facts, that will be relevant to sustain claim under 163-A or not. [(New India Assurance Co. Ltd. vs. Jaspreet Kaur) 2007 ACJ 2167 (P&H)].
18. It was held that when the total earnings of the husband and wife were more than Rs. 40,000/- contemplated, the claim was not tenable. And a claim petition under Sec.166 could not be converted into a claim under Sec.163-A. [(New India Assurance Co. Ltd. vs. Lalthangveli) 2007 (4) TAC 215 (Gau)].
19. In a claim filed under Sec.163-A, on appreciation of evidence, the Claims Tribunal can treat the claim as one under Sec.166. [(Sumiya Devi vs. Sri Bir Marketing Services) 2007 (4) TAC 423 (AP)]: [(Ravinder vs. Subhash Chand) 2007 (4) TAC 739 (P&H)].
20. It would not be open to the insurer to seek any apportionment of liability in a case arising under Sec.163-A. [(New India Assurance Co. Ltd. vs. Rejeshwar Pandey) 2007 (3) ACC 77 (Del)].

21. The deceased was riding a two-wheeler and he was himself to blame for the mishap in a collision with another vehicle. In respect of a claim for his death under Sec.163-A, the contentions of the insurer that he cannot sustain a claim arising out of his own fault under Sec.163-A and in any case the **risk to such rider was not required to be covered** under Sec.147 were negated. It was held that Sec.163-A was an exception to the rule and even if the victim was at fault, he could sustain the claim and the said provision would override Sec.147 also and as such the insurer could not avoid liability. Adverting to a host of decisions, the appeal of the insurer was rejected. [(United India Insurance Co. Ltd. vs. Rekha) 2007 ACJ 2614 (Raj)].

The author does not concur with the above view. It is true that in [2004 ACJ 934] the Supreme Court had made a passing observation that even if the victim was at fault, such a claim may lie. But then that was certainly not the essence of the decision. There is a difference between Sec.140 and Sec.163-A, which needs to be understood. Further, the risk to such rider, when he is not a workman with the owner of the vehicle under WC Act, 1923, was not required to be covered. Sec.163-A cannot over ride Sec.147 for the reason that requirements of risk coverage are only under Sec.147 and Sec.163-A has nothing to do with it at all, but is confined to negligence aspect.

Interest

Sec 171 and (% interest as per policy of RBI) U/s 171 in addition to compensation simple interest @ 9% as per RBI policy [(Kaushnuma Begum vs. New India Assurance) 200 SOL Case No. 749]

Interest

1. The tribunal had no jurisdiction to impose any penal interest

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based on default in compliance with a deposit. [(Arati Chakraborty vs. Nephurai Jamatia) 2007 ACJ 1698 (Gau)]

2. Interest should be normally granted as a matter of course from date of claim petition and if not granted, the Tribunal should give reasons. [(Swapan Kumar Sarkar vs. United India Insurance Co. Ltd.) 2007 ACJ 1853 (Cal)]: [2007 (3) TAC 585].
3. Interest on interest is not permissible. [(Oriental Insurance Co. Ltd. vs. Nirmala) 2007 ACJ 1810 (Ker)].
4. Appropriation of deposit and interest shall be in terms of the provisions of Or.21 CPC alone, unless consented to by the decree-holder; the appropriation shall be towards interest and costs alone first. While affirming [2003 ACJ 418 (Ker)], it was so held in [(Oriental Insurance Co. Ltd. vs. Nirmala) 2007 ACJ 1810 (Ker)].
5. The judgment-debtor cannot avoid interest liability on the sum deposited as required by Sec.173 for maintaining an appeal. [(Oriental Insurance Co. Ltd. vs. Nirmala) 2007 ACJ 1810 (Ker)].
6. The rate of interest of 9% p.a. was slashed down to 7.5% p.a. [(Oriental Insurance Co. Ltd. vs. Nune Mastan) 2007 (II) ACC 743 (AP)].
7. In respect of an accident dated 1996 the rate of interest was reduced to 9% p.a. from 12% p.a. [(Metropolitan Transport Corporation Ltd vs. V.R.Gopal) 2007 (2) TN MAC 25 (Mad)]: [(Oriental Insurance Co. Ltd. vs. Vijaya) 2007 ACJ 2105 (Mad)]: [(Saleeman vs. Brijesh Kumar Maheshwari) 2007 ACJ 2034 (Uttara)]: [(Metropolitan Transport Corporation Ltd. vs. M.Kamala) 2007 (3) T A C 829 (Mad)].
8. In respect of accident dated 2002 the rate of interest granted were at 7.5%p.a. only. [(The New India Assurance Co. Ltd. vs. Shanti Pathak) 2007 (2) TN MAC 84 (SC)]

Motor Third Party Claims Management

9. The Supreme Court had awarded interest at 12% p.a. on the increased amount. [(Kanhaiyalal Kataria vs. Mukul Chaturvedi) 2007 ACJ 1972 (SC)].
10. In view of the decision in [(Shanmughasundaram vs. Jothi) in 2005 (1) LW 566] : [2004 (2) TN MAC 323] in line with Apex Court ruling in [2004 ACJ 648 (SC)] it was held that default clause on interest liability was not legal and valid. [(TNSTC Ltd vs. Sambandam) 2007 (2) TN MAC 124 (Mad)].
11. On the premise that accident had occurred on 8/9/93, the rate of interest awarded at 12% by the Tribunal was affirmed in appeal. [(Superintendent of Police, South Arcot Vallalar District, Cuddalore vs. Poorani) 2007 (2) TN MAC 265 (Mad)].
12. In [(Lal Dei vs. HRT) 2007 (8) SCC 319] 9% p.a. interest was granted.
13. Interest is granted as on date of accident. [(OIC vs. Raj Kumari) 2008 (2) LW 19 (SC)].
14. Rate of interest as per bank rate, [(Dharampal vs. UPSRTC) 2008 (4) Supreme 348 : 2008 (5) MLJ 752 (SC)].
15. Proper calculation of interest - no interest on interest- [2007 4 ACC 670 (Ker) (DB)].

Dishonour of Cheque

1	2008 ACJ 1111 Civil Appeal No. 5829 of 2007 (Arising out of SLP (C) No.7746 of 2006)	Deddappa & Ors vs. National Insurance Co. Ltd. Date of Judgement: 12/12/2007 Regional Director, Employees' State Insurance Corporation, Trichur vs. Ramanuja Match Industries [AIR 1985 SC 278],	No warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."
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2	1998 ACJ 121	Oriental Insurance Co. vs. Sunitha Rathi	Cover note obtained after accident, company is not liable
3	1998 ACJ 123	Oriental Insurance Co. vs. Inderjit Kumar	Policy issued on the basis of cheque – which bounced. Co. to pay & recover from insured (64 VB considered). Pay & recover.
4	2000 ACJ 630	New India vs. Rula	Dishonour of cheque does not affect rights of third party.
5	2001 ACJ 638	National Insurance vs. Seema Malhotra	Cheque dishonoured due to insufficiency of funds – insurer not bound to settle OD claim but liable to TP & pay & recover.

Negligence

1	1966 ACJ 42	Jamnagar Motor Transport vs. Gokuldas Pithamber LR's	Composite negligence; no contributory negligence
2	1995 ACJ 366	RD Hattangadi vs. Pest Control (India)	Tort – Burden of Proof on the claimant to show failure of defendant to take that degree of care reasonable. Composite negligence.
3	1996 ACJ 386	Indrani Rajadurai vs. MMGI	Motorcycle on extreme right to save him. Held contributory negligence 60:40
4	1996 ACJ 1125	KSRTC vs. Sakeena	Negligence of Bus & Truck Bus driver 60:40

5	1987 ACJ 561		Liability referred u/s 147 MV Act refers to a liability under "Law of Torts".
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No-Fault Liability

No-Fault Liability

1. [(Yallwwa vs. National Insurance Co. Ltd and others), 2007 ACJ 1934]. Gross error not considering the objections relating to statutory liability
2. The petrol Tanker after collision did not cease to be motor vehicle. It exploded after 4½ hours, the insurer was held liable. Section 166 of the 1988 Act covers accident "arising and caused" while Section 140 covers only accident 'arising' [(Shivaji Dayanu Patel vs. Vatchala Utham Mor) 1991 ACJ 777]
3. The Motorcyclist was wholly negligent and suffered permanent disability. It was held that no fault liability was payable. [(Nanda Kumar vs. Thanthai Periyar TRANSPORT} 1996 ACJ 555]
4. Claim made in 1984. Amended Act will not be applicable [(Kashmerilal vs. Doaba Roadways) 1998 ACJ 1314]
5. The deceased was a passenger in the auto rickshaw and an unidentified truck hit it from behind. The said owner and insurer were not impleaded. It was held that still the claim against the owner and insurer of the auto rickshaw to the extent of No Fault Liability would still be sustainable for the claimants. [(Tammneni Aswarthu vs B.Fakrudd) 2007 ACJ 849 (AP)]. Appeal against such an award was held not tenable following the decision in [2004 ACJ 35 (Bom)] in [(Dilip Namdeo Gaikwad vs. Ramchandra Dhondu Kshirsagar) 2007 ACJ 920 (Bom)].

NFL not retrospective

1. Sec.140 MV Act, 1988 is not retrospective- [(State of Punjab vs. Bhajan Kaur) 2008 (3) Supreme 724].
2. In [(Ramvati vs. Yamin) 2007 ACJ 1221 (Del)] it was held that amendment to enhance the no fault liability sum was not retrospective. And in [(New India Assurance Co. Ltd. vs. Poonam Nilesh Thakur) 2007 ACJ 1032 (Bom)] it was held that technical objections of insurer on the validity of cover note would have to be relegated for trial and not permissible at the interim award stage.

Tractor-trailer no liability even under NFL

1. In a case where 44 persons were carried in a tractor-trailer it was held that since basic liability itself was not tenable, the insurer could not be directed to meet the interim award also. [(National Insurance Co. Ltd. vs. Yallawwa) 2007 ACJ 1081 (Kant)]. The decision has been affirmed by the Apex Court [in (Yallawwa vs. National Insurance Co. Ltd.) in 2007 ACJ 1934 (SC): 2007 (5) 322: 2007 (2) TN MAC 114]: [2007 (3) ACC 268].
2. Following the verdict in (Yallawwa case supra) it was held that Tribunal was duty bound to decide on issue of liability at the interim stage also. The High Court was directed to reconsider the liability of insurer in terms of [(Oriental Insurance Co. Ltd. vs. Brij Mohan) 2007 (7) Scale 763] in the decision reported in [(United India Insurance Co. Ltd. vs. Serjerao) 2007 (8) Supreme 25]: [2008 (2) LW 33].

NFL only interim award

1. The interim award shall become part of the final award and hence interest has to be computed on the final award till date of deposit of interim award and then this amount has to be

deducted from the principal for the purpose of calculation of interest, [(Oriental Insurance Co. Ltd. vs. Nirmala) 2007 ACJ 1810 (Ker)]. If the final award was in excess of the interim award and the interim award was already deposited, then the same shall be adjusted against interest liability payable along with the final award. [Ved Parkash vs. Bhupia 2007 ACJ 1874 (HP)]:

2. The distinction between Sec.140 and 163-A were gone into [2007 (4) TAC 85] and explained in some detail in this decision. [(Haseena Sulhana vs. National Thermal Power Corp. Ltd) 2007 ACJ 1832 (AP)].
3. The interim award was passed against the insurance company in a case where 3 persons carried in a tractor-trailer had died. Ultimately, the final award was to the effect that the insurer was exonerated. Thereafter, the attempt of the claimants to execute the interim award was held to be untenable since the interim award merged with the final award and as the insurer was ultimately held not liable, the interim award was no longer executable. [(National Insurance Co. Ltd. vs. Kalyan Singh) 2007 ACJ 1932 (MP)].
4. The registered owner alone would be liable for interim award and he could seek recovery from the transferee. [(Niranjan Singh vs. Zeena) 2007 (II) ACC 453 (P&H)].
5. The compensation award under No-Fault Liability was not taxable as income. [(Hansaguri Prafulchandra Ladhani vs. Oriental Insurance Co. Ltd.) 2007 ACJ 1897 (Guj)].
6. It was held that insurer cannot raise a defence on driving licence at the stage of interim award but can raise it at the stage of trial. In case the insurer was ultimately exonerated they can seek recovery of such sum from the such sum insured. [(Oriental Insurance Co. Ltd. vs. Misin Jena) 2007 (3) TAC 408 (Orissa)].

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7. Determination of permanent disablement cannot be a ground to relegate interim award proceedings for final trial. [(Satish vs. Dharmendra) 2007 (II) ACC 668 (MP)].
8. Proof of negligence or default of owner was not relevant in interim award proceedings [(Prabha Shanker Shukla vs. Shri Kant Tiwari) 2007 (II) ACC 853 (All)].
9. The interim award under No-fault Liability should be immediately disbursed as otherwise the purpose of its award would be defeated. [(Sakunat vs. MACT, Deeg) 2007 AIHC 2370 (Raj)].

Power to Review by Tribunal

Writ jurisdiction was plenary on which no statutory constrictions could be imposed. Article 226 writ is maintainable [(United India Insurance Company Ltd vs. Rajendra Singh & others) 2000 ACJ p 1032 Civil appeal no. 2087-2088 of 2000 decided on 14-03-2000]

16

Hit-and-Run Motor Accident Cases

This chapter deals with the Scheme for Solatium fund and procedure to claim compensation for hit-and-run cases of accidents caused by Motor vehicles driven in public place.

The Central Government in exercise of powers conferred by Section 163 (1) of the Motor Vehicles Act 1988 (59 of 1988) vide S.O. 440 (E) dated 12th June 1989 has implemented a scheme for payment of compensation to the victims of hit-and-run motor accidents. This scheme is called 'The Solatium Scheme 1989'. Section 161 of 1988 Act defines hit and run motor accidents to mean an accident arising out of use of a motor vehicle whose identity cannot be ascertained despite reasonable efforts for the purpose of establishing legal liability under Section 166 for negligence and NFL under Section 140.

The Solatium Scheme specifies the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, administration of the scheme and the payment of compensation. (Motor Vehicle (Amendment) Bill 2007 has proposed Insurance Regulatory and Development Authority to administer The Solatium Scheme)

Section 163 (2) prescribes that a scheme made under sub-section (1) provides that

- (a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;
- (b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;
- (c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939, (4 of 1939.) as it stood immediately before the commencement of this Act provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

Procedure for Making the Claims Application

Rule 20 of Solatium Scheme 1989 envisages an application to be filed in Form I [clause 20 (I)] before 'Claims Enquiry Officer' of the Sub Division in which the accident has taken place. Therefore Claims Tribunal has no jurisdiction as held in New India Assurance Company Ltd vs. Rajendra Prasad Bhati & ors. [2002 ACJ 1762]. The application has to be made within 6 months from the date of accident.

Procedure to be followed by the Claims Enquiry Officer

On receipt of claims application, the Claims Enquiry Officer shall

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immediately obtain a copy of the F.I.R. inquest report; post mortem report, or certificate of injury and hold enquiry in respect of claims arising out of hit-and-run motor accidents. Claims Enquiry Officer is required to decide the rightful claimants and to submit a report to 'Claims Settlement Commissioner' in Form III [Clause 20 (1) (B) 2] within one month along with duly discharged Form II [Clause 20 (1)] and an undertaking in Form IV [Clause 22 (1)] along with his recommendation. The Claims Settlement Commissioner is required to sanction the claim within 15 days and communicate the sanction to insurance company's nominated officer. The Legal representatives of the deceased / injured person are required to submit a certificate under Section 162 of Motor Vehicles Act 1988 as per Form V [Clause 20 (1)].

No Fault Liability

This chapter deals with principle and scope of No fault liability including interim compensation and effect of statutory breach on the no fault liability.

Liability Without Fault

Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle, the owners of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of Sec. 140. (1) of the Motor Vehicles Act 1988.

Section 140 (2) of M. V. Act 1988 prescribes the amount of compensation which shall be payable under sub-section (1) of M.V. Act 1988. In respect of the death of any person the amount shall be a fixed sum of Fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.

Section 142. Permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140, if such person has suffered by reason of the accident any injury or injuries involving:

- (a) Permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

- (b) Destruction or permanent impairing of the powers of any member or joint; or
- (c) Permanent disfigurement of the head or face.

The following important note supplements the above proviso:

1. The Doctor should certify permanent disability for particular limb and for body as a whole and reference to medical theory considered.
2. No interim compensation is allowed on the ground of no fault liability, where disablement is temporary.

Scope of enquiry under No Fault Liability

The problem to understand under principle of no fault liability is, whether negligence, breach of policy, cover to the victim etc are to be enquired into while deciding No Fault Liability. The Insurers have disputed the liability under No-Fault, on the grounds of 'breach of policy', 'pillion rider not covered under policy', 'lack of valid driving licence with driver', 'deceased was travelling unauthorised', the Accident occurred due to collision of Tempo and a motorcycle' it has been held that policy conditions couldn't be considered at No-Fault Liability stage. Some evidence has to be produced for the Insurance Company, and any condition which involves 'may', 'if' and 'but' can not be considered at the time of No Fault Liability. [1994 ACJ p 929 (Bombay)] also refer [1991 ACJ p 777 (SC) Tanker case]

Impact of wrongful act, neglect or default of the owner of the vehicle or injured person

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 of the vehicle concerned or of any other person. A claim for

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compensation shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement, the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

Compensation under any other Law or Section is in addition

The owner of the vehicle liable to give compensation for relief regarding death or bodily injury to any person, is also liable to pay compensation under any other law for the time being in force, provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163A.

