



MOTOR ACCIDENT CLAIMS

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INTRODUCTION

- The purpose of the presentation is settlement of claims arising out of motor accident
- The claims are to be settled according to the law laid down **UNDER THE MOTOR VEHICLE'S ACT, 1988** and its Rules.

- The M.V. Act is a beneficial legislation, the primary objective being to provide a statutory scheme for compensation of victims of motor vehicle accidents; or, their family members who are rendered helpless and disadvantaged by the untimely death or injuries caused to a member of the family, if the claim is found to be genuine [**The New India Assurance Co. Ltd. vs. C. Padma and Ors.** [\(2003\) 7 SCC 713](#)]
- The Act provides a summary procedure for claiming compensation for the loss sustained in an accident, which is otherwise applicable to suits and other proceedings while prosecuting a claim before a civil court. [**Vimla Devi and Ors. vs. National Insurance Company Limited and Ors.** [\(2019\) 2 SCC 186](#)] see also **The State Of Arunachal Pradesh Ramchandra Rabidas @ Ratan Rabidas & Anr.** AIR 2019 (SC) 4954 : 2020 (3) BLJ 196 (SC)
- The physical disability caused due to an accident must be judged with reference to the nature of the work being done by the injured for assessing award of compensation. (Para 9) **Sarnam Singh v. Shriram General Insurance**, AIR 2023 SC 3601 see also **Jayanandan V. Varkey & Ors., Arising out of SLP (C) No.22423 of 2024** LiveLaw (SC) 44

"MOTOR VEHICLE"

- Section 2 (28) "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 or internal source **and includes a chassis to which a body has not been attached and a trailer**; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding ⁹[twenty-five cubic centimetres];



- P. Ramanatha Aiyar's Law Lexicon . 3rd Edition. , defines the expression 'accident' as:
- "an event that takes place without one's foresight or expectation; and event that proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected, chance, causality, contingency."
- The expression 'accident' in the context of an accident insurance policy has been explained in MacGillivray on Insurance Law 12th Edition.
- "In the context of an accidental insurance policy the word is usually contained in phrases such as "injury by accident", "accidental injury", "injury caused by or resulting from an accident" or "injury caused by accidental means" and in each of these phrases it has the connotation of an unexpected occurrence outside the normal course of events."

- In order for an accidental insurance claim to succeed,
- The means causing the injury or death also have to be accidental in nature.
- In order to sustain a claim under the accident benefit cover :-
- It must be established that the injured / deceased has sustained a bodily injury which resulted solely and directly from the accident.
- There must be proximate causal relationship between the accident and the bodily injury. violent and visible means.

Breaking down the clause into its components, what it postulates is that:

- (i) The assured must sustain a bodily injury;
- (ii) The injury must solely and directly result from an accident
- (iii) The accident must be caused by outward, violent and visible means;
- (iv) The injury must solely, directly and independently of all other causes result in the death and injury .
- (v) Death must ensue within a period of 180 days from the injury caused in the accident. **Smt. Alka Shukla v. Life Insurance Corporation of India AIR 2019 SC 2088**

The Insurance Policy is to be looked into in the cases of Employees

If the Provisos of insurance policy specifically disclose that compensation will not be paid in respect of injury of the injured if he is under the influence of intoxicating liquor. The relevant Proviso 4 of the insurance policy reads thus: "PROVISOS Provided always that the company shall not be liable under this policy to:

4) Payment of compensation in respect of death, injury or disablement of the insured from (a) intentional (illegible) suicide or attempted suicide, (b) whilst under the influence of intoxicating liquor or drug (c) or (illegible) by insanity, (d) arising or resulting from the insured committing any breach of the law with criminal intent."

The aforesaid Proviso 4 makes it amply clear that the injured is not entitled to compensation since on facts it is proved that he was intoxicated and that was due to intoxication. **NARBADA DEVI AND OTHERS — Appellant Vs. H.P. STATE FOREST CORPORATION AND ANOTHER AIR 2021 SUPREME COURT 1541 .**

GENERAL CLAUSES ACT, 1897

- Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been affected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been affected at the time at which the letter would have been delivered in the ordinary course of business. Section 114 of the Evidence Act, 1872 enables the Court to presume that in the common course of natural events, the communication sent by the post would have been delivered at the address of the addressee. **Ajeet Seeds Ltd. K. Gopala Krishnaiah (2014) 12 SCC 12** see also **The IFFCO - TOKIO General Insurance Company Limited Versus Shamima Khatoon 2024 (5) BLJ 472**

The other laws involved are

- Ø Indian Contract Act
- Ø Negotiable Instrument ` Act
- Ø Insurance Act
- Ø The Interest Act
- Ø Criminal Procedure Code
- Ø Code of Civil Procedure.
- Ø Indian Evidence Act.
- Ø The Hindu Succession Act.
- Ø Indian Succession Act.
- Ø Insurance Regularity And Development Authority
- Ø The Fatal Accident Act.



THE ROLE OF THE POLICE IN SETTLEMENT OF CLAIMS

- **158(6) OF THE MOTOR VEHICLES ACT, 1988** deals with it.
- **JHARKHAND MOTOR ACCIDENT CLAIMS TRIBUNAL RULES 2019**

RULE 3. Duties of investigating police officer in motor accident cases.-

(1) Notwithstanding anything contained to the contrary in any other rules in force, it shall be the duty of the investigating police officer, as expeditiously as possible to

- a) get the scene of accident photographed from such angles as to clearly depict, and in case of inability to do so, prepare a site plan, drawn to scale, as to indicate the lay-out and width, etc. of the road(s) or place, as the case may be, the position of vehicle(s), or person(s), involved, and such other facts as may be relevant so as to preserve the evidence in this regard, inter-alia for purposes of proceedings before the Claims Tribunal;



- b) gather full particulars of the insurance certificate /policy in respect of the motor vehicle involved in the accident and to require the production of documents mentioned in sub-section (1) of section 158 of the Act, and thereupon either to take the same in possession against receipt, or to retain the photocopies of the same, after attestation thereof by the person producing the same;
- c) verify the genuineness of the documents mentioned in clause (b) by obtaining confirmation in writing from the office /authority purporting to have issued the same;
- d) submit detailed report regarding an accident to the Claim Tribunals, in Form "A" by not later than thirty days of the receipt of notice in Form "B", accompanied by requisite documents which shall include copy of report under section 173 of the Code of Criminal Procedure, 1973(2 of 1974), medico legal certificate, post-mortem report (in case of death), first information report, photographs, site plan, photocopies of documents mentioned in clause (c), report regarding confirmation of genuineness thereof, if received, or otherwise action taken;

- e