

The office of Governor enjoys many powers under the Indian Constitution, hope the procedures in their appointments and removals carry more transparency and effectiveness enhancing their values by suitable amendments in the Constitution of India.

THE GAP BETWEEN THE EXPECTATIONS OF THE GENERAL PUBLIC AND THE REMEDIES PROVIDED UNDER LAW - A BRIEF STUDY OF ACCIDENTAL DEATHS

By

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India is an accident prone country. The road safety in India is at cross roads. Now-a-days there were many fatal road accidents resulting in the death of human beings on the spot. When any such accidents occur the Law that comes into play is usually a criminal case under Section 304-A IPC against the erring driver and the Law of Insurance that cover the life of the deceased persons during the accidents and most important is the claim to the dependents of the deceased family members. If the rashness or negligence is proved against the erring driver he would be sentenced as provided under Section 304A of IPC¹.

For the first time in *Kesavan Nair v. State Insurance Officer Justice Krishna Iyer*, as he then was, observed in Paragraph 4 of his order as follows : It is not altogether irrelevant to observe that motor vehicle **accidents** in the State are increasing at an alarming rate but that there is hardly any serious check by the concerned authorities to ensure careful driving. The innocent victim is faced with legal difficulties in recovering damages².

The other aspect is victim compensation, damages *etc.*, that would be granted after

necessary adjudication under the relevant provisions of Insurance Laws, Motor Vehicles Act and other Civil Laws. When there was no Insurance coverage to the accident vehicle the insurance companies decline to grant the amount by way of damages under tortious liability. The remedy of damages is usually granted against the person responsible for the death (Accident) and also against the owner of the motor vehicle concerned when there is no third party Insurance³.

When the general law is as stated above there were certain instances where the public were resorting to certain activities taking law into their hands.

The Supreme Court has pointed out that the road accidents had become one of the top killers in the country. It was pointed out that most of these accidents would be due to reckless driving which persuaded the Courts to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Supreme Court cautioned the Accident Claims Tribunal to take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt or some obscurity⁴.

1. Justice P.S. Narayana and Manohar Gogia's Criminal Major Acts 9th Edition 2010 ALT Publication P.309

2. 1971 ACJ 219 (Kerala)

3. Insurance Law

4. N.K.V. Bros. (P) Ltd. v. M. Kanimai Ammal, 1980 ACJ 435 (SC)

Recently, in some places, in the East Godavari District, Andhra Pradesh the following incidents had occurred.

Cr.No.96/2013 of Mummidivaram PS under Sections 304-A, 338 and 337 of IPC.—It is a case of road traffic accident it reflects at 5.30 a.m., on 25.8.2013 on the N.H. 216 road in Rajupalem Village of Mummidivaram(m). In this case a Lorry Bearing No.AP 05 TA 3555 hit a car and a motor cycle from behind. As a result one person traveling in the car died on the way to hospital and two persons who were traveling on the motor bike severely injured. The person who died was returning after attending a marriage function of a relative.

The person who died namely *Vasamsetti Satyanarayana*, aged 25 years having wife and a daughter. His parents are old aged persons and they are also depending on him. The deceased was a private professional videographer and he is the sole earning member in the family. The friends, relatives *etc.*, of the family of the deceased and the villagers resorted to agitation by way of Rasta-Roko seeking immediate compensation to the family of the deceased.

The whole village came in support to the family of the deceased and joined the agitation which obstructed the traffic. The general public, the students and employees *etc.*, were subjected to lot of inconvenience. The accused was apprehended and charged. At present, the case is pending before Court.

Cr.No.84/12 under Section 304(A) IPC of I.Polavaram PS.—This is another case of fatal road accident that occurred on 24.12.2012 at about 09-30 hours on N.H. 216 road at Komargiri Village in I.Polavaram(m). In this case a school boy aged 8 years namely *P. Suryateja* was run over by RTC bus and the boy was crushed to death and his body was badly mutilated. The relatives of the deceased boy and other villagers took out agitation by resorting to

Dharna. The agitators exerted pressures on the RTC authorities to come to the accident spot and announce the compensation to the family of the deceased. With the intervention of well informed elders and leaders the matter was subside. By then, there was much incontinence to the public at large and also public authorities including police. The accused is charged and pending before Court.