Appearing in sub-Section (5) of Section 140 to mean "any other law for the time being in force as, for example, the Workmen's Compensation Act, 1923". The said expression, the learned counsel would contend, would embrace also the other provisions of the said Act. According to the learned counsel, the expressions "any other law" would by necessary implication including other provisions of the Motor Vehicles Act having regard to the fact that the remedies provided for under Sections 163-A and 166 are distinct and separate and are based on different legal regimes.

A claim for compensation under Section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible, and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under Section 140 shall be disposed of as aforesaid in the first place.

No fault liability - interim compensation

Notwithstanding anything contained in sub-Section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under Section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation, and if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

If the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

Alternative Proceedings u/s 140 & Section 163 A

It would appear, on a proper analysis of the scheme of the Act that the concept of 'no fault liability' is envisaged both under Section 140 of the Act and Section 163-A. The proceeding there under being alternative to each other providing for identical rights and liabilities, and an order under Section 140 not being final, there is no reason as to why an award made under Section 163-A thereof should be treated as final.

'Adequate and rational' vs. 'Just Compensation'

It was pointed out that whereas under the former (Section 140) "*adequate and rational compensation*" is provided for, the latter (Section 163 A) provides for "*just compensation*". Section 163-A introduced by the Parliament in the year 1994 carries absolutely a different scheme vis-à-vis 'no-fault liability' introduced in the year 1982 in Motor Vehicles Act, 1939 which was in pari materia with Section 140 in the 1988 Act. By enacting Section 163-A, an

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exception to the provisions of Section 166 was made for the purpose of implementing the principles of social justice.

Interim compensation not a matter of right

Grant of interim compensation under Section 140 is not a matter of right. In [FA Nos. 4250 to 4253/2001 in MACT Case No. 1920 to 1923 /2000] the driver was found not holding valid & effective driving licence, which led to insurance company challenging the Order. Gujarat High Court decided that applicants will get decision on merit; No Fault Liability amount deposited by Insurance Company would be withdrawn against security and if the decision of MACT went against the claimants, then the amount would be repaid to the insurance company. Under Chapter XI Section 145 (C) 'liability' wherever used in relation to death of or bodily injury to any person, includes liability in respect, thereof, under section 140; as per section 147 the Insurance Company is not liable to pay compensation under section 140 also.

Dealing with No Fault Application

On submission of "search Report" by the Advocate and on the basis of confirmation/denial of the Insurance and coverage for insured Vehicle in the said accident, advocate submits a '**Say Report**' or '**No Say Report**' to the No Fault Liability application.

Non availability of statutory defence in no fault

The availability of no fault defence is not applicable, so far as no fault proceedings are concerned; Dealing with statutory defence requires a comprehensive and detailed enquiry, which is undertaken at the final trial stage. The decisions of Apex Court in [1991 ACJ 777] & [1994 ACJ 929 (Mumbai)] have now been reviewed by Supreme Court in [2008 ACJ 254]. A no-fault liability petition is not defeated by the negligence of the victim. Therefore, it was held in [1996 ACJ 555] that No-Fault compensation is payable even where

the victim himself is criminally prosecuted, or the victim though not the owner of the vehicle involved in the accident, was driving at the time of accident.

Choice to recover

The claimants have the choice to recover the No Fault compensation from all or any of the tortfeasors. Where both the tortfeasors are impleaded the compensation is apportioned. Where only one vehicle is impleaded, No-Fault compensation is to be paid entirely by the owner of the said vehicle, or the insurer [Bombay High Court 1994 ACJ 556].

In the case of death even if the cause of death is proved, no fault proceedings are not defeated. In the case of injuries unless the disability is certified as permanent and injuries also speak of seriousness, then alone, No-fault is payable [1994 ACJ p 942 (MP)]. The disability certificate has to be filed, for getting no fault compensation as per provisions of Section 142 of 1988 Act read with Rule 255 of Maharashtra Vehicle rules which prescribes the format of certificate to be issued by the treating Doctor certifying the nature of treatment and disability.

Section 140 and Owner driver

In a case where an applicant himself is driving the vehicle, he is not a third party but he is a joint tortfeasor. [Oriental Insurance Co. Ltd. vs. Hansraj Kodala & others {2001 (5) ACJ 827 (SC)}].

Application u/s 140 alone not tenable

Gujarat High Court has laid down a principle that application under Section 140 of MV Act 1988 alone is not maintainable. The applicant must file an application under Section 166 also. The application for no fault liability under Section 140 is a part of application u/s 166 for fault liability only. As the Section 166 requires the person at fault to pay compensation, how one can claim compensation for his own fault, hence driver is not entitled to get relief under Section

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140 for his own negligence. The definition of liability under Section 146 includes Section 140 too. When the insurer is not liable to pay compensation under section 166 how can the liability under Section 140 be passed on to the insurance company?

Section 140 and Driver's own negligence

A driver can not claim compensation in MACT for his own negligence because he is liable to pay compensation. [2001 (7) ACJ 1329 (MP)] In TN SRTC vs. Natrajan & others, [II (2003) ACC 1 (SC)] the claimant himself was driver of Corporation Bus and he was found negligent to the extent of 50%. It was held that the Corporation was vicariously liable for negligence of claimant himself. In [2001 (5) ACJ 998] it was held that an owner is liable to pay compensation to third party and a driver is not a third party. Where the claimant himself is at fault, he is entitled to No-Fault Liability amount. [2008 (1) TLNJ 625 (Civil)].

Statutory Breach

While deciding under Section 140 of the MV Act 1988, the question of statutory breach is to be examined because it is based on No Fault Liability.

Gratuitous passenger involved in accident

If the vehicle involved in the accident is a goods carriage and claimant is a passenger travelling in the said goods vehicle, the insurance Company is not liable to make any payment to the claimant.

According to terms and conditions of insurance policy; insurance of such passengers as are gratuitous passengers is not covered, as there is no statutory requirement to do so, a goods carriage is not permitted to carry passenger as per MV ACT 1988 and no premium is paid by owner of the vehicle for that. It amounts to breach of terms and conditions of the Permit granted to the offending truck by motor vehicle authorities under the M.V. Act,

1988. Therefore, Insurance Company is not liable to satisfy the award for compensation under Section 140 of the M.V. Act 1988.

Tribunals obligation to examine Specific contention

Where *specific contention* and objection are raised by the insurer before the claims Tribunal against the application u/s/140 of the 1988 Act filed by the claimants, the Tribunal is obliged to examine. The Apex Court has clarified the position in Yallwwa vs. National Insurance Co. Ltd and others, [2007 ACJ 1934].

Where MACT, ignoring such a contention, has examined the merits and involvement of the vehicle and established the same and also considering the permanent disability as defined u/s.142 of the 1988 Act, allowed the No-Fault Liability application under Section 140 with 7.5% interest, the claims Tribunal is said to have '*committed gross error in not considering the objections raised*' by the insurer. [New India Assurance Company Ltd. vs. Vinodbhai Pitambarbhai Chavda & 1 {First Appeal No. 2984 of 2008}]

Effect of application under Section 166

When the main application u/s.166 of the 1988 Act is pending before the Motor Accident Claims Tribunal, it is better that the main application u/s.166 of the Act be decided and claims Tribunal not permit the respondent claimant to withdraw the application under Section 166 of the Act. The claims Tribunal shall have to decide the application u/s 166 of the 1988 Act, independently without being influenced by this order.

Driving without valid and effective licence

The appellant's original driver and owner challenged the interim award made by the Claims Tribunal of Vadodara in [MACT No. 1437 of 2007 dated 2nd April, 2008]. On 7th September, 2007, the

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Claims Tribunal had exonerated the Insurance Company from paying the amount due against no fault liability under Section 140 of the MV Act, 1988. [Munaf Habibbhai Kazi & 1 vs. Charanbhai Ramsingh Bhai Rathwa & 1{First Appeal No. 2865 of 2008}]

The contention raised by the Insurance Company was that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident. Further, the driver was not qualified for holding or obtaining such licence and also did not satisfy requirement of Rule 3 of the Central Motor Vehicles Rules, 1939 and, therefore, it amounted to statutory breach of the provisions of the MV Act and Rules and terms and conditions of policy and that so defence was available to the insurance company under Section 149(2) (a) (ii). The decision of the Apex court in Yallwwa vs. National Insurance Co. Ltd and others, [2007 ACJ 1934.] considered by the Claims Tribunal.

The Claims Tribunal observed that the licence which the opponent driver was holding had expired on 11th November, 2005 and, therefore, on the date of accident i.e. 7th September, 2007, the driver did not have a valid licence to drive the vehicle and, therefore, based upon such conclusion, Claims Tribunal exonerated the Insurance Company from paying such amount in an application for interim award under Sec. 140 of the MV Act, 1988.

Whether another valid licence can be produced?

It was pleaded that the driving licence was renewed for a period from 19.1.2006 to 18.1.2008 but the said licence was not brought to its notice when the Claims Tribunal was examining the application under Section 140 of the MV Act, 1988 and, therefore, in absence of such information of licence, Claims Tribunal took the view correctly that the licence had expired on 11th November, 2005.

It was noted by appellate High Court that while the main application under Section 166 of the MV Act, 1988 was pending before the Claims Tribunal, the appellants would certainly have an opportunity

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to bring such renewed licence on the records of the Claims Tribunal to contend that on the date of accident, the driver opponent no.1 was holding legal and valid licence to drive the vehicle and the Claims Tribunal could examine the same without being influenced by its order in an application under Section 140 of the MV Act, 1988 and will strictly examine the case as per the evidence on record. Such a safeguard will sufficiently protect the interests of the appellants.

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Liability of Insurer

This chapter deals with the liability of Insurance Company when the policy is not in existence, due to break in insurance, or dishonour of cheque and its limited obligation of Insurer to indemnify in terms of General Law.

Liability when Policy is not in Existence

The Motor Insurance Policy is a legal agreement issued in compliance with Insurance Act 1938 and its provisions relating to advance payment of premium. The policy does not cover the risk, if the premium cheque is dishonoured, or if the premium to accept the risk is paid after the accident has already taken place. The certificate of insurance and cover note issued in such circumstances become in fructuous but the treatment of their consequences is different in case of own damage liability vis-à-vis third party liability envisaged under the 1988 Act. Therefore, the question arises "whether insurance company may be held liable for payment of compensation during the period when the insurance policy was not in existence.

The appellant, National Insurance Co. Ltd., originally issued a Package policy to the respondent bearing Policy no. 201002/31/92/63/00057 on 21.6.1992 at 11.45 p.m.; this policy expired on 21.6.1993 and was renewed after 9 days of its expiry on 30.6.1993 and the said policy also expired on 29.6.1994. After 21 days of the expiry of the insurance policy, the bus met with an accident at about 9.15 a.m. on 20.7.1994 killing two persons. One person died on the spot and the other died a few days later in the hospital.

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Admittedly in the present case, the insurance policy was renewed on 20.7.1994 at 1800 p.m. whereas the accident had occurred at 9:15 a.m. on the same day i.e. 20.7.1994. The time was specifically mentioned in the motor renewal endorsement. It is incorporated in this document that the policy is renewed for twelve months from 20.7.1994 (1800 p.m.) to 19.7.1995.

The Claims Tribunal allowed the claim petition, ignoring the specific terms of the insurance policy and averments of the written statement filed by the appellant Insurance Company. The High Court noticed the pleadings and referred to the decided cases and culled out the following propositions of law:

- (i) If time is mentioned in the insurance policy or cover note, the effectiveness of the policy would start from that time and date mentioned and not from an earlier point of time;
- (ii) If the accident takes place on that very date before the time which is mentioned in the insurance policy, the insurer will not be liable to indemnify the insured;
- (iii) If the time is not mentioned in the insurance policy, it would commence from the date which means midnight and in case the accident occurred on the date of taking the policy, the insurer will be liable to meet the liability of the insured under the award.

Documents produced and proved

The Insurance Policy and the motor renewal endorsement were on record. Both these documents were produced and proved by the appellant insurance company. The Claims Tribunal and the appellate High Court seriously erred in ignoring these basic and vital documents and deciding the case against the insurance company ***on the ground of non-production of the Cashier and Development Officer.***

The ratio culled out by the High Court is correct in the decided

cases e.g. National Insurance Co. Ltd vs. Smt. Sobina Iakai & Ors [Appeal (Civil) 1393 & 1394 of 2001 date of judgment: 09/07/2007] & National Insurance Co. Ltd. vs. Smt. Kerolin P. Marak & Others [Appeal (civil) 1394 of 2001}]

In the absence of any specific time mentioned in the policy, the contract would be operative from the mid-night of the day. Under the operations of the provisions of the **General Clauses Act** and in view of the special contract mentioned in the insurance policy, the effectiveness of the policy would start from the time and date indicated in the policy. Please refer to the cases of

1. New India Assurance Company Ltd. vs. Ram Dayal [(1990) 2 SCR 570.]
2. National Insurance Co. Ltd. vs. Jikhubhai Nathuji Dabhi [(1997) 1 SCC 66]
3. New India Assurance Co. Ltd. vs. Bhagwati Devi [(1998 (6) SCC 534)]
4. New India Assurance Co. Ltd. vs. Sita Bai [(1999) 7 SCC 575]
5. National Insurance Co. Ltd. vs. Chinto Devi [(2000) 7 SCC 50]

Commencement of cover from the time and date specifically incorporated

In Kalaivani & Ors. vs. K. Sivashankar & Ors.[2002 ACJ 613], the Supreme Court has reiterated clear enunciation of law, observing that it is the obligation of the Court to look into the contract of insurance to discern whether any particular time has been specified for commencement or expiry of the policy. A very large number of cases have come to our notice where insurance policies are taken immediately after the accidents to get compensation in a clandestine manner. In order to curb this widespread mischief of getting insurance policies after the accident, it is absolutely imperative to clearly hold that the effectiveness of the Insurance policy would

start from the time and date specifically incorporated in the policy and not from an earlier point of time.

Break in Insurance

In a case of National Insurance Company Ltd vs. Hamza & Shabeer WPA no. [3010 of 2001 (WC)] following the Judgment in Kalaivani & Ors. vs. K. Sivashankar & Ors.[2002 ACJ 613], an appeal was preferred by National Insurance Company, denying cover as on date of accident, on which date the premium was paid by the insured, much after the expiry of previous policy with another insurer. Premium, which led the insurance company to grant cover w.e.f one day after the premium, was tendered by the insured, despite the fact that the policy, was issued on the date of the accident.

Court can not vary the terms and conditions of a concluded contract

The Court upheld the case of the Insurance Company in appeal and said that knowing fully well that the Policy would come into force from a particular day mentioned therein and when the parties have not let in any evidence to show the intention of parties to the terms and conditions of the Policy, *no court can vary the terms and conditions of a concluded contract*. The court held that the policy came into force from the date mentioned in the Policy and that the Company is not liable to indemnify the owner in between the time and date on which the Policy is issued and the time of commencement of Policy.

Fitness of the vehicle

As per Section 56 of the Motor Vehicle Act 1988 if the fitness of the vehicle had expired before the date of accident, the vehicle shall not be deemed to be registered for the purpose of Section 39 which states “No person shall drive any motor vehicle and no owner of the motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle

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is registered in accordance with the Motor Vehicle Act 1988.” The provision must be read in consonance with Central Motor Vehicle Rules 52 for renewal of certificate of registration and Rule 62 for the validity of the certificate of Fitness.

To illustrate the point, refer to notification published by Govt. of Gujarat dated 22-04-1998 and Gujarat Motor Vehicles Rules 172 A which reads as under: “Any motor vehicle constructed or adapted to carry more than six persons excluding driver is to be inspected periodically otherwise it is not permissible to use in public place.”

Dishonour of Cheque

If the cheque is dishonoured the Insurance Policy Contract becomes void ab initio, however the courts have emphasised the fact that the Act was brought forward for the benefit of third party and underlying the public policy behind the statutory scheme in respect of insurance as evidenced by Sections 147 and Section 149 of the 1988 Act, having regard, in particular, to the fact that the policy of insurance to cover the bus without receiving the premium had already been issued, the insurance company was liable to indemnify the-insured.

Regard to the underlying Public Policy vis-à-vis Cancellation of Policy

In [(Oriental Insurance Co. Ltd. vs. Inderjit Kaur and Ors.) - 1998 (1) SCC 371] it was opined that a policy of insurance, which is issued in public interest, would prevail over the interest of the insurance company. To illustrate the policy of insurance for a bus was issued on 30.11.1989. A letter stating that the cheque had been dishonoured was sent by the insurance company to the insurer on 23.1.1990. The premium was paid in cash on 18.5.1990. The bus met with an accident on 19.4.1990. In terms of sub-section (5) of section 147 and sub-section (1) of section 149 of the act, the insurance company became liable to satisfy awards of compensation in respect thereof, notwithstanding its entitlement to

avoid or cancel the policy for the reason that the cheque issued for payment of premium thereon had not been honoured.

The said decision proceeded on the basis that it was the insurance company which was responsible for placing itself in the said predicament as it had issued a policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of section 64-vb of the 1938 act. The *public interest* in a situation of that nature and applying the *principle of estoppels*, this court held, would prevail over the interest of the insurance company.

Waiver of condition Precedent for Policy to take effect

The Supreme Court in [(New India Assurance Co. Ltd. vs. Rula and ors.) (2000) 3 SCC 195] held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for the insurance policy to take effect but such a condition which is intended for the benefit of the insurer can be waived by it. It was opined: “*if, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the premium would not affect the rights already accrued in favour of the third party*”. The dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

Section 64-VB of the 1938 Act

In [National Insurance Co. Ltd. vs. Seema Malhotra and ors. 2001 (3) SCC 151], both the aforementioned decisions were analysed in the light of Section 64-VB of the 1938 Act. It was held:

“In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange”

drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid".

Thus, when the insured fails to pay the premium promised or when the cheque issued by the insured towards the premium is dishonoured or the bank concerned returns the cheque, the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation. The case came up in Supreme Court [(National Insurance Co. Ltd vs. Deddappa & Ors) – Appeal (Civil) 5829 of 2007 (dt. 12/12/2007)] as per the facts given below:

Shantamma, daughter of the appellant herein was sleeping in her hut. A tempo-bearing registration No. KA 37, 2257 that was being rashly and negligently driven by respondent no. 2 herein, ran over her. Indisputably, the accident had occurred on 6.8.1998 and Shantamma died on the spot. Household articles of the appellant also were damaged in the said accident.

The said vehicle was insured with the National Insurance Company. A plea was taken by the insurance company that although the vehicle in question was insured by the owner for the period 17.10.1997 and 16.10.1998, the cheque issued, having been dishonoured, the policy was cancelled and, thus, it was not liable.

Communication of Cancellation of contract

The admitted facts of the case are that the second respondent who was driving the vehicle was also the owner thereof. The insurance policy was to remain valid for the period 17.10.1997 to 16.10.1998. Respondent no.3 issued a cheque on 15.10.1997. The said cheque was presented for encashment before the Syndicate Bank. The bank by its letter dated 21.10.1997 issued a 'return memo' disclosing dishonour of the cheque with the remarks "fund insufficient". First respondent thereupon cancelled the policy of insurance. The said information was communicated to respondent no.18 Intimation thereabout was also given to the R.T.O. concerned.

Examination of witnesses

The insurer also examined witnesses before the Claim Tribunal inter alia, to prove cancellation of the policy of insurance, postal acknowledgement showing intimation thereabout which was served to the insured and a copy of the letter dated 6.11.1997 issued to the R.T.O. and the memo issued by the bank as regards dishonour of the cheque etc. Section 147 of the act obligates the owner of the motor vehicle to get the vehicle insured in so far as the claim of third party is concerned. The act does not deal with contract of insurance as such. Contract of insurance is governed by the Insurance Act, 1938 (for short "the 1938 act").

No risk to be assumed unless premium is received in advance - Section 64VB

Section 64-VB of the 1938 act provides that no risk is to be assumed unless premium is received in advance :

1. No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.
2. For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation — Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

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3. Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.
4. Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal-holidays.

The said provision, as such in no unmistakable term provides for issuance of a valid policy only on receipt of payment of the premium.

Provisions of the Contract Act 1882

Under Section 25 of the Contract Act 1882 an agreement made without consideration is void. Section 65 of the Contract Act 1882 says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get back the money.

A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration.

Payment by cheque

In today's world payment made by cheque is ordinarily accepted as valid tender. Section 64 VB of the 1938 Act also provides for such a scheme. Payment by cheque, however, is subject to its encashment. In [(Damadilal & ors. vs. Parashram & ors). (1976) 4

SCC 855], this court observed: “On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted...”

Limited obligation of Insurance Company to Indemnify

Recently in [(The New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya and anr) 2006] 5 SCC 192], although in the context of the Workmen Compensation Act, 1923, Balasubramanyan, J opined:

“it is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the workmen’s compensation act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the motor vehicles act the Workmen’s Compensation Act does not confer a right on the claimant for compensation under that act to claim the payment of compensation in its entirety from the insurer himself”.

Contract of Insurance part of General Law of Contract

It was further observed by Roskill, L.J. In Cehave vs. Bremer] – *“the law relating to contracts of insurance is part of the general law of contract.*

Lord Wilberforce in [Reardon Smith vs. Hansen- Tangen (All ER P approved this view. 576 h)] wherein he said: "*it is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principle should not apply to different branches of that law.*"

Insurer's liability not for interest and penalty

As per Colinvaux's Law of Insurance, 7th edn., (Para 2- 01), a contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. A policy of insurance has, therefore, to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.

Statutory Liability vis-à-vis a Third Party Liability u/s 147 and 149 of the 1988 Act

The Supreme Court in [(National Insurance Co. Ltd vs. Deddappa & Ors)-Appeal (Civil) 5829 of 2007 dt.12/12/2007)] accepted that they are not oblivious of the distinction between the statutory liability of the insurance company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion; the insurance company would not be liable to satisfy the claim.

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A beneficial legislation as should not be construed in such a manner so as to bring within its ambit a benefit, which was not contemplated by the legislature to be given to the party. In *Regional Director, Employees' State Insurance Corporation, Trichur vs. Ramanuja Match Industries* [AIR 1985 SC 278], this court held: “*we do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.*”

The apex courts has opined that “If all concerned have been informed, mainly RTO & Insured, by registered post A. D. & all the proof made available at the time of the evidence, and if the contract of insurance has been cancelled and all concerned have been intimated thereabout, [(National Insurance Co. Ltd vs. Deddappa & Ors) Appeal (Civil) 5829 of 2007 dt.12/12/2007)] the insurance company would not be liable to satisfy the claim.

Cheque dishonoured but premium paid before the date of accident

However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the insurance company is legally justified in refusing to pay the amount claimed by the respondents”.

Liability of Insurers to Drivers and Passengers

This chapter deals with liability of owner driver, gratuitous passenger, Driver having valid and effective driving licence and any other breach of condition of Insurance contract besides the liability under mandatory cover to passengers and liability to driver under W.C. Act 1923.

The Motor Vehicle Act 1988 covers liability for private car in respect of death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward). But except insofar as it is necessary to meet the requirements of Motor Vehicle Act 1988, the insurance company shall not be liable, where such death or injury arises out of and in course of employment of such person by the insured. In case of commercial vehicles, liability for death or bodily injury to any person is caused by or arising out of use (including the loading and unloading), even when the vehicle is stationary and not directly involved in the accident of the motor vehicle.

The commercial vehicle policy provides cover for Workmen's Compensation liability towards paid drivers, conductors, ticket examiners in case of public passenger vehicle, and in case of goods carrying vehicles, persons carried in the vehicle (for loading and unloading). It may be noted that legal liability towards persons carried in the goods vehicle is excluded. However, legal liability towards fare paying passengers carried by virtue of a contract of employment is covered.

In ‘Package Policy’ unlike the ‘Liability only’ policy, the cover is not restricted during the use of vehicle in a ‘public place’, only, as the section is silent on this aspect. Therefore, it is implied that third party liability cover granted by this section in package policy, operates whilst the vehicle is used in a private as well as public place.

No Liability for Owner-Driver

As per Motor Vehicles Act and Rules the owner is not entitled to get any compensation, if he drives the vehicle and meets with an accident. The contract between the insured and insurer is that, if any accident occurred out of the use of Motor Vehicles then only third party is entitled to get compensation. The insurer and insured is the *first and second party* and other than the all are *third parties*.

The deceased was the owner of the vehicle and was driving the vehicle when he met with an accident. Though the deceased had valid driving licence, he was not considered third party as per Rules and 1988 Acts. Hence the petitioners are not entitled to get any compensation...”. Requirements of policies and limits of liability are as given below :

Section 147. (1) (b) “In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily injury (to any person, including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of the third party caused by or arising out of the use of the vehicle in a public place.”

147. (ii) (b) “Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.”

Liability of Insures to Drivers and Passengers

Provided that a policy shall not be required :

(i) To cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923(8 of 1923) in respect of the death of, or bodily injury to, any such employee:

- (a) Engaged in driving the vehicle, or
- (b) If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) If it is a goods carriage, being carried in the vehicle, or

(i) To cover any contractual liability.

Explanation : "For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

Liability of the Insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act 1988, the question of the insurer being liable to indemnify insured, therefore, does not arise.

"..... an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or

arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. [Dhanraj vs. New India Assurance Co. Ltd. & Anr.) 2004 (8) SCC 553]

If the policy does not cover any risk for injury to the owner himself, the contention that the premium of Rs. 4,989/- was paid under the heading "Own damage" is for covering liability towards personal injury" is not acceptable. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim, provided a valid Personal Accident insurance Policy has been obtained and subsisting on the date of accident.

Need for Driving Licence

Section 10 of the Motor Vehicles Act 1988 enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-Section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are:

- (a) Motorcycle without gear
- (b) Motorcycle with gear
- (c) Invalid carriage
- (d) Light motor vehicle
- (e) Transport vehicle
- (f) Road roller, and
- (g) Motor vehicle of other specified description

The definition clause in Section 2 of the 1988 Act defines various categories of vehicles which are covered in broad types mentioned

in sub-section (2) of Section 10. They are goods carriage, heavy goods vehicle, heavy passenger motor vehicle, invalid carriage, light motor vehicle, maxi-cab, medium goods vehicle, medium passenger motor vehicle, motor-cab, motorcycle, omnibus, private service vehicle, semi-trailer, tourist vehicle, tractor, trailer and transport vehicle.

Obligation on driver to hold effective and valid Driving Licence

Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It may be true that a fake or forged licence is as good as no licence but the question, is whether the insurer must prove that the owner was guilty of a wilful breach of the conditions of insurance policy or the contract of insurance. There is a general agreement with the approach of the Bench in Lehra case, but in the light of the requirements of the law, the insurer is required to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever.

Disqualification of driver or invalid Driving Licence

Section 110. (iii) Relates to the breach of policy condition. Disqualification of the driver or invalid driving licence of the driver, as contained in Section 149(2) (a) (ii), has to be proved, to have been committed by the insured for avoiding liability by the insurer. Mere absence of driving licence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was 'guilty of negligence' and 'failed to exercise reasonable care' in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly

licensed driver or one who was not disqualified to drive at the relevant time.

Fake Driving Licence

As a matter of law there is no doubt that a fake licence cannot get its forgery outfit stripped off, merely on account of some authority renewing it with or without knowing it to have been forged. Section 15 of the MV Act 1988 empowers any licensing authority to renew a driving licence issued under the provisions of 1988 Act, with effect from the date of its expiry. No licensing authority has the power to renew a fake licence and, therefore, a renewal, if at all made, cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact, those other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

Although, a contract of insurance is in the realm of private law domain, having regard to the object for which Section 147 and 149 of the 1988 Act had been enacted, the social justice doctrine as envisaged in the preamble of the ‘Constitution of India’ has been given due importance.

Breach of Conditions of Contract

The Act, however, provides for the cases where the insurance Company can avoid its liability. Avoidance of such liability would largely depend upon violation of the conditions of contract of insurance. Where the breach of conditions of contract is ex-facie apparent from the records, the Court will not fasten the liability on the Insurance Company.

In certain situations, however, the Court while fastening the liability on the owner of the vehicle may direct the Insurance Company to pay to the claimants, Awarded amount with liberty to it to recover the same from the owner.

Statutory obligation of owner that driver holds a Valid License

The owner of the vehicle has a statutory obligation to see that the driver of the vehicle whom he authorized to drive the same holds a valid licence. Here again, a visible distinction may be noticed, viz. where the license is fake and a case where the licence has expired, although initially when the driver was appointed, he had a valid licence.

The question came up for consideration in United India Insurance Co. Ltd. vs. Gian Chand and Others [(1997) 7 SCC 558], wherein it was held;

"Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicenced driver, the Insurance Company would get exonerated from its liability to meet the claims of the third party who might have suffered on account of vehicular accident caused by such unlicensed driver....."

A three Judges' Bench of the Supreme Court in [(National Insurance Co. Ltd. vs. Swaran Singh and Others) 2004 (3) SCC 297], upon going through the provisions of the Act as also the precedents operating in the field, laid down the following dicta;

"..... Analysed the relevant provisions of the said Motor Vehicle Act, which stipulates that a motor vehicle must be driven by a person having a valid and effective driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive".

The insurer is entitled to succeed in its defence and avoid liability, where the driver of the vehicle, did not hold any licence and was allowed to drive the vehicle consciously by the owner of the vehicle.

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This Court in National Insurance Co. Ltd. vs. Swaran Singh and Others [(2004) 3 SCC 297], clearly laid down that the liability of the Insurance Company vis-a-vis the owner depends upon several factors. The owner would be liable for payment of compensation, where the driver was not having a licence at all. The obligation is on the part of the owner to take adequate care, to see that the driver had an appropriate licence to drive the vehicle. The owner of the vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.

The matter, may be different where a disputed question of fact arises as to, whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance, as also the provisions of the Act, by consciously allowing any person to drive a vehicle, who did not have a valid driving licence. Where an accident took place owing to a mechanical fault or vis major. (See Jitendra Kumar 22.)” The driver of the vehicle may not have any hand in it at all.

Appropriate Licence

The Court in National Insurance Co. Ltd. vs. Kusum Rai and Others [(2006) 4 SCC 250], held that it had not been disputed that the vehicle was being used as a taxi, therefore, the vehicle was accepted as commercial vehicle. The driver of the said goods carrying vehicle, was required to hold an appropriate licence as per the provisions of the Motor Vehicle Act. The driver, who was alleged to be driving the said vehicle at the relevant time, was holder of a licence to drive a (LMV) light motor vehicle only. He did not possess any licence to drive a commercial goods carrying vehicle. Evidently, there was breach of condition of the Contract of Insurance.

Driver did not have a Valid Licence

In [(Ishwar Chandra & Ors. vs. The Oriental Insurance Co. Ltd. & Ors) 2007 (4) SCALE 292], this Court held “*From a bare perusal*

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of the said provision... the licence is renewed in terms of Motor Vehicle Act and the rules framed there under. The proviso appended to Section 15(1) of the M V Act 1988 in no uncertain terms states that the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident."

The owner of lorry bearing registration No.MYJ-6666 had filed an appeal questioning correctness of the Order passed by the Motor Accidents Claims Tribunal, Shimoga, fixing the liability on him to pay compensation awarded. The claim petition related to an accident, which occurred on 20.11.1994 when a child aged seven years, who was the son of claimants, had lost his life. The High Court by the impugned order enhanced the sum to Rs.1,52,000/-. The appellant (hereinafter referred to as the 'insurer') was directed to indemnify the award.

The insurer's stand before the Claims Tribunal and the High Court was that the driver driving the lorry was not authorized to drive the lorry because he was only licensed to drive a Light Motor Vehicle (in short the 'LMV'). When the accident took place, i.e. on 20.11.1994, the driver was authorized to drive LMVs. Subsequently, on 11.10.1996 at the time of renewal of licence it was endorsed that he was authorized to drive Heavy Goods Vehicle (in short the 'HGV').

The High Court was of the view that the owner is not expected to know as to what type of licence the driver possessed. If the driver was authorized to drive one type of vehicle and was driving another type of vehicle, it cannot be said that there was wilful breach on the part of the insured. It was noted by the High Court that the owner of the vehicle may not know as to what the nature of the licence held by the driver was. Accordingly, the quantum of compensation was enhanced and the appellant was held to be liable to pay the entire compensation.

In view of what has been stated in Swaran Singh's case (supra) the Supreme Court held that the appellant insurer was not liable to indemnify the award. [(Oriental Insurance Co. Ltd vs. Syed Ibrahim & Ors) - Appeal (civil) 4308 of 2007. date of judgment: 17/09/2007 arising out of SLP (C) Nos. 8499-8500 of 2005)]

Impact of Workman's Compensation Act

The cleaner of a Truck suffered injuries in course of employment and preferred a claim in MACT. The question arose whether compensation could be assessed as per WC Act1923. It was held that liability would be determined in accordance with the Law applicable to the forum opted and can not be restricted to the quantum payable under the WC act [1992 ACJ p 65 (MP)]

Liability of the Insurer with regard to passenger carried in goods carrier

Transporting unauthorised persons in improper manner causes more road accidents and loss of life too. It creates a huge loss of revenue to Government because the owner of the vehicle does not pay passenger tax etc. In [2001 SOL case no. 481 [(New India vs. Asha Rani) 2001 SOL case no. 482] [(Ramesh Kumar vs. National Insurance Company Ltd) decided on 17-08-2001] it was held that insurance company was not liable and no defence was available to insurance company. In [III (2002) ACC 753 (SC) (New India Assurance Company Ltd vs. Asha Rani) decided on 3-12-2002] it was decided by the larger Bench, headed by Chief Justice that the insurer was not liable to pay compensation for the persons travelling in goods vehicle.

Again the question of liability of the insurer with regard to the goods carrier was dealt with in [(Oriental Insurance Company Ltd. vs. Devireddy Konda Reddy and Ors). AIR 2003 SC 1009]. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger as per the definition of "goods carriage" in the 1988 Act as

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amended. This is clear from the expression “in addition to passengers” as contained in the definition of “goods vehicle” in the Old Act. The position becomes further clear because the expression used “goods carriage” is solely for the “carriage of goods”. Carrying of passengers in a goods carriage is not contemplated in the Act.

It is of significance that proviso appended to Section 95 of the Old 1939 Act contained in clause (ii) does not find place in the new 1988 Act. The same reads as follows: “except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.”

Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of “public service vehicle”. The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen’s Compensation Act, 1923. There is no reference to any passenger in “goods carriage”.

The inevitable conclusion, therefore, is that provisions of the 1988 Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

(ii) To cover any contractual liability.

The above position was highlighted in [Devireddy Konda Reddy and Ors.’s case (*supra*)] and [(National Insurance Company Ltd. vs. Ajit Kumar and Ors). AIR 2003 SC 3093]. The High Court in [(Smt. Thokchom Ongbi Sangeeta @ Sangi Devi & Anr vs. Oriental Insurance Co. Ltd. & Ors) Appeal (civil) 4946-4947 of 2007 (Arising out of SLP (C) Nos.3871-3872 of 2005) Date of Judgment: 23/10/2007], in the Bench of Dr. Arijit Pasayat & P. Sathasivam justified in holding that the insurer was not liable.