Cr.No.86/2012 under Section 304(A) IPC of I.Polavaram PS.—This is a case of fatal road accident that occurred on 25.12.2012 at about 2-30 p.m., at RCM Church on N.H. 216 road at Pasuvullanka Village in I.Polavaram Mandal. In this case a girl aged 7 years namely *Palivela Sri Harshini* was ran over by an RTC bus this incident also leg to much protest at the accident spot and there was Dharna for a long time. In this case also on the pressure exerted by agitators RTC authorities were forced to come to the accident spot and with the intervention of local leaders the matter was amicably settled. But this incident also caused much inconvenience to the general public and also public authorities as the flow of traffic was held up for long hours on the NH-216.

Cr.No.44/2014 of Ambajipeta PS under Sections 304-A and 337 IPC is also one such matter which disclose the same story. The accused is charged and pending before Court.

It is needless to say that such instances have became common in the country. The police are facing tough time in brining the situation to normalcy. The police were acting with utmost patience. Most of the people leading agitation are not aware of the legal consequences. They think that unless they exert pressure on the owner of the crime vehicle involved, they may not be able to get compensation to the family of the deceased. The police were doing their best in such situations by explaining to them about the third party insurance claim and other aspects and sparing no efforts to convince the mob

and agitators. In all the above cases, police registered cases against the persons leading the agitations under Section 341 IPC read with 34 IPC⁵.

In all the above matters, the persons who died on the spot in road accident happened to be the earning members (or the main person) of the family and there is every likely-hood of the family being deprived of bread and butter. This caused rage among the public and they have resorted to Rasta-Roko/Dharna *etc.*, demanding immediate monetary relief to the family of the deceased. The public were aggressive and violent in their attitude in the face of death of the earning member. The emotions and also the sympathies in favor of the family of deceased prompt them to agitation.

Whenever any road traffic accident resulted in the death of human beings, the SHO who takes up the case for investigation is duty bound under Section 158(1)(6) of M.V. Act to inform the Insurance Company concerned.

Section 158 speaks about production of certain certificates, license and permit in certain case : (1) Any person driving a motor vehicle in any public shall, on being so required by a police officer in uniform authorized in this behalf by the Government produce-

- (a) the certificate of insurance
- (b) the certificate of registration'
- (c) in the case of transport vehicle also the certificate of fitness referred to in Section 6 and the permit relating to use of the vehicle.

5. In this section the expression produce his certificates of insurance, means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of Section 146.

5. Justice P.S. Narayana and Manohar Gogia's Criminal Major Acts 9th Edition 2010 ALT Publication P.355 and P.19

6. As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer In-charge of the police station shall forward a copy of the same also to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer.

160. Duty to furnish particulars of vehicle involved in accident :—A registering authority or the officer In-charge of a police station shall if so required by a person who alleges that he is entitle to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against out of the use of a been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be on payment of the prescribed free any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle and the name and address the person who was using the vehicle, damaged in such form and within such time as the Central Government may prescribe.

The Hon'ble Supreme Court in the judgment between *the Managing Director, Metropolitan Transport Corporation Ltd., Chennai Appellant v. Ramarao*, respondent held that Courts have always been concerned that the full compensation amount does not reach and benefit the victims and their families, particularly those who are uneducated, ignorant, or not worldly-wise. Unless there are built-in safeguards they may be deprived of the benefit of compensation which may be the sole source of their future sustenance. This Court has time and again insisted upon measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation. [See *Union Carbide Corporation v. Union of India*, (1991) 4 SCC 584 and *General*

Manager, Kerala State Road Transport Corporation v. Susamma Thomas, (1994) 2 SCC 176]. But in spite of the directions in these cases, the position continues to be far from unsatisfactory and in many cases unscrupulous relatives, agents and touts are taking away a big chunk of the compensation, by ingenious methods.

The police were doing their best in explaining them about the course of action to be taken as contemplated under relevant laws, but the public who were agitating were adamant and were not convinced as the Court process of remedies will consume a lot of time as the family of the deceased were not capable of a long wait for the remedy. The victims of the road accidents are scared of the delays in deciding the compensation.