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The facts of the case are that on 19.12.1994 at about 7.30 a.m., near Lungthulien village about 7 km. southwest from Parbung Police Station on Tipaimukh Road, a Tata truck bearing registration No. MN-01/3578 while proceeding towards Mizorm met with an accident. Two claim cases were filed before the Motor Accident Claims Tribunal, Manipur, under Motor Vehicles Act, 1988. The Tribunal by common judgment and award dated 31.12.2002, awarded compensation of Rs.2,99,464/- in MACT Case No.61/95 and also an award of Rs.1,62,000/- in MACT Case No. 27/95. The Insurance Company assailed the said common judgment and award only on the ground that the vehicle involved in the accident was a Tata Truck, which is a goods Vehicle, and, therefore, the Insurance Company is not liable to pay compensation.

But in the [(Smt. Thokchom Ongbi Sangeeta @ Sangi Devi & Anr vs. Oriental Insurance Co. Ltd. & Ors (supra); the question that ought to have been dealt with by the High Court was the person who had the liability to pay the amount awarded as compensation.

Tractor – Trailers

When a trailer is attached to a tractor, the motor vehicle becomes a Transport Vehicle. In AIR 1965 Andhra Pradesh 1979, it was reported, “ A trailer comes within the definition of a “goods Vehicle” [Refer case 1996 (3) Civil LJ 3139 (P & H) Ejaz book page no. 23 para I & para 31]

As per notification No. SO 451 E dt 19-06-1992 Vehicles are categorised in two specific categories i.e. Transport Vehicles and Non Transport vehicles. As per Sr. No. (VI), Trailers are classified under Transport Vehicle (T) & as per Sr. No. (X) Tractors are classified under Non-Transport (NT). Section 14 (2) (a) of Motor Vehicle Act 1988 states that “ a licence to drive transport Vehicle, shall be effective for a period of three years, and in Section 14 (2) (b) it is given for a longer period than for other transport vehicles. As per Section 3 (1) no person shall drive a transport vehicle unless his driving licence specifically entitles him so to do. As per section 10 tractors come under motor vehicles of a specified

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description because in the format of licence it is not mentioned, that is, in other words, it can not be considered as light motor vehicle.

Wherever tractor alone is ensured and not the trailer, insurance company must produce a copy of the Driving Licence and RTO Certificate and see that it is exhibited. In [(New India Assurance Co. Ltd vs. Thirakappa Ramappa Itagi) 2002 (5) ACJ 753], the Tractor was insured but trailer was not insured and front portion of the trailer ran over the deceased; it was held that in order to fasten liability on the insurance company the tractor and the trailer both must be individually insured. Also refer [(Ramesh vs. Kamathchi Ammal) 2002 (3) ACJ 482 (Mad)]. In [2002 (2) ICC 482 AP] & [(New India Assurance Co. Ltd vs. Ijjagiri Kanakamma & others), where it was held that a tractor and a trailer are both goods vehicle. The tractor was insured while trailer was uninsured and unauthorised passengers were travelling in the trailer, so the insurance company was absolved of the responsibility of paying any compensation.

Permit

The police requisitioned a tractor-trolley to carrying students for a function of the Minister of State. Some students were injured and later succumbed to death in an accident. The tractor was insured for agricultural purpose and not for carrying passenger gratis or on payment of charges. It was held in (Madhya Pradesh vs. Sommla Police ([2002 (6) ACJ 1080 (MP)]) that insurance company was not liable.

Liability of Insurers to Passengers

Will a statutory insurance policy under the Motor Vehicles Act, 1998, intended to cover the risk to life or damage to property of third party, cover the risk of death or injury to a gratuitous passenger carried in a private vehicle? The following points are required to be proved to disclaim liability by insurers towards passenger in goods vehicle (Bombay High Court)

- Produce the certified true copy of the policy with all endorsements and warranties attached and to place on record the relevant exclusions relating to carrying passengers for hire or reward
- Make the insured produce the original permit issued by the RTA before the court and bring the exclusion therein to the attention of the court and / or if it is not permissible.
- Serve notice on RTA to present himself as witness before the court and to give evidence about breach of permit committed by the insured.

Gratuités Passengers in a Private Car

The insurance company had raised the contention that the scope of statutory insurance under Section 95(1) (a) read with 95(1) (b) (i) of the Motor Vehicles Act, 1939 does not cover the injury suffered by a passenger..... [Pushpabai Purshottam Udeshi and Ors. vs. M/s. Ranjit Ginning and Pressing Co. (P) Ltd. and Anr., [1977] 2 SCC 745] After referring to the English Road Traffic Act, 1960, and Halsbury's Laws of England (Third Edition) this Court came to the conclusion that Section 147(1) of the 1988 Act (Section 95 of the Motor Vehicle Act 1939) required that the policy of insurance must be policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third party" were wide enough to cover all persons except the insured and the insurer.

It is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 147(1) of the Act, the risk to 'a passenger in a vehicle who is not carried for hire or reward is not required to be insured', the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act, 1988.

Liability of Insures to Drivers and Passengers

In [(Dr. T.VS. Jose vs. Chacko P.M. alias Thankachan and Ors.) 2001 (8) SCC 748] Variava, J. had an occasion to survey the law with regard to the liability of insurance companies in respect of gratuitous passengers. After referring to a number of decisions the learned Judge observed, "*the law on this subject is clear, a third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward.*" The insurer company was not liable to reimburse the appellant.

The argument that the risk pertaining to a third party would extend to a person other than the parties to the insurance contract was raised in New India Assurance Company vs. Satpal Singh and Ors., [(2000) 1 SCC 237] However, Satpal Singh case has been specifically overruled in the subsequent judgment of a Bench of three judges in New India Assurance Company vs. Asha Rani and Ors., [(2003) 2 SCC 223]. In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of Section 147 of the 1988 Act, as contrasted with Section 95 of the 1939 Act, held that the judgment in Satpal Singh's case (*supra*) had incorrectly decided and that the insurer will not be liable to pay compensation.

In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed that Section 147 of Motor Vehicles Act 1988, *inter alia*, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'good carriage'.

Furthermore, sub-clauses (i) of Clause (b) of sub-section (1) of Section 147 speak of the liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

Whereas sub-clause (ii) thereof deals with liability, which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service caused by or arising out of the use of the vehicle in a public place.”

[(United India Insurance Co. Ltd., Shimla vs. Tilak Singh and Ors) -Appeal (civil) 2291 of 2000 date of judgment: 04/04/2006] it was held that although the observation made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that, it owed no liability toward the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

Liability to pillion passengers

For covering liability to pillion passengers endorsement of I.M.T. 70 pertaining to accident to unnamed hirer/driver/pillion passenger, is required on the insurance policy, which may be obtained by payment of additional premium. Refer [(United India Insurance Co. Ltd., Shimla vs. Tilak Singh and Ors.) – Appeal (civil) 2291 of 2000 date of judgment: 04/04/2006]

Fixing the responsibility of the person to pay

While issuing notice on 4.3.2005, it was indicated that the matter requires to be remitted to the High Court to fix the responsibility of the person who is to satisfy the Award made by the Tribunal. Accordingly, the Supreme Court remitted the matter for the limited purpose of fixing the responsibility of the person who is to satisfy the Award given by the Tribunal in Smt. Thokchom Ongbi Sangeeta @ Sangi Devi & Anr vs. Oriental Insurance Co. Ltd. & Ors [Appeal (civil) 4946-4947 of 2007 (Arising out of SLP (C) Nos.3871-3872 of 2005) date of judgment: 23/10/2007]

Chairman of a society neither third party, nor employee

The Chairman of a co-operative society who was travelling in the society's car died in an accident. It was held that the Insurance Co. was not liable to cover the risk of any passenger travelling in the car, and not being carried for hire or reward. Also, the passenger could not be deemed to be a third party within the meaning of the MV Act. It was held that the insurer was not liable to pay compensation, since the chairman could not be said to be a servant of the society, travelling in the car in pursuance of a contract of employment.

This was because the 'Chairman' or 'Elected Representative of the body' could not be said to occupy the office as an employee. He occupied the office in his own right, as an elected member, and not under any contract of employment. Oriental Fire and General Insurance Corporation Ltd. vs. Shuivangouda and others [1984 ACJ 786 (Kant) (B.B.)]

Gratuitous passenger on official duty – contract of employment

The deceased was an occupant of the car on official duty and returning in the car of his employer, when the car met with an accident. It was held that the deceased was a passenger in the car, by reason of or in pursuance of a contract of employment, hence, the insurer was liable to the claimant. [(Gopi Bai Ghanshyam Das Advani vs Food Corp. Of India.Bombay) 1983 ACJ 340(Bom)].

Car used in contravention of Limitation as to use

The deceased was carried for hire in a car. It was held that the insurer was not liable for the claim of the death of the said occupant, since the car was used in contravention of the policy condition

prohibiting the carrying of passenger for hire or reward. It was held that the use of the car for the carriage of passengers for hire was an unauthorised use. Hence, the insurer was entitled to avoid their liability. [(United India Fire and General Insurance Corp. Madurai VM.S.Durairaj) 1982 ACJ 261 (MAD)]

Liability in regard to ‘goods carrier’

The insurer submitted that on the basis of the position in law no direction to pay and recover the amount from the insured can be given by the Claims Tribunal for the passenger carried in goods carrying vehicle. The question of liability of the insurer with regard to the ‘goods carrier’ has been dealt in [(Oriental Insurance Company Ltd. vs. Devireddy Konda Reddy and Ors.) AIR 2003 SC 1009] and [(National Insurance Company Ltd. VS. Ajit Kumar and Ors.) AIR 2003 SC 3093] by analysing the provisions of Section 95(1) of Motor Vehicles Act, 1939 as well as Section 147(1) of the Motor Vehicle Act 1988.

Third party risks in the background of vehicles, which are the subject matter of insurance, are dealt with in Chapter VIII of the Old Act and Chapter XI of the 1988Act. Proviso to Section 147 needs to be juxtaposed with Section 95 of the Old Act. Proviso to Section 147 of the Act reads as follows: “Provided that a policy shall not be required

- (i) To cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to, any such employee -
 - (a) Engaged in driving the vehicle or
 - (b) If it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicles, or

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- (c) If it is a goods carriage, being carried in the vehicle, or
 - (ii) To cover any contractual liability.

Proviso appended in clause (ii) of old Act

The proviso appended to clause ii) of Section 95 of the old M V Act of 1939 does not find place in the new Act of 1988. The same reads as follows :

“except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.”

‘Goods Carriage’ as per new Act

The legislative intent in the new Motor Vehicles Act 1988 was to prohibit goods vehicle from carrying any passenger. The position becomes further clear because the expression used is “**goods carriage**” is solely for the “**carriage of goods**”. Carrying of passengers in a goods carriage is not contemplated in the Act of 1988.

There is no provision similar to clause (ii) of the proviso appended to Section 95 of the Old Act prescribing requirement of insurance policy. This is clear from the expression “**in addition to passengers**” as contained in definition of “goods vehicle” in the old Act of 1939.

The difference in the language of “goods vehicle” as appearing in the 1988 old Act and “goods carriage” in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression “in addition to passengers” as contained in definition of “goods vehicle” in the old Act. The position

becomes further clear because the expression used “goods carriage” is solely for the carriage of goods”. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirements of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of “public service vehicle”.

Mandatory Cover for Passengers

Section 147 of the Motor Vehicles Act 1988 mandates compulsory coverage against death of or bodily injury to any passenger of “public service vehicle”.

Limited cover under W.C. Act

The proviso under section 147 makes it further clear that compulsory coverage in respect of ‘*drivers and conductors*’ of public service vehicle and ‘*employees carried in goods vehicle*’ would be limited to liability under the Workmen’s Compensation Act, 1923. There is no reference to any passenger in “goods carriage”.

The inevitable conclusion, therefore, is that provisions of the 1988 Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability thereof. The above position was highlighted in Oriental Insurance Company Ltd. vs. Devireddy Konda Reddy and Ors. [AIR 2003 SC 1009] and National Insurance Company Ltd. vs. Ajit Kumar and Ors. [AIR 2003 SC 3093].

Owner driver whether a third party

Oriental Insurance Co. Ltd. vs. Jhuma Saha and Ors. [Appeal (Civil) 280 of 2007 date of judgment: 16/01/2007]

First and Second Party

As per Motor Vehicles Act and Rules, the owner is not entitled to get any compensation if he drives the vehicle and meets with an accident, as the Insurance Policy scope of cover is meant for third party. The contract between the insured and insurer is that if any accident occurred out of the use of Motor Vehicles, then only the third party is entitled to get compensation. The insurer and the insured is the first and second party and other than these all others are third parties.

The MACT had erroneously held that the vehicle is being insured and an additional premium for the death of the driver or conductor having been paid, the liability was covered by the Insurance Policy. As per the decision in National Insurance Co. Ltd. vs. Nicollella Rohtagi and Ors., [(2002) 7 SCC 456}, the appeal was not maintainable, in view of Section 147 of the Motor Vehicles Act, 1988, the jurisdiction of the Tribunal was confined to a third party claim and, thus, the impugned judgment cannot be sustained.

Section 147(1) (b) of the Motor Vehicles Act, with which we are concerned, reads as under:

- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-
 - (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-
 - (i) Against any liability which may be incurred by him in respect of the death of or bodily injury (to any person, including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of the third party caused by or arising out of the use of the vehicle in a public place.”
 - (ii) Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place”

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Provided that a policy shall not be required-

- (i) To cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923(8 of 1923) in respect of the death of, or bodily injury to, any such employee-
 - (a) Engaged in driving the vehicle, or
 - (b) If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
 - (c) If it is a goods carriage, being carried in the vehicle, or
- (ii) To cover any contractual liability.

Explanation- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

Liability of the Insurance Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act 1988, the question of the insurer being liable to indemnify insured, does not arise.

In Dhanraj vs. New India Assurance Co. Ltd. & Anrs., [(2004) 8 SCC 553], it is stated that: "*an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised*

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representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle".

Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. It has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium paid under the heading "Own damage" is for covering liability towards personal injury. "Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would not be attracted in the present case.

Passengers in Public Service Vehicle

Section 95(1) (b) (ii) covers the risk to passengers carried in a public service vehicle, "against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

Cover while Boarding/Alighting

Questions have arisen as to whether or not a person attempting to board a bus or alighting from a bus and being involved in a road accident would be a passenger within the meaning of the MV Act, since it would mean the application of section 95(2)(b)(ii) regarding the limit of liability. If he was not to be categorized as a passenger in the public service vehicle then the limit of liability as for the case of a "third party would apply."

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The decision reported in [1978 ACJ 160] would throw proper light on the subject since the decision looked at the entire proviso (ii) in sub-section 1 of Section 95 of 1939 Act to see whether such persons who attempt to board the bus or alight from the same could be considered as passengers in the public service vehicle.

A boy made an attempt to board a crowded bus. The conductor whistled to signal to the bus to move on. The boy fell down and sustained severe injuries. It was held that the boy was a passenger of the bus within the meaning of M.Vs. Act and the insurer's liability were restricted as per the passenger liability specified in the policy. The Court considered the principal contention of the applicant that the Tribunal should have held that the insurer was liable for the whole amount of compensation payable to the respondents, since the injured was only attempting to board the bus and could not be categorized as a passenger in the bus within the meaning of the MV Act and that the provisions of section 95(2) (9b) was not applicable to the insurer to raise. [(Gobinda Prasad Mukherjee vs. Sujit Bhowmick and another) 1978 ACJ 160 (Cal.) (D.B)].

It is with regard to proviso (ii) of sub-section (1) in Section 95 that a policy of insurance also covers the risk to such persons as are "*being carried in or upon or entering or mounting or alighting from the motor vehicle*" endorsement No.13 I.M.T attached to commercial vehicle policies for the contract carriage/ stage vehicle carriages vehicles.

When seen in the light of provisions of the M.V Act and the policy of Insurance, it is a contentious point whether or not persons attempting to board a public service vehicle or alighting from it, would not suffer the limit of liability of the insurer vide section 95(2)(b) of the MV Act. This question is best left to the Courts of the land. [(Kala Devi vs. Balwant Singh)1986 ACJ 832(N.D) (N.D)]

Foot on the footboard of the bus and another on the ground

The deceased had one foot on the footboard of the bus and

another on the ground. He fell beneath the left rear wheel of the bus and died. It was held that the driver of the bus was rash and negligent in causing the death of the passenger, that the deceased being a passenger in the public service vehicle, the liability of the insurer was limited as per the statute at the time of the said accident. It is of interest to note here that no effort was made to argue that the deceased was not a passenger when he met with the accident. He had in fact, ceased to be a passenger. He was a third party and hence liability ought not to have been limited as to a passenger. [(Makbool Ahmad vs. B. Huralal) 1986 ACJ 219(Raj)].

Foot on the footboard of a stationary bus

The deceased placed his foot on the footboard of a stationary bus. The driver started the bus and the deceased fell down. He was crushed under the rear wheel. On a question whether the deceased, who was **attempting to board the bus, was a passenger**, it was held that he was a passenger in the public service vehicle, within the meaning of section 95 of MV Act, and hence the insurer's liability was limited as per the statute.

Definition of Passenger

It was held that the word "**passengers**" would include even those persons meeting with death or bodily injury under the circumstances mentioned in proviso (ii) to sub-section (1) of section 95 thus: "*to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of occurrence of the event out of which a claim arises.*" It was observed that the fact that the deceased did not buy a bus ticket would not render him gratuitous passenger and hence not a passenger within the meaning of a MV Act.

Definition of gratuitous passenger

In the case of gratuitous passenger in a motor vehicle, the gratuitous passenger is he who has been given a free lift by the owner or

driver of the motor vehicle. The free lift may be due to a variety of reasons e.g. friendship, direction from superiors, relationship, etc. In the case of taking a passenger gratuitous, there is always an element of obligation on the person so carried free of fare. In the instant case, the fact that the deceased would have purchased the ticket in due course would mean that he was not a gratuitous passenger and hence only a passenger per se.

The Court followed the judgement of the Calcutta High Court reported in the [1978 ACJ 160], in arriving at this decision. [(Uvaraja vs. Patrvathi Ammal)1986 ACJ 506(Mad.)]

About to board but fell down in the rush

The deceased was about to get into the bus, but fell down before that, in the rush of people. He was ultimately crushed under the wheel. Following the decision of the division Bench of the Madras High Court made in the CMA 558/79, it was held that the deceased was not a passenger in the bus and hence the insurer's liability was not limited as per section 95(2)(b)(ii) of the MV Act. In the bench decision it was observed the facts were similar to those in a case where a person fell down in a scramble to get inside the bus and died. "Therefore, we can safely say, that a person attempting to get into the bus and who does not succeed in getting an entry into the bus cannot be taken as a passenger in the bus." [(M/s Southern Motors Madurai vs. C Sivjothiammal) 1982 ACJ (Supp.) 85 (Mad.)]

Attempting to get into a bus

The deceased got down from the bus so as to give way to persons getting down from bus at the bus stop. But before he could get back into the bus, it moved. When he attempted to get into the bus, he fell down. His legs were crushed under the left rear wheel of the bus and he died. It was held that the deceased was not a passenger in the bus, since he was only attempting to get into the bus when the accident occurred. The bench observed that a person who did not get an entry into the bus and failed to get into the bus

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cannot be said to be in any sense a passenger of the bus, even though the deceased may have been a passenger in the first stage of the journey. Hence it was held that the Insurance Company could not invoke the limit of liability towards a passenger in a public service vehicle since the deceased could not be categorized as a passenger in a bus. The bench followed another decision of the Madras High Court in [Madras Motor and General Insurance Co. vs. Perumal Kodar in C.M.A nos. 7 and 25 of 1972.] where it was held that a person travelling on the footboard without actually entering the bus, could not be taken to be a passenger in the bus and that if death or injury was caused to such a person, there could not be any limit on the insurer's liability.

The matter was set at rest by Supreme Court holding that a person who is in the process of boarding or alighting from a bus can be treated as a passenger, and not a third party and the liability is to be decided as per the provision of the Motor Vehicle Act 1988. [1997 ACJ p 6].

Alternate Methods of Settlement

This chapter deals with alternative methods of settlements other than Claims Tribunal, In-house Conciliatory mechanism as well as compromise mechanism.

Case for Conciliatory Settlements

Conciliatory or negotiated settlements of the legal claims are always beneficial to the insurers. It is a means for fast disposal of cases which helps not only the insurance company in expeditious determination of liability but also helps the claimants to get reasonable amount of compensation without waiting endlessly to obtain an award. The fast disposal also helps the MACT to reduce their pendency of cases, to facilitate speedy justice by saving time wasted in unwanted complex procedures of the courts.

The quicker disposal of cases through 'conciliation' is appreciated by the Tribunals since they see this as a positive sign of the insurance companies willingness to help the victims of motor accidents, which is the moving spirit behind the enactment of M V Act 1988 by the legislatures of Indian Republic. The fast disposal of claims also enhances the image of the insurance company in the public eye.

The settlement so achieved, is highly economical to the insurance company. Fast disposal eliminates the adverse impact of inflationary trends and depreciation in value of money and the resultant increase in the amount of awards. In India inflation rate is very high, and it varies from time to time, based on various factors. If we take a

long-term view, we can consider the average of inflation as 7.5%. This is a very conservative estimation of the inflation during the recent past. This inflation results in depreciation of money value in actual terms and we keep adjusting to such inflationary pressure and depreciation in money value, as time passes.

Thus a compensation of Rs. 1,00,000/-, which was thought very reasonable 10 years ago, will appear meagre today. Similarly, any compensation amount that we think reasonable today will appear to be a paltry sum after 10 years. This results in automatically and involuntarily pushing up the award amount. Consequently all awards passed by any court after a lapse of a decade or so, from the date of filing of application, are bound to be on the higher side. This is due to the operation of invisible pressure or atunement of our mind to the inflationary trends and may also be in response to the constant changes in the economic condition of the citizens of our country.

If we work out an example at the rate of an assumed inflation of 7.5% per annum, an amount of Rs. 1,00,000/- ten years ago will workout to Rs. 2,06,100/-. Hence, the Court awards will be in the vicinity of 2,06,100/- which other wise could have been settled for Rs. 1,00,000/- ten years ago. In addition to the award amount, interest is also awarded at the rate of 9-12% per annum. All this will push the total out go to 4,53,420/-. If we allowed the case to be awarded by the MACT.

At this juncture, we should also not forget that Rs. 1,00,000/- which we would have paid as out of Court settlement ten years ago, is not kept idle, but is invested to earn interest / dividends. As our average income on investment is around 10% when we calculate the total income from this investment at 10% compound interest we get Rs. 1,59,370/- and the totals corpus (Principal + Interest) would work out to Rs. 2,59,370/-. Please note that there still would be a net loss of 1,94,050/- (4,53,420-2,59,370). Therefore, if we settle large number of cases through 'alternate methods of settlement' we will save huge amounts by way of reduced claims out go and ultimately make better contribution to society at large.

Conciliatory Committee

U/S 152 of the Motor Vehicle Act 1988, as amended in 1994 in order to dispose of Motor TP Claims and Claims under Jald Rahat Yojana Through Compromise, the concept of Conciliatory Committee, as an alternative forum have been introduced. The conciliatory committee is required to have a Retired High Court Judge or Retired District Judge, Retired Insurance executives (Manager / DGM / GM / CMD of GIPSA Companies) and an Orthopaedic Surgeon.

The 'Conciliatory Committee' would process an application for compensation as per legal advices of the panel advocate and in terms of (as a guide line) the provision of the Structured Compensation u/s 163 A of M V Act 1988, as amended in 1994, for settlement of TP claims between the insurer and the insured persons. The JRY Scheme has been introduced by the General Insurance Corporation of India for settlement of non fatal claims involving non minor injuries, at the pre litigation stage. The Conciliatory Committee is required to process applications for claims under JRY as per legal advice of the panel advocate and on the basis of the opinion of an Orthopaedic Surgeon advising the percentage of the disability sustained by the victim / applicant to recommend to the competent authority for the approval of the claim. Since the settlement is effected at the pre litigation stage and without involving the Court, no consent award is necessary.

But a disadvantage of JRY is that the claimants may again move Tribunals if they feel that the amount passed by the 'Conciliatory Committees' under JRY is inadequate. Therefore, the very purpose of avoiding the legal procedure may be frustrated and the company will not only have to pay the amount given by the committee under JRY but also satisfy the award passed by the Tribunal.

However, in order to avoid this situation, we can take shelter u/s 22C (1) of the Legal Services Authorities (Amendment) Act, 2002, which states "Any party to a dispute may, before the dispute is brought before any Court, make an application to the permanent

Lok Adalat for the settlement of dispute.” Therefore, if our primary liability is established through investigation, the cases may be placed before the permanent Lok Adalat for consent award, which shall be deemed to be a decree of a Civil Court and shall be final and binding on all the parties to the dispute.

Joint Compromise Petition

Divisional in-house Conciliatory Committee (DICC)/ Regional in-house Conciliatory Committee (RICC):

For speeding up the process of litigation and speedy disposal of cases DICC/ RICC had been set up in 1997 in order to explore the possibility of settlement of Motor TP claims exclusively. The DICC consists of Officer in-charge of the Division, Officer in-charge of Motor Claims and one other Officer from non-motor stream. The present revised limit of financial authority of DICC for Motor TP claims is Rs.10,00,000/-.

The RICC consist of Officer in charge of the Region, Officer in-charge of motor portfolio and one other Officer not below the rank of Manager. The present revised limit of financial authority of RICC for Motor TP claims is Rs.18,00,000/-.

If cases are settled through DICC / RICC, a joint compromise petition, duly signed by both the parties, with their advocates, is required to be filed before the respective MACT, where the case is pending, in order to get the consent award.

Step No.1: Documents to be checked / verified for establishing liability

Underwriting Documents

The source for collecting underwriting document is generally the underwriting office.

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- (A) Policy copy with endorsements if any, covering the vehicle at the material time of accident, as mentioned in the claim application.
- (B) Compliance of Section 64 VB

Vehicular Documents

The Vehicular documents mean following:

- (i) Registration Particulars/ Registration Certificate Book
- (ii) Route Permit (if the vehicle is Commercial)
- (iii) Driving License (whether valid and effective)
- (iv) Owner Insured
- (v) Policy record / Court of SDUM having jurisdiction over the area in which the accident occurred.

Documents relating to Police case

- (i) FIR \ Panchnama

Lodging of FIR a must

Emphasis should not be given on DDR (Daily Diary Report), which is an agreement entered in to by the driver\owner and the injured persons\legal heirs of the deceased, to avoid a criminal case, since normally the sections of Indian Penal Code that arise in a case of RTA are 279, 337, 338 & 304 which fall under the category of cognizable offence against which lodging of FIR is a must. The source for collecting documents is Police Authority, Court of SDMJM having jurisdiction over the area in which the accident occurred.

- (i) Police Report u/s. 158(6) of the MV Act 1988, (amended, w. e. f. 14-11-94).
- (ii) Final Police Report / Charge sheet u/s 173 Cr. P. C.

Investigation Report (Mandatory)

The Investigator is required to obtain the details of the following documents :

- (i) Identification of claimant (Voter I.D. Card / Photograph duly certified by the Competent Authority viz., Panchayat / Councillor / Local MLA / MP / Gazetted Officer)
- (ii) Income Certificate of the victim verified from employer, or if self employed, verification through documents.
- (iii) Age proof of the injured claimants deceased, school leaving certificate / Hospital record / Voter ID card.
- (iv) Details of dependents in case of the death of the victim, age, income, status and relation of the dependent / claimant with the victim.
- (v) The involvement of the vehicle's in the accident and the involvement of that claimant injured / deceased in the said accident to be ascertained / authenticated.
- (vi) Driver's statement and owner's statement as to the cause of accident and the nature of loss sustained by the victim/ claimant in detail.
- (vii) All the injury reports of the victims, verified from the respective hospitals / nursing homes on authenticity.

The Panel Doctor has to verify the following aspects

- (i) The alleged injury as narrated under the claim petition, the

medical papers (in original) submitted before him and his clinical examination, all to tally with the nature of the injury.

- (ii) Whether the injury (ies) is/are major/minor
- (iii) Whether claimant has sustained permanent total / partial disablement?
- (iv) Degree of disablement
- (v) Whether the medical bills submitted by the claimants have relevance with the injury treatment
- (vi) Present status of the injured person.

Documents relating to death

- Post-mortem report / Death Certificate
- Source: Police authority, Court of SDJM having jurisdiction over the area in which the accident occurred
- Step no. 2

After verifying all the documents as mentioned above, if it is found that the liability is otherwise not in dispute; the cases may be segregated in order to explore the possibility of out of court settlement.

Necessary assessment of compensation should be made keeping in mind the provisions of MV Act, as well as the guidelines to this effect, and the assessed amount be offered to the claimant by registered post for his consent for compromise, under intimation to the tribunal. If we do not receive any response from the claimant within the specified time of 30 days, then we can approach the Tribunal with the offer for necessary recording by the Court that the claimant is not entitled to any interest on the offered amount since he failed to accept the offer.

If the claimant is ready to accept the offer of compromise on the assessed amount he / she may be requested to give his / her consent for such compromise in writing and the matter placed before the fora as mentioned above, for effecting necessary compromise, or the same may be placed before the tribunal for a consent decree.

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It is a scheme where claimant is not required to file any claim in the Claims Tribunal or Court or any other authority. The settlement is arrived with the assistance of an independent panel comprising of Retired judges, Medical Practitioners and Retired Insurance Executives. The claimants have the liberty to engage advocates and the amount is so arrived by negotiation and mediation process. The claimant is required to submit his claim to insurance company directly along with the Registration book, insurance particulars of the offending vehicle, copy of FIR, proof of age and income, photographs, medical certificate in support of the claim, medical bills, and hospital records and prescribed consent form. However, the claimant may file his claim in Tribunal if the settlement is not reached amicably.

This method is used for third party minor injury claims that do not require adjudication of disability certificate and determination of future earning capacity etc. Besides, it does not require complex arguments and extensive evidence from either party.

Consensual Adjudication

This method is most suitable as it allows both parties to reach a consensus even during the currency of the case files in Claims Tribunal. The contesting parties are free to file the application for compromise so reached in the Tribunal, which is accepted, by the Claims tribunal as consensus adjudication and order to this effect is passed accordingly.

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Himanchal Pradesh High Court has established Conciliatory Boards to expedite the compromise settlement which are aided by the Conciliator appointed by the Courts that help contesting parties to arrive at a compromise.

Lok Adalat

This chapter deals with need for legal aid services, Insures perspective of Lok Adalat, procedure for conduct and participation in Lok Adalat.

Need for Legal Aid

Justice Krishna Iyer has observed "Legal aid is a delivery system of social justice". Legal aid means giving to persons of limited means e.g., victims of motor accidents, in dire need of legal assistance, gratis or for normal fees, legal advice, in Courts in Civil and Criminal matters. The Constitution of India under Articles 14, 38 and 39A adequately expresses the provision of equal justice and free legal aid. Section 304 of the Code of criminal procedure, 1973 provides for legal aid to the accused at state expenses. The Supreme Court of India observed the necessity of the legal aid to the deserving citizens in the State of Bombay vs. Narothamdas Jethabai, AIR 1951 SC 69(1951) 4 SCR 51; 53 BOM LR 402, the Hoscot case, State of Haryana Vs, Darshana Devi 1979 ACJ 205.

Legal Services Authorities Act 1987 has been enacted to provide free and competent legal services to the weaker sections of the society, to ensure that opportunity for securing justice are not denied to any citizen for reasons of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. The legal aid committees / legal aid advice boards have taken a statutory shape in all the states under the Legal Services Authorities Act 1987.

Lok Adalat a Voluntary and Conciliatory Agency

Chapter VI of Legal Services Authorities Act 1987 authorises the State and District Authorities to organise Lok Adalats. Every litigant exposed to hazards of long litigation can take advantage of Lok Adalat. The Lok Adalat works as a ***voluntary and conciliatory agency***, operating on the principle of settlement between the parties. The Legal Services Authorities (amendment) Act 1994 effective from 09-11-1995 has given the Lok Adalat got statutory character and it has been legally recognised.

Certain salient features of the Legal Services Act

Section 19 (Organisation of Lok Adalat for Conciliation)

1. Central, State, District and Taluka Legal Services Authority have been created which are responsible for organising Lok Adalat at such intervals and places.
2. Conciliators for Lok Adalat comprise the following:
 - (1) A sitting or retired judicial officers.
 - (2) Other persons of repute, as may be appointed by the State Government in consultation with the Chief Justice of High Court.
 - (3) Jurisdiction: The following types of cases can be referred to the Lok Adalat.
 - (a) Any case pending before the Court.
 - (b) Any matter, which is falling within its jurisdiction but not brought before any Court for which the Lok Adalat is organised.

Section 20 (Compromise through Conciliation)

References of Cases: Cases can be referred for consideration to the Lok Adalat as under:

- (A) By consent of both parties to the dispute.
- (B) One of the parties makes an application for reference.
- (C) Where the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat.
- (D) Compromise settlement shall be guided by the principles of justice, equity, fair-play and other legal principles
- (E) Where no compromise has been arrived at through conciliation the matter shall be returned to the concerned Court for disposal in accordance with Law.

Section 21 (Decree of Civil Court)

After the agreement is arrived at with consent of the Parties, ***the Conciliators pass award***. The matter need not be referred to the concerned Court for ***consent decree***.

The Act Provision envisages as under:

- (i) Every award of Lok Adalat shall be deemed as decree of Civil Court.
- (ii) Every award made by the Lok Adalat shall be final and binding on all the parties to the dispute.
- (iii) No appeal shall lie from the award of the Lok Adalat.

Section 22 (Judicial Proceedings)

Every proceeding of the Lok Adalat shall be deemed to be judicial proceedings for the purpose :

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- (i) Summoning of Witnesses.
- (ii) Discovery of documents.
- (iii) Reception of evidence.
- (iv) Requisitioning of public record.

Permanent Lok Adalat for ‘Insurance Service’

By amendment no. 37 of 2002, called ‘ Legal Services Authorities(Amendment) Act,’ which came into force with effect from 11-06-02, Permanent Lok Adalat have to be established to cover ‘Public Utility Service’ and ‘Insurance Service’ in terms of the definition of the public utility services u/s 22 A of the Legal Services Authorities (Amendment) Act, 2002.

From a close reading of Act, it is evident that Lok Adalat is an alternative forum where compromise between the parties can be reached at in a case with the intervention of the member Judges. Every Lok Adalat organised for an area shall consist of:

- (a) Servicing or retired judicial official,
- (b) Member of the legal profession and
- (c) Social worker or a person engaged in Para legal activities in the area.

Lok Adalat’s have jurisdiction to determine and arrive at a compromise settlement between the parties to a dispute, in respect of any case pending before, or any matter falling within the jurisdiction of and not brought before any Court for which the Lok Adalat is organised. However, award of the Lok Adalat is at par with the decree of a Civil Court and is final and binding on all the parties to the dispute and no appeal lies in any Court against the award.