This sort of agitations, Dharnas, Rastha-Roko *etc.*, are resulting in lot of inconvenience to the general public and causing lot of burden to the police. A practical study of the incidents reveals that something is missing in the administration of laws. It is high time for our Legislatures to find out remedial measures by making suitable amendments to the Motor Vehicle Act and Insurance Laws.

Evidently there was much gap between the expectations of the public and the remedies provided under existing laws. Though, it may not be possible to meet all the expectations of lay man some thing can be done to improve the situation. Legal awareness, Counseling of the families of the victims will certainly improve the present situation⁶.

The Author advocates that the Claim of Insurance may be made a swift remedy and the time gap between the occurrence of the accident and the final and full settlement of claim must be reduced to the possible minimum say, within weeks, if not days. In western developed countries there are instances where the insurer will visit the hospital immediately and settle the claim

within 24 hours by paying medical expenses *etc.*, after consulting the doctor.

Unless we evolve a system similar to that of western countries the present trend may lead to a point where the general public may take law into their hands. The situation calls for quick remedies and quick disposal of cases especially when the life of human being is involved. The lawmakers, the Judiciary and all stake holders, concerned with the administration of Criminal Justice and Claims Tribunals are requested to have a relook into the relevant laws to bridge the gap between the expectations of general public and the remedies that were provided under law.

Suggestions :

- (1) The Insurance Companies may be directed to pay the relief or compensation 50% of the victim amount on the day of occurrence after receiving FIR, Inquest Report and PM Certificate.
- (2) The Law may amended suitably for paying compensation and by conducting speedy trial by fixing time limit maximum 6 months.
- (3) If the driver of the vehicle commits M.V. Act violations for 5 times, such driver has to be disqualified from holding a driving license permanently. If the driver of the vehicle convicted for 3 times in non-fatal accidents and two times in fatal accidents, such driver has to be debarred permanently from holding a Driving License.
- (4) The motor insurance was made compulsory by the Motor Vehicles Act. But in many cases the policy was lapsed by the date of accident due to forgetfulness of the owner of the vehicle. The Government is now collecting life tax to the vehicle. If the insurance is collected for a period of

6. M.V. Act Section 158(1)(6) Volume III, Andhra Pradesh Police Academy, 2005 P.60, 61

10 or 15 years at one stretch it will save the believed families of road accident. Due to lack of insurance policy and poor financial position of the owner of the vehicle, the family members of the person who met with accident will not get full compensation. The Legislature has to make suitable laws and amend the Act to provide long term vehicle insurance policies.

- (5) The long delays in settling accident claim by the Motor Accident Claims Tribunal is to be curtailed. As observed by Hon'ble Supreme Court the delay in disposal of compensation case is causing peculiar problems to victims and they are forced to take up a profession unknown to them.
- (6) The time limit should be maximum of 6 months and Court shall empowered to grant some advance relief in case of necessities like marriage and sickness of the dependents to be considered and advance amount of 50 percent to be granted by the Court.
- (7) The Government should consider for creation of accident relief fund placed at the disposal of the District Collector to give immediate relief to the dependants of the deceased on the

spot. The Insurance Company can appropriate the same by way of returning back to Government by the Insurance Companies after settlement by the Claims Tribunal. When there is no insurance to the vehicle the same may be recovered from the concerned owner of the vehicle.

- (8) The police should follow the Motor Vehicle Act strictly and send up report to Motor Accident Claims Tribunal and to the Insurance Company within 30 days as required under the Act.
- (9) We could ensure accident free society by amending laws suitably and by bringing awareness among the public.
- (10) Deterrent punishments are to be imposed on the erring drivers in each case.

This Author had an occasion to interact with the Officers of United Insurance Company Ltd., National Insurance Company Ltd., etc., regarding speedy disposal of claims. All of them in one voice agreed that there is an imperative need for speedy disposal and agreed to extend their co-operation for speedy disposal

The writer wishes to see accident free India by 2020.

SEXUAL VIOLENCE AGAINST WOMEN-ISSUES AND CHALLENGES

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Law is response to social problems.....

Sunday the 16th December, 2012... savage acts by six desperadoes who committed the sexual assault on the 23 year old paramedical student in a moving bus shook the nation

as never before. The incident happened at the heart of the nation, the national capital. It hit the heart of the nation. Heart pumps blood to all the cells in the body. The incident at the heart of the nation shook all the parts of the nation. The incident hit the