Insurers Perspective of Lok Adalat

An insurer has four basic objectives to lean heavily towards the institution of Lok Adalat and other 'Conciliatory Forums' in place of regular Motor Accident Claims Tribunals where we have over 4,00,000 cases pending for adjudication.

Shortening the process of litigation

The first objective relates to drastically shortening the process of litigation in order to save legal costs and interest liability.

Question of quantum

The second objective relates to striking a reasonable deal with the claimants on the question of quantum of compensation, to avoid the possibility of unexpected high awards.

Reduction in accumulated cases

The third objective relates to reduced accumulated cases, which in effect means reduced provisions, ultimately reflecting favourably on the bottom-line of Insurers. From the social view point, reduction in accumulated losses tends to mitigate the hardship of the claimants, by offering of a reasonable sum which suits both the parties.

Reduction in Workload in Office

The fourth objective relates to reduce workload in the office consequently reducing the expenses of management.

Procedure for Conduct and Participation in Lok Adalat

There are three steps in making compromise settlement.

STEP I

Valid Insurance Policy

The insured should have a valid Insurance Policy covering the vehicle involved in the accident, which means that as on the date of accident there should be an Insurance Policy subsisting for the specific vehicle involved in the accident. In other words engine number, chassis number, and registration number of the vehicle involved in the accident, must tally with the details given in the policy and proposal form. The details regarding ownership and the class of vehicle should also be verified.

Date of Accident

If the accident occurred during the policy period, and if it occurred in close proximity zone, the same is investigated thoroughly in regard to regularity in premium payment to authorised representative of insurance company and premium deposit in insurer's office, besides the issuance of cover notes serially.

Valid Driving Licence

The driving licence should be valid for the type of vehicle covered on the date of accident, which means that if the vehicle is heavy goods vehicle (HGV) and the driver has a licence for light motor vehicle (LMV) without endorsement for Transport vehicle, then such a case can not be deemed fit for compromise.

Charge Sheet

The driver of the vehicle should be charge sheeted by the Police, confirming the negligence of the other driver, to protect contributory liability on the other insurance company.

Violation of Permit

There is no violation of permit conditions viz. excess of passenger,

unauthorised passengers e.g., passengers in Goods carriage, passengers travelling in tractor trailer, claim as employee disputed by the insurance company, policy obtained by fraud. It is here that the role of investigator becomes important in verification of facts to insurers satisfaction.

STEP II

Once Step I is found satisfactory, the next step is to decide about extent of liability for death cases / disability /injury cases.

In case of death claim

The income of the deceased should be reduced by 1/3rd in the case of married persons and 50% in case of bachelors for personal expenses as a broad guide line, which may vary depending upon the facts of each case. In case the deceased is aged 20 years and unmarried the 'average age of both the parents' is taken into account for the purpose of applying multiplier. In case the application is filed u/s 163A of the Motor Vehicles Act 1988, then the multiplier is applied as per structured formula given in the schedule; but if the claim petition is made u/s 166 the table of multiplier provided by the company is used. The opinion of the panel advocate should also be sought on what would be the reasonable amount.

STEP III

The next step is to initiate action for Lok Adalat settlement, to achieve the most important goal of prompt compromise to expeditiously provide compensation to the legal representatives of deceased and save on interest liability of the insurer which increases with passing time. The petitioner also prefers immediate settlement instead of unnecessary long drawn exercise in court. There are two ways of doing this as per flow chart no. 1.

Compromise through DICC

The Divisional In-house Conciliatory Committee (DICC) was created

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exclusively for dealing with Third Party Claims and is a very effective forum for reaching compromises in Motor Third Party Liability cases. In respect of conciliatory settlement under Motor Third Party claims Divisional In-house Conciliatory Committee and Regional In-house Conciliatory Committee are vested with higher powers than those conferred on authorities individually. The DICC shall consist of officer in-charge of the Division, officer in-charge of Motor Claims and one other officer from non motor stream, preferably Account department. The RICC shall consist of officer in-charge of the Region, officer in-charge of Motor Claims and one other officer not below the rank of Manager." [Page 11 Para 8 of Financial Standing Order 1997 Booklet (Annexure 'A', Part I Para I regarding formation of DICC)]. The advantage of DICC is that cases can be settled at the convenience of both claimants and insurers. The case file can be scrutinised in depth before offering settlement.

The Conciliatory Committee so formed is required to review at least on monthly basis, claims cases in excess of powers conferred on the highest authority in the Divisional Office or Chief Manager's authority in Regional Office as the case may be, but up to the limit indicated for the relevant committees and take a decision on the settlement of each claim. A continuous record of the claims settled by the committees is kept in separate register, which is inspected by the controlling officers from the Regional Office/Head Office as the case may be, and also by Internal Audit teams. The claim can be settled only when there is an agreement amongst all members of the committees and the relevant entry in the register is countersigned by each of them. The next higher authority decides on disagreements between members of the committee and cases beyond the power of the committee. (Para 9 supra)

Once suitable cases are identified the claimants are sent a registered letter intimating the willingness of the insurance company to settle the claim, giving date, time and the name of the office, which can be contacted for the purpose. In case there is no response, another attempt is made through insurance company's panel advocate so as to make contact with the claimants through the petitioners advocate.

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Once a meeting takes place, the actual amount that is to be offered is explained to the claimants giving detailed rulings and guidelines for determining quantum for death and injury/ disability. The same can be settled through MACT to seek closure of proceeding in Claims Tribunal. In cases involving permanent/temporary disability, the opinion of orthopaedic surgeon may be taken.

Once the amounts have been agreed upon, a memo of compromise is filed in the respective Claims Tribunals who in turn pass a decree for the amount. The Insurance company then deposits the amount with the Claims Tribunal.

Compromise through Lok Adalat

This is another method by which cases can be compromised. It is organised by the Legal Services Authority. They call up the petitioners Advocate to come forward for reaching compromise in the case.

It is advisable that the Legal Council intending to submit cases for Lok Adalat, list out proposed cases of the concerned Insurance Company for disclosing the driving licence and insurance particulars so as to enable the insurance company to come and negotiate effectively. Normally the cases lacking requisite particulars, would not be suitable for settlement in Lok Adalat.

While presenting the case to the Lok Adalat for an effective and just settlement, it is essential that the application submitted be accompanied with the material documents like the certified copy of FIR, Panchnama, Post Mortem report, Wound Certificate and the Sketch of the scene of offence, if available in the related criminal case.

All the files, which are to be considered for settlement in Lok Adalat, should be very minutely checked. Since Lok Adalat is a very effective means of speedy settlement of motor accident claim, it has been observed over a period of time that bogus claims are put up for settlements. This is because of the fact that due to the

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fast pace of proceedings, cases are generally wound up in a day or two, and so it is not possible for the Insurance Companies to check each and every document, pertaining to cases that come up for settlement through Lok Adalat.

If all the documents are not available with the insurance company, the concerned Advocate should be asked to collect all the documents from the Advocate of the applicant, so that all the documents could be scrutinized properly. It is always advisable to have each and every claim scrutinised by the concerned Advocate.

In order to ascertain negligence or contributory negligence, or composite negligence of the persons involved in the case, the aforesaid documents are helpful for assessing the extent of negligence. If the investigation officer has not prepared the *sketch of scene* of offence during the course of his investigations, the petitioner should, at least, be asked to make efforts from the recitals in the '*Panchnama*' to reconstruct a sketch of the scene depicting the topography of the place of impact and directional situation of the road. Such preparation not only helps in the prosecution of a case effectively before the Lok Adalat, it also helps in conducting the case before the Motor Accident Claims Tribunal, in case it is not decided at Lok Adalat.

The Legal Services Authority fixes a date, when the petitioners along with their Advocates are required to be present. Once the extent of compensation is agreed upon, we can not go back on it. Here also the petitioner's advocate can be called to the office to discuss the quantum and the matter can be subsequently reported at Lok Adalat. Therefore, unless the case file is complete in all respects, the case should not be taken up for compromise.

After filing in the memo of compromise, it should be pursued till the copy of the compromise award is received and compensation cheque released to claimants.

Can a settlement made in Lok Adalat be interfered with by the High Court? There was a news in a daily newspaper about the case of a girl aged 3 years old, losing both her legs and the claim

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was compromised in Lok Adalat for Rs. 30,000/- as full and final settlement. Allahabad High Court *suomotu* (of its own) noticed inadequacy of award amount on the basis of news paper report and enhanced the award to Rs. 1,00,000/- [1994 ACJ P 036 (Allahabad)]

LOK ADALAT/ MACT CLAIMS SCRUTINY FORM

MACT CLAIM NUMBER

OUR FILE NUMBER

Name of the applicant

Vehicle number

Date of accident

Time of accident

A. General

1. Are the driver and owner defended by insurer Yes/No
2. Whether summon is served to owner Yes/No
3. Whether investigation report is received by the insurer Yes/No
4. Whether NFL is paid Yes/No

B. Police papers

1. Whether FIR is in Time Yes/No

If no, how much late_____

Are you satisfied with the reason for late FIR Yes/No

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State the reason _____

2. Whether involvement of the vehicle is clearly established Yes/No

3. Whether involvement of the applicant is proved in the accident Yes/No

C. Driving Licence, Vehicle particulars and Policy particulars

1. Type of the vehicle involved in the accident Transport/ Non Transport

2. Whether the vehicle is used as per permit at the time of accident Yes/No

3. Whether Policy is confirmed Yes/No

4. Whether DL is found valid and effective Yes/No

5. Is there any breach of policy condition Yes/No

6. Whether vehicle was fit to ply on the road at the time of accident Yes/No

D. Applicant's detail

1. Nature of claim Injury/PTD/Fatal

i. If TPPD claim, liability of the company Limited/ Unlimited

ii. Limit of liability for Property Damage

2. Status of the injured /deceased in the accident

IF FATAL CASE

Specify the document which is produced by the legal heirs of the deceased as proof of heirs

If Fatal Case	As per Police papers	As per Medical papers	As per petition
Number of dependent			
Relationship with deceased			
Age of deceased			
As of dependent			
Occupation of deceased			
Occupation of dependent			
In Injury Case			
Age of the injured			
Occupation of the injured			
Income of the injured			
Age of the applicant			
Occupation			

- o Medical Leave Certificate (MLC)
- o Whether the nature of injury may result into Yes/No
- o Permanent disability as per MLC
- o Primary Treatment taken at

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- o Secondary treatment

Disability assessed by the Doctor

E. Quantum

1. Whether other vehicle is involved in the accident Yes/No
 - (a) If yes, is it insured with other insurance company Yes/No
 - (b) If yes name of the insurance company
2. Is it a group case? Yes/No
 - (a) If yes, whether any case is previously/ Currently settled in Lok Adalat or by MACT Yes/No
3. Injury
 - (a) Nature of injury
 - (b) Disability assessed by the Doctor and %—————
 - (c) Disability % to be considered—————
 - (d) Amount claimed—————

	Injury	Fatal
Monthly income assessed		
Multiplier applied		
Feature pecuniary loss		
Actual loss of income		
Pain, shock, suffering		

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Medicine & drugs		
Food transportation etc		
Attendance		
Sub Total		
Less contributory negligence or share of other insurance company		
Net Liability of the insurance company		

Special Comments if any_____

As per my opinion the liability of the company is absolute and clear and it is a fit case for settlement in Lok Adalat

Advocate of the insurance company

- Whether any fee paid
- Balance fee to be paid

[The above questionnaire has been prepared by Mr. D.C. Chinoy Sr Asst. DO 1 Rajkot to be filled up and duly signed by the Advocate for each case coming up for Lok Adalat settlement]

Frauds in Motor Insurance

This chapter deals with meaning of fraud and legal provisions, Kinds of fraud, various stages of commission of frauds, effective handling of fraud cases, and preventive management of fraud cases.

Meaning of Fraud and Legal Provisions

The Webster dictionary provides meaning of fraud as, “intentional perversion of truth in order to induce another person to part with something of value or to surrender a legal right.” In essence fraud is an act of deceiving or misrepresenting another person dishonestly and/ or fraudulently, for achieving a wrongful gain or causing a wrongful loss.

Provisions of Indian Penal Code

Section 2 (23-25) of IPC provide definition of ‘wrongful gain’; ‘wrongful loss’ along with acts committed ‘dishonestly’ and ‘fraudulently’ as hereunder:

- “**Wrongful gain**” is the gain by unlawful means, of property, to which the person so gaining is not legally entitled.
- “**Wrongful loss**” is the loss by unlawful means, of property, to which the person losing it is legally entitled.
- “**Dishonestly**”: Whoever does anything with the intention of

causing ‘wrongful gain’ to one person or ‘wrongful loss’ to another person is said to do that thing ‘dishonestly’.

- “**Fraudulently**” A person is said to do anything fraudulently, if he does that thing with intent to defraud but not otherwise.

Fraud under Section 463 of IPC provides an intention to deceive, whether it is from any expectation of advantage to the party himself or from ill will towards the other, is immaterial. Forgery under Section 463 of IPC provides that whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery.

Making a False Document

Section 464 of IPC provides that a person is said to make a ‘false document,’ who dishonestly or fraudulently makes, signs, seals or executes a document or part of document, or makes any mark denoting execution of a document, with the intention of causing it to be believed that such a document or part of a document was made, signed or sealed by or by the authority of a person, by whom or by whose authority he knows that it was not made, signed, sealed or executed or at a time at which he knows that it was not made, signed, sealed or executed.

Secondly the person is said to make a false document who, without lawful authority, dishonestly, fraudulently, by cancellation of otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at time of such alteration.

Thirdly the person is said to make a false document, which dishonestly or fraudulently causes any person to sign, seal, execute or alter a document knowing that such person by reason of

unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the documents or nature of the alteration.

False Evidence

Section 191 of IPC provides provision for giving false evidence as "*Whoever, being legally bound by oath and express provision of law to state the truth or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true is said to give false evidence*". The statement is false whether it was made verbally or otherwise.

Fabricating False Evidence

Section 192 of IPC provides provision for fabricating false evidence as whoever, causes any circumstances to exist or makes any false entry in a book or record, or makes any document containing a false statement intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding or a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding is said to fabricate "false evidence."

Provisions of Civil Procedure Code

Sub-section 2 of Section 48 of CPC provides certain circumstances of fraud.

Criminal Procedure Code

Section 156 of Cr. PC provides that an officer in-charge of a police station may, without the order of Magistrate investigate any

cognizable case, which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Ch XIII.

Section 102 provides the power to Police Officer, to seize certain property when any offence is committed and provide a seizure memo to be produced before the competent Court.

After Final Report is filed by the Investigating Agency in criminal cases, only Magistrate has the power and the aggrieved can file appeal or seek judicial review. [2007 (7) Supreme 495].

Motor Vehicle Act 1988

Section 158(6) of Motor Vehicle Act 1988 provides that as soon as any information regarding any evidence involving death or bodily injury to any person is recorded or report under the section is completed by a Police Station, the Officer in-charge of the Police Station shall forward a copy of the same within 30 days from the date of recording of information or as the case may be, on completion of such report to the Claims Tribunal and Insurer.

Kinds of Fraud

Conversion of non-road traffic accidents into road traffic accidents

Some of the examples are:

- (i) A person falling from tree / slipped in staircase or bathroom or receiving injury in likewise manner.
- (ii) Natural death / suicide / murder converted into road traffic accident by way of staging false accident.

Conversion of medical cases for wrongful gain

- (i) Medical expenses incurred for some disease are met out by way of filing MACT cases by falsely associating it with some false injury.
- (ii) Permanent disability either on medical ground or congenital (since birth) is converted into disability arising out of road accident.

Frauds in road accidents

- (i) Substitution of uninsured vehicle by an insured vehicle.
- (ii) Late implication of insured vehicle in case of hit and run.
- (iii) Substitution of name of the driver having no driving licence by the name of a driver having a valid driving licence.
- (iv) Addition of names of the persons not affected by accident, either at the time of finalizing charge sheet or writing general report.
- (v) Impersonation either for the driver or victims of the accident or claimants.
- (vi) Filing of more than one application in different MACT(s) due to the provision permitting filing of claims at the place of accident, at the place where the claimant resides, at the place of business of claimant, or where the branch office of the respondent company is situated. It may be done simultaneously at one time or at different times. It may be during the pendency of first case or when the first case had already been decided, due to the omission by the legislature in respect of limitation period for filing road accident claims.

Underwriting Frauds

- (i) Using fabricated and bogus cover note, policy document or Certificate of Insurance.
- (ii) Forging a cover note or Photocopy of existing cover note, by way of interpolation of dates, name of insured and vehicle number.
- (iii) Issuance of ante-dated cover note / deposit challan / receipt / by authorised person of the company.
- (iv) Issuance of original cover note to insured, without filing the time of commencement of the cover in cover note, with the intention to give wrongful gain to insured, and submitting copies thereof, in the office after filling the time of commencement of cover.
- (v) Misuse of signed, blank cover notes handed over to Agents/ Dealers /RTA agents by the Development officer/ Branch Manager.
- (vi) Acceptance of cover by authorised officer either in collusion with the issuer of the cover note or due to gross negligence.
- (vii) Acceptance of premium in cash, for ante dating by way of adjusting the premium on back date while the genesis is operative on the date. (It can be operative up to next 6 days) or by way of showing as late collection scroll, particularly of Friday evening.
- (viii) Acceptance of premium by back dated Cheque/ Third Party cheque to adjust the premium of bogus cover.
- (ix) Cheque of the date, knowingly that it will not be honoured by the bank.

Various Stages of Commission of Frauds

- (i) At the time of underwriting, when cover is given knowingly about the occurrence. If cover is not available, then by arranging forged cover.
- (ii) By way of furnishing wrong information to Police Authority or by way of arranging False FIR through Police Authority.
- (iii) By way of arranging false medical records / forged hospitalization records and also Medical Leave Certificates.
- (iv) By way of arranging certificates of Competent Medical Practitioner for creating non-existent Permanent Total or Partial Disablement or to exaggerate percentage of Permanent Partial Disablement.
- (v) By way of arranging vehicles for non-traffic or traffic accidents in collision with some vehicle owners.
- (vi) By way of arranging for bogus Employment Certificate, Tax Receipts, RC Books, Post arranged driving licenses, age certificates, etc.
- (vii) By way of furnishing wrong information in the application for compensation filed in the MACT and / or criminal court, in respect of dependency, occupation, income, age, injury, accident itself, impersonation, etc.
- (viii) By way of staging examination-in-chief through stock witness in relation to the information laid down above.
- (ix) By way of collusion with the insured and sometimes in connivance with advocates of the Company.
- (x) Satisfaction of award where grounds of successful appeal are available.

Identification of Fraud

Thorough knowledge of MACT cases, M V Act, Criminal Procedure Acts and CPC and document related in connection thereof should be there to detect the fraud. Some examples are:

- (i) ‘FIR’ provides information about the cause and nature of accident, negligence, vehicle no., name of the driver, place of the accident, name of the victims of accident, names of the hospital where the victims were first admitted, name of eye witnesses.
- (ii) ‘Accidents register’ gives information about the above facts.
- (iii) ‘Seizure memo’ gives first information about the existence of policy, name of the driver and also the driving licence seized along with vehicle records.
- (iv) ‘Panchnama’ / site sketch plan at the place of accident gives information about cause of accident, and negligence part.
- (v) ‘Inquest report’ gives information about the deceased person, time of accident, time of identification of dead body, and outer marks of injury, hurt, etc.
- (vi) ‘Post Mortem Report’ gives information about time of death, age of deceased and cause of accidental death.
- (vii) ‘Statement of witness’ given before the Police Authority in accordance with section 161(3) of Cr. PC gives information on the persons involved in criminal cases where as, stock witnesses are examined in MACT trials.
- (viii) ‘Report of Motor Vehicle Inspector’ informs about the damages to the vehicle, with date of accident and inspection. It can also be inferred from there, if vehicle had some mechanical fault. It gives information about the name of the owner and the driver.

- (ix) ‘Charge sheet’ informs about the negligence of the driver, in addition to giving other information like vehicle involved persons dead or injured, etc.
- (x) ‘Findings in a criminal case’ such as non-involvement of vehicle or non-accident cases.

Effective investigation

The perusal of above-mentioned documents and probing mind of MACT officer will be able to detect if any fraud is involved. Apart from these, effective investigation should be arranged for the corroboration of the vital facts and to dig out additional information to ascertain the truth. For effective investigation following norm should be followed:

- (i) The investigator must visit the place of occurrence of accident to ascertain the place of accident / details of accident / victims etc. It is preferable that this part of investigation is conducted immediately after the information of accident is made available through any source such as newspaper etc.
- (ii) Details of information in relation to victims and claimants should be ascertained by the investigator from the residence/ dwellings of the victim/ claimants and from the neighbours of this person. As proof of it, the investigator should bring recent photographs of these persons, as well as the persons whose statements he obtains in support of the facts. Weightage should be given to the documentary evidence.
- (iii) Investigator should specifically collect the details of the offending vehicle, the driver at the time of accident, owner, RC particulars, insurance details, so that any fraud in connection with aforesaid should be detected at an early stage.
- (iv) The investigator must bring a copy of Medical Leave Certificate, Hospital record where the victim allegedly had been reported/admitted. In addition to it he must bring

information if any other hospital or clinic was situated near the place of accident. If yes, then the reason for admitting victims to a distant hospital. Copy of prescription, discharge certificate, bills of purchase, etc must be collected.

- (v) Identification of fraud is also possible if investigation is arranged by introducing modern technology like videography, audiography, etc., so that fraud is proved conclusively.
- (vi) Own damage claim file should be connected with MACT claim file for verification of facts and detection of frauds.

Underwriting fraud can be detected at an early stage through:

- (i) The investigation report
- (ii) The seizure memo
- (iii) 64 VB Compliance Certificate
- (iv) The copy of cover produced by the applicant in MACT in support of the claim.
- (v) Any complaint received in the office.

Effective Handling of Fraud Cases

Frauds committed with internal support

The cases falling under ‘close proximity’ must be reported to the controlling office immediately with all documents as prescribed by the guidelines. Investigation must be made into the close proximity cases to exclude the possibility of antedating or old losses being camouflaged. If antedating is found, immediate departmental action through vigilance should be initiated so that a stand on fraud in collusion with the employees/ agents could be taken in defence in MACT. In such cases the cover note issuance authority of the suspected employee should be withdrawn simultaneously while

the matter is being reported to vigilance department for initiating action.

It would be necessary to establish fraud at trial level by deposing through the authorized officer of the company, establishing policy/ cover note/ other documents and initiating departmental action.

Frauds Committed by Outsiders

- (a) FIR should be lodged before the competent police authority. In case police authority does not take cognizance of it, the complaint should be made to the judicial authority.
- (b) Specific pleas on the issue should be raised in written statement itself. If detected at a later stage, it should be raised through additional petitions before MACT.
- (c) Available evidences must be produced in the MACT either through the documents/ investigator/ officer of the company or voluntary witnesses. In case any document is adduced, it should be deposed through the person who issued the document e.g., RTA record, Hospital record.
- (d) False disability certificates must be challenged through our panel orthopaedic medical practitioner.
- (e) If the fraud is detected after the award, the matter must be brought to the same court, which passed the award under Section 151 of CPC in the light of recent Supreme Court judgement which says that no Court is powerless to review its own judgement, if judgement is obtained by way of fraud or false information, whatsoever.
- (f) If the fraud is detected after the appeal is filed it must be submitted with proper prayer by way of specific petition for consideration as additional evidence, in the light of judgement of Supreme Court.

Frauds by Facilitating Agencies

- Advocate (See Role of Advocate)
- Police (See Role of Police)
- The details are given in appropriate chapters.

Preventive Management of Fraud Cases

- (i) In extreme cases the practice of issuance of cover note should be abolished. It would be appropriate to consider functioning of non-TP offices. Also where there are rampant cases of fraud related to the underwriting, the office should be closed / staff should be rotated and all facilitating personnel must be reviewed / changed.
- (ii) Care must be taken when fraud is detected the first time to appoint specific investigators and the advocates who have enough skills and standing to deal with such cases. There should be interactive sessions with advocates, investigators, underwriters and other connected persons with MACT offices.
- (iii) In cases of frauds connected with major accidents, necessary assistance may be invited from the media whose first time reporting might be used as evidence.
- (iv) The time has come when the leading investigators should be appointed in each District nationwide, who will work directly under the supervision of controlling offices. They should also be instructed that they will personally verify all accidents in Districts. If any case is related to the company they will immediately commence their investigation in the matter and shall collect all particulars / documents / information from various statutory authorities, hospitals, independent witnesses, etc. Emphasis should be on their creating their own data bank relating to all the accidents in the vicinity. Strict legal action is

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to be initiated against the hospitals stock witnesses/ doctors and others if they are found involved in the fraudulent activities against the company.

- (v) Advocates should be instructed to arrange for summons / bailable warrants, etc for the non cooperative witnesses and persons representing statutory authorities.
- (vi) Such cases should not only be defended properly but after establishing the fraud, they should also be published in newspapers, electronic media and on other available platforms.
- (vii) Initiation of criminal action is also suggested against the persons involved in fraud.
- (viii) Some of the judgements like [M. Jayanna vs. K. Radhakrishna Reddy] of Hyderabad should be distributed among all the officers and dealing advocates from the nodal offices.
- (ix) When the role of advocate appears to be doubtful, this misconduct must be dealt with in accordance with the laid down guidelines in Advocates Act.
- (x) No cover note must be issued by the development officer/ agent for TP cases to save the company from the liability of pay-and-recover in cases where the premium cheques are dishonoured.
- (xi) No third party cover should be issued without proper identification and inspection of the vehicle.

False and Fabricated Claims

In [2007 ACJ 2824] it was held that minor discrepancies in the FIR would not prejudice the sustainability of the claim petition. [(Tulsa Bai vs. Sadhu Singh) 2007 (4) TAC 742 (MP)] If there is inconsistency in the version of the accident, the dismissal of the claim petition is in order. [2007 4 ACC 151 (Jhar)]. There was a

delay of 6 months in filing the FIR and the evidence of the so-called eyewitness was not trustworthy. The dismissal of the claim petition was upheld in appeal. [(Shaila Bhat vs Vijaypal Singh) 2007 (3) ACC 63 (Uttar)]. In a fabricated claim by an injured policeman, the claim was dismissed with directions to Police to take action against the claimants/policeman. In spite of the driver being convicted on admission of guilt, the claim was dismissed as false. [2006 ACJ 1771(Kant)].

Power to Recall by Tribunals

In [(United India Insurance Co. Ltd., vs. Rajendra Singh) – 2000 ACJ 1032] the Supreme Court had adverted to tainted claims in this jurisdiction and held that the Claims Tribunals had the inherent power to review/recall awards which are alleged to be tainted with fraud. It was held that fraud and justice can never go together and no insurer can be deprived of his right to seek and recall the award, which is alleged to be so trained.

There were a couple of claims lodged by father-son duo alleging involvement of an insured vehicle. Four months after the awards were passed in lakhs, there was a visitor to the insurer who produced a document to demonstrate that the claims were fudged and fabricated. The insurer immediately approached the Claims Tribunal to seek and recall the award. The Tribunal dismissed the applications as not maintainable on the ground that the Claims Tribunal had no such power of review. The remedy for the insurer was held to be by way of an appeal. The insurer moved the High Court by way of writ petition. That too met with the same fate. On appeal to Supreme Court, it was held that the insurer was entitled to move the Claims Tribunal under Secs.151 & 152 CPC., irrespective of whether or not the power of review was vested statutorily with the Claims Tribunal. The Supreme Court held that it had the inherent power from its very Constitution to deal with such allegations of fraud. The remedy of appeal was an unrealistic one since the insurer would obviously be unaware of the elements of fraud while contesting. Any appeal would be futile as there would neither be pleading nor evidence. Therefore, it was held that review/recall of the award was the proper remedy. The appeals

of the insurer were allowed, directing the Claims Tribunal to reopen the awards and decide them afresh.

There is yet another decision reported in [(Oriental Insurance Co. Ltd., vs. R. Mani) – 2000 ACJ 247 (Mad)] on similar lines holding that the Claims Tribunals of such kind had the concomitant power to recall awards tainted by fraud from its very Constitution. Thus the taint of fraud and fabrication in MACT jurisdiction is a recorded fact in law reports.

But Tamil Nadu had the unique distinction of providing a dubious lead in having a major share of such tainted claims, which has now culminated in an order by the High Court reported in [(National Insurance Co. Ltd., vs. State of Tamil Nadu) – 2005 (1) LW 176] wherein the complaints of insurance companies have been directed to be entrusted to Central Bureau of Investigation, New Delhi, for re-investigation. It appears that the menace of such false and fabricated claims is not unique to the genius of Tamil Nadu. Such claims do exist all over the country and are a real menace crying to be dealt with to safeguard the purity of this welfare jurisdiction. The orders dated 1/3/2006 is now pending before the Apex Court in SLP at the instance of State of Tamil Nadu and hopefully it will look at it in a the national perspective.

False Premises

It is not as if fabrication is only in falsely implicating insured vehicles in motor accidents where the vehicle is unidentified. An accident was originally reported to Police as a **skidding of a scooter** leading to a fall. After six months the mishap was converted to a collision between the scooter and an insured. The High Court came down heavily on the claim as a fraud and fabrication. It was held that appreciation of evidence should be in proper context and the earliest version should be taken to be truthful as lapse of time enables parties to fabricate the facts. It was held that sympathy for the victims should not be misplaced. The claim petition was held fit to be dismissed as false and fabricated. [(United India Insurance Co Ltd vs. Pawan Tikkiwal) 2007 (4) TAC 77 (Raj)]: also in [{2007

ACJ 2570} & {2008 ACJ 210 (Raj)} it was held to be a fabrication based on the discrepancies in documentary evidence and the oral depositions.

But there are instances of persons dying from AIDS, Jaundice, being falsely claimed to have died from motor accidents. In a recent case, murder was converted to motor accident. The Insurer was held not liable [2008 ACJ 113 (Kant)]. Injuries suffered due to falling from a tree or heights are fixed as motor accidents. There is *willing complicity* of the owners of vehicle, drivers, police personnel and medical professionals too to fabricate a claim. In a case of fraud it would be open to the aggrieved to file a writ petition since fraud would vitiate any judgment intended to do justice. [(New India Assurance Co. Ltd. vs. MACT, Gauhati) 2007 ACJ 1360 (Gau)].

It would suffice to record a couple of them and the events leading up to the orders of the High Court, Madras directing re-investigation by CBI. In 1996 there was an accident in Tiruppur area of Tamil Nadu involving a Maruthi car in which some persons were travelling when it hit a palmyrah tree. The FIR was registered at the instance of a passenger on the car, stating the manner of accident as the car having lost control and hitting a palmyrah tree. Six months down the line, police investigation suggests that one Mr. Kittan had come to the Police Station to relate a conversation he had overheard between a driver and a cleaner of goods vehicle, at a teashop on the highway. According to it the driver of the truck had laughed out aloud and related to the cleaner that six months earlier there was an accident involving a Maruthi car and the injured passengers were unaware of the involvement of the truck. One Good Samaritan Mr. Kittan had noted the vehicle number. This event was related to Police authorities on a Friday and the following Monday morning the driver/owner of the vehicle was arrested and in a jiffy charge-sheeted, they confessed to guilt and were convicted to pay fine before a criminal Court. Thereupon, 5 motor accident claim petitions were filed before the Claims Tribunal seeking compensation from the owner of the vehicle and the insurer of it.

Insurer's right to Challenge Conviction on Abuse of Process of Law

The insurer is not a party to the Criminal Court proceedings. Though Criminal Court verdicts are not binding on claims Tribunals, a plea of guilt would stop the driver and insurer from disputing otherwise in a claim proceeding. In the criminal jurisprudence insurer's right to challenge such conviction on abuse of process of law was unheard of and not reported till only some years back. The insurer chose to move the High Court by way of Civil Revision Petition in 1998 challenging the order of conviction of driver/owner on admission before the Criminal Court under Art. 227 as having arisen out of an abuse of process of law. The jurisdiction of High Court under Articles 226 and 227 and Sec.482 Cr.P.C. were invoked for the said purpose. The petition was admitted and stays on the claim petitions were granted. Ultimately, it culminated in an order of the High Court directing the Crime Branch in Tamil Nadu to conduct re-investigation of the closed criminal action in the light of the evidence submitted by the insurer that the claim was a fabricated one [in (National Insurance Co. Ltd., vs. K. Nandabalan) – 2005 (2) LW 439.]

This course of action was probably the only one of its kind embarked on by an insurer until [(Rajendra Singh's Case) 2000 ACJ 1032] opened their eyes to the possibility of recall of the award. Thereafter, in similar circumstances of fudging in a claim, the insurer moved the High Court under Art. 226 seeking for re-investigation of a closed criminal case, by the higher echelons of the Police establishment and to file an additional charge sheet, if necessary, under Sec.173 (8) of Cr.P.C. A writ of mandamus was issued by the High Court to the Police authorities. The authorities failed to comply with the directions and contempt petition arose therefrom. During pendency of the contempt proceedings the Police Authorities filed a report confirming that the allegations of the insurer on false and fabricated claims appeared to be correct and that the accident might have been a stage-managed one. By that time it was widely reported in the media that in Namakkal belt of Tamil Nadu there were scores of such false and fabricated claims and huge loot was

going in the name of welfare jurisdiction. Claims unrelated to motor accidents were manipulated as motor accident claims and compensation sought for in lakhs and even crores.

Nandabalan's Case – Constituting a Central Agency to consider the complaints of insurers

Taking the cue from this wide reportage, the insurer moved an application before the High Court seeking for creation of a re-investigative mechanism with the Crime Branch of Tamil Nadu Police, as distinct from the local police establishment. It was pointed out that the local Police establishment, medical men and lawmen were in the thick of the scam and it was widespread. The State Public Prosecutor was called by the High Court, Madras who appeared and confirmed the scam in all its manifestations. It was recorded that the State was equally inclined to expose the scamsters and proceed against them. The High Court, thereupon, delivered a verdict constituting a Central Agency at Chennai to consider the complaints of insurers with regard to false and fabricated claims. The order [in (National Insurance Company Ltd., Coimbatore vs. K. Nandabalan, 2005 (2) LW 439)], in full is a unique decision of its kind, fully revealing the goings-on in this jurisdiction.

1. “By order dated 22.10.2002 in W.P. No.38891/2002 this Court directed the first respondent therein to consider the representation dated 03.07.2002, stated to have been sent by the petitioner to him, if not already considered and disposed of, within 30 days from the date of production of a copy of the order in the writ petition before the first respondent. Complaining that the first respondent has not complied with the direction referred to above and such failure has a direct impact on the pending proceedings namely, MCOP No.1060/2001 on the file of the Motor Accident Claims Tribunal (Fast Track Court No. 2), Tirunelveli, the Insurance Company has come up before the Court in this contempt petition. The contempt Petition was admitted and notice was ordered. After service, the proceedings underwent a few adjournments. Ultimately, the representation dated 03.07.2002 of the petitioner had met with

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a written response from the respondent in the contempt petition, which reveals a startling state of affairs in making a claim case before the fast track court referred to above.

2. Learned counsel for the petitioner had stated that admittedly the response of the respondent in the contempt petition to the earlier order of this court was belated. But none-the-less he requested the Court, not to take serious note of that fact but to close the contempt petition. However, before closing the contempt proceeding, the learned counsel wanted this court to send a message to the Law Enforcing Agency in this State about the callous and indifferent manner in which the Law Enforcing Agency is treating the complaints already given/to be given by the Insurance Companies complaining of fabricated records, to make it appear as though a particular vehicle is involved in a road traffic accident, so as to bolster all false claims of such alleged victims. In support of his case, the learned counsel had stated that there was a racket going on in this state involving the handiwork of a number of people from all fields in fabricating the records at the police station level, as well as at the hospital level, and those records are used to give colour to a motor accident claim before various Tribunals. According to him, whenever the Insurance Company, shown as the insurer of the vehicle in question, has reason to raise its eyebrows and file a complaint before the concerned police, there appears to be either no response or only a lethargic response. This, according to the learned counsel, would amount to exposing various Insurance Companies to bogus claims before the Motor Accident Claims Tribunal, resulting in substantial monetary loss. In other words, according to the learned counsel, liability is fastened on the Insurance Companies on fabricated records. A number of statements in the press were also produced before this court in and by which such a large-scale of on-going racket has been brought out. Learned counsel had also filed a tabular statement containing details of various cases pending before various claims Tribunals filed against the Insurance Company in question, which according to him, are suspected to be on fabricated records.

3. In the light of the above materials this Court thought it fit to have the assistance of the State Public Prosecutor as to how best

this menace could be checked.. As already stated, the written reply sent by the respondent in the contempt petition to the petitioner's representation dated 03.07.2002 *prima facie* disclosed a sorry state of affairs. If those materials are found to be true, then it brings a disgrace to the noble legal profession. The argument put forward before this Court by the learned counsel for the petitioner was that, persons in police service were also not far off from this rot. Having regard to the entire spectrum, the learned State Public Prosecutor would state that the situation as projected before this Court is really very serious and warrants effective steps to curb the menace. Learned State Public Prosecutor also added that the State was not lagging behind in extending a helping hand to save the Insurance Companies from such bogus claims and in fact, when such instances were brought to the notice of the Law Enforcing Agency, investigation had been ordered. It is also the submission of the learned State Public Prosecutor that having regard to the ramification of the issues involved, which appear to be in the entire breadth and width of the State, it was desirable that one Central Agency may be constituted to look into complaints of the types referred to above, so that the investigation may proceed in the right direction and in all earnestness. Having regard to the issues involved, which may disclose the involvement of many persons in the various fields viz., legal, police and medicine, I am of the opinion that a Central Agency headed by the Deputy Inspector General of Police, CBCID, Chennai may be constituted for the purpose of looking into all complaints relating to bogus claims, before the Motor Accidents Claims Tribunal. Accordingly a Central Agency having its office at Chennai headed by the Deputy Inspector General of Police CBCID was constituted as the Agency to investigate by itself by any of the officers attached to it or transfer the investigation to any officer of competent jurisdiction within whose jurisdiction the cause of action for filing a motor accident case has arisen. In the event of transferring the work of investigation to any officer other than an officer attached to the Central Agency, the Central Agency shall keep monitoring the Investigation to be done by the officer to whom the work has been transferred. The Central Agency shall make every endeavour to complete the investigation in respect of crimes so brought to its notice within 60 days from the date of receipt of such a complaint and file the final report

before the court having jurisdiction over the area where the cause of action has arisen. The date of filing of the final report and the court, before which it is to be filed, shall also be informed to the complainant well in advance.”

Reinvestigations closed as mistake of fact

Having read the said decision, it would appear that insurers could breathe easy to face the scam. It was true that during the said proceedings and in the immediate aftermath of the said decision, there were a host of withdrawal of claims fearing criminal action. Insurers were able to save crores of rupees. But some months down the line, it was found that the scamsters had devised ways and means to get over this hiccup.

The complaints of insurers for reinvestigation, were being closed by the dozen, on the premise of Mistake of Fact. The insurers were in no position to defend the motor accidents claims, based on fraud, and equally challenge the criminal Court verdicts on other fronts. It was practically an impossible exercise. Dissatisfied with the functioning of the Central Agency, the insurer moved the High Court seeking entrustment of such re-investigation to CBI. The High Court by orders dated 1/3/2006 reported in 2006 (2) LW 176 has granted the relief prayed for. It also being an order of its own kind, on the national level, and deemed appropriate to extract in full.

“By order dated 29.10.2003 passed in contempt Petition No.431 of 2003 [(National Insurance Company Ltd., Coimbatore vs. K. Nandabalan, 2005 (2) LW 439)]. the learned Single Judge directed to Constitute a Central Agency headed by the Deputy Inspector of Police. CB-CID, Chennai for the purpose of looking into all the complaints relating to bogus claims before the Motor Accident Claims Tribunal filed, based on fabricated records. It was directed that whenever complaints of such types be given to the Central Agency so constituted the Central Agency may have the complaints investigated by any of the officers attached to it or transfer the investigation to any officer of competent jurisdiction within whose

jurisdiction the cause of action for filing a motor accident case has arisen. It was further directed that in the event of transferring the work of investigation to any officer other than an officer attached to the Central Agency, the Central Agency should keep monitoring the investigation to be done by the officer to whom the work has been transferred. The Central Agency was directed to make every endeavour to complete the investigation in respect of crimes so brought to its notice within 60 days from the date of receipt of such a complaint and file the final report before the Court having jurisdiction over the area where the cause of action has arisen.

The contempt petition was filed by the National Insurance Company Limited complaining about the callous and indifferent manner in which the Law Enforcing Agency was treating the complaints filed by the Insurance Companies complaining of fabricated records to make it appear as though a particular vehicle was involved in a road traffic accident so as to bolster all false claims of alleged victims. The learned single judge noticed that there was a racket going on in this State involving the handiwork of a number of people from all fields, in fabricating the records at the police station level as well as at the hospital level, and other public officials are involved in the scam. In fact, the learned Public prosecutor appearing for the State admitted the large-scale fraud and fabrication in such claims and stated that the State was also keen to put an end to the menace. The learned Public Prosecutor suggested the constitution of one Central Agency to look into the complaints of the types referred to above so that the investigation would proceed in the right direction and in all earnestness. Pursuant to the order of the learned single Judge, the Insurance Company lodged nearly 400 complaints before the Central Agency.

3. The National Insurance Company has now filed W.P.No. 7389 of 2005 complaining that the course of action initiated by the Central Agency is not only slow and tardy but after the initial enthusiasm, on the realization that a sincere re-investigation may expose fellow police officials, there was an effort to tone down the manner of investigation. It is alleged that the officers to whom re-investigation was entrusted are to whom investigation was entrusted. They are totally indifferent to the serious nature of the

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crimes involved. Even in such of those few cases where a fraud was exposed and charge sheets were filed, it was found that the charge sheets were so formulated and proceedings manipulated so as to enable the accused to escape the wrath of law. In a large number of cases, notwithstanding the glaring fraud and fabricated documents available on record, the Central Agency has totally disregarded and ignored the vital links and instead closed the complaints as mistake of facts. In particular, reference was made to several such instances in respect of complaints with District Crime Branch, Pudhukottai. It is alleged that the officials at Pudhukottai to whom reinvestigation were entrusted were antagonistic towards Insurance Companies and the officials and investigators appointed by the company and had a pre-disposed mind to hurriedly close the reinvestigation, so as to protect the fellow officers from being exposed. There was hardly any investigation of the kind expected from the Central Agency, which was vested with a solemn duty considering the scale and extent of fraud that was perpetrated in a beneficial jurisdiction. The Insurance Company had annexed to the petition a list of around 540 false MCOP claims throughout the State of Tamil Nadu. According to them a detailed and thorough probe is necessary at the hands of the expert and professional police establishment to verify the authenticity of the accidents said to have been reported in various districts. It is alleged that the issue is quite serious and grave. Crores of rupees of public money are involved and larger public interest is at stake. Therefore, it is prayed that the investigation be entrusted to the Central Bureau of Investigation (CBI) to look into the complaints of the Insurance Company for a speedy and expeditious investigation as the Insurance Company is facing litigation in various Courts at various stages, and any award passed without the benefit of such investigation would seriously prejudice the interest of the Insurance Company.

4. During the course of hearing an additional affidavit was filed on behalf of the Insurance Company furnishing the details of the amounts involved in the scam. The statistics as on 31.12.2005 are as follows :

S. No.	Insurer	MCOPs Reported	Total Amount Claimed (Rs. in Crores)
1.	M/s.National Ins. Co. Ltd.	28.462	238.40
2.	M/s.New India Assu. Co. Ltd.	16.727	179.38
3.	M/s.Oriental Ins. Co. Ltd.	28.157	313.08
4.	M/s.United India Ins. Co. Ltd.	55.962	692.75

It is stated that significant percentage of the above claims i.e. 25% at least were found to be tainted by fraud and fabrication. Further, in order to demonstrate that re-investigation by CB-CID was not sincere and diligent and their closure of the complaints as mistake of facts was contrived and deliberate the following instance from other Police Stations were also cited :

- (i) "MCOP No.123/2002 – MACT, Virudhunagar– Rs.10,00,000/- Crime No.313/2001 – Virudhunagar Bazar Police Station. Deceased rider of TVS 5- TN 67 Z 7513 was knocked down by an unidentified van-After 7 days an insured vehicle TN 67 Z 0031 was falsely implicated – Notwithstanding a detailed investigation report dated 12.07.2004 with findings based on evidence gathered, complaint was closed as mistake of fact on 31.07.2005.
- (ii) MCOP No.342/2002 – MACT, Srivilliputhur – Rs.4,00,000/- Crime No.106/2002 – Dhalavaipuram Police Station. Injured Ramkumar admitted in a hospital on 07.03.2002 and treated till 21.04.2002 whereas the accident is alleged on 30.03.2002 – In spite of documented evidence on date of accident and hospital records, complaint was closed as mistake of fact by CB-CID.
- (iii) MCOP Nos. 79 & 80 of 2004 – MACT, Virudhunagar – Rs.1,00,000/- and Rs.50,000/- respectively – Cr. No.79/2002 – Virudhunagar Town Police Station. An unknown van had hit a two wheeler TN67 T 3486 – An insured TN 67 U 4632 was falsely implicated for the purpose of the claim – In hospital records, G.H. Madurai and Jawahar Hospital

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Madurai the noting was patient while riding a bike was hit by a car. Contrary to the findings of our Investigator with evidence, the complaint was closed as mistake of fact.

- (iv) MCOP No. 120/2002 – MACT, Sivakasi – Rs.8,00,000/- Cr.No.557/1999 – Virudhunagar Town Police Station.
Deceased died in accident-dated 16.10.1999 reported to police as hit by an unknown vehicle and the vehicle held undetectable. After 2-1/2 years of such closure an insured vehicle TN 67 Z 4644 was falsely implicated and charge sheet filed to benefit the claimants. In spite of categorical findings based on acceptable evidence in Investigation Report dated 14.03.2004 complaint closed as mistake of fact on 17.11.2005.
- (v) MCOP No.180/2001 – MACT, Sivakasi - Rs.3,00,000/- Cr. No.233/201 – Sivakasi Police Station.
FIR was registered as involving TN 69 Y 0646 it was falsely implicated by a conspiracy. Notwithstanding findings in Investigation Report dated 05.12.2004 with credible basis, without proper examination the complaint was closed as mistake of fact.
- (vi) MCOP No.122/2004 – MACT, Virudhunagar – Rs.6,00,000/- Cr. No.1/2002 – Soolakarai Police Station.
An unknown vehicle hit a bullock cart on 05.10.2002 and registered as FIR. After 3 months an insured vehicle TDF 4549 was falsely implicated. In spite of findings in Investigation Report dated 20.12.2004 backed by acceptable evidence complaint was closed as mistake of fact on 17.11.2005.”

5. W.P.No.39956 and 39968 of 2005 were filed by Public-spirited citizens seeking entrustment of investigation into the printing of FIRs outside the permitted source and misuse thereof with the CBI. It is the case of the petitioners that the Police Departments in the State are freely using the duplicate FIRs in order to have wrongful gain. Reliance is placed on press reports in which particulars of such FIRs are furnished in detail. It has been pointed out that on P.S. Sankar, Proprietor of Keerthana Printers and one Mr. M. Sundarajan, Proprietor of Arun Graphics in Udumalpet were

arrested for printing the Government Department forms and for being in possession of the same without any authority. It is also pertinent to note that in the additional affidavit filed by National Insurance Company, it has been demonstrated that such fake FIRs have also been used for registering some of the Motor Accident Claims.

6. We have heard..... learned counsel appearing for the Insurance Company in W.P. No.7389 of 2005; learned counsel appearing for the Petitioners in W.P.Nos.39956 and 39968 of 29/005 respectively, and learned Additional Advocate General appearing for the State. We have examined the facts and circumstances leading to the filing of various petitions in this Court and the events that led this Court in directing to constitute the Central Agency to enquire into the Various complaints of insurance scam, has not disputed that the situation is very grave and warrants effective steps to curb the menace. But he submitted that the State Government in majority of the cases has taken bonafide action in the matter, and it must be left to the State Government to complete its investigation under the Code of Criminal Procedure without any interference from the outside agency. He also suggested that this Court might constitute a separate wing similar to Economic Offences Wing to investigate into the complaints under the supervision of any retired High Court Judge to be nominated by the Court. Having considered the submissions of the learned counsel for the parties, we are inclined to handover the investigation in the matter to the CBI.

7. Motor Accident Insurance has been made compulsory by Parliament for the motor users for the benefit of innocent motor accident victims. The Parliament has further mandated that the defence of the insurer shall be limited so as to ensure that innocent victims get compensation from the Insurance Companies rather than seek relief from men of straw. It is a beneficial legislation to ensure certainty of compensation to victims and the Insurance Companies have a duty to ensure the same. It is this beneficial legislation which has been totally abused by some unscrupulous elements and it is distressing to note that a large number of Police officials and medical fraternity are involved in the scam. We are,

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however, refraining from entering upon the details lest it may lead to prejudice against either party, but we think that since the accusations are directed mainly against the local police officials, it is desirable to entrust the investigation of the matter to an independent agency like the CBI so that all concerned including the Insurance Companies may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. may be right in saying that the local police are carrying out the investigation faithfully, but the same will lack credibility, since the allegations are mainly against the police department. Therefore, in our opinion, it would be advisable and desirable as well as in the interests of justice to entrust the investigation to the CBI forthwith in respect of the complaints filed by National Insurance Companies.

8. We accordingly direct that the CBI shall investigate into the said complaints filed by the Insurance Companies as well as complaints relating to the use of fake FIRs by different Police stations. The learned counsel appearing for the Insurance Company states that the Insurance companies would meet the entire cost of the CBI. The State is directed to extend its full cooperation and support and provide all necessary infrastructure to the CBI in investigation of the complaints. The CBI is directed to submit its preliminary report within a period of four months from today. All future complaints by the Insurance companies shall be directly filed before the CBI. The Director of Central Bureau of Investigation, New Delhi is directed to constitute, a Special Team of Investigators for carrying the investigation in the present matter. It is further directed that when filing of such complaint is brought to the notice of the connected Motor Accident Claims Tribunal, the Tribunal shall take note of it before passing the order and if necessary to record further evidence in order to ascertain the genuineness of the claim. We make it clear that our order should not be taken as reflection on the credibility of either the local police or the State Government. We have passed the order keeping in mind the larger requirements of justice.

9. "The hearing of the petitions is adjourned to 19th July 2006." The scale of fraud and fabrication is there for all to see. The issue

is now pending before the Apex Court, the State of Tamil Nadu does not deny the existence of scam or the losses caused to the insurers. They have seemingly raised constitutional questions as to whether the High Court in exercise of their jurisdiction under Art. 226 direct intervention by CBI notwithstanding the pre-requisite of consent of State Government envisaged under Sec.6 of Delhi Special Establishment Act, 1946. The larger Public Interest commends the intervention by CBI since it is the premier investigating agency and its very name spells trouble for the scamsters in such matters. The scam is not unique to Tamil Nadu. It appears to be well entrenched at all levels and is being perpetrated throughout the country in this jurisdiction. The insurers are defenceless as it is impossible to prosecute such offenders on various fronts even while defending the claims before the Tribunals. It is hoped and trusted that the scam in this field is seen for what it is and a surgical remedy, and a speedy one at that is introduced to ensure that the purity of the beneficial jurisdiction is salvaged to the extent permissible in the present scenario.

Thereafter, the State of Tamil, Nadu filed SLP No 1307/2006 before Supreme Court, which was dismissed by order, dated 11.07.2006. Back before the High Court, Madras, CBI submitted that they did not have adequate manpower, infrastructure to handle so many complaints and accordingly, they have been entrusted only with 23 complaints till date. And by orders dated 10.11.2006, the High Court had directed the Central Government to respond as to whether an 'Insurance Fraud Bureau', like those existing in UK, and US could be created in India. The Central Government has since filed an Affidavit expressing inability on the ground that already an IRDA Committee and the Law Commission have found it not feasible. Hence it would appear that IFB in India may remain an unrealized dream. The Central Government has suggested that just as banks are taking care of their claims, it was for the vigilance department of the respective Insurance Companies to handle it, enlisting the services of the local State Police, as law and order was a state subject. The said proceedings are pending before the High Court, of Madras and the last word on it cannot be said to have been uttered yet.

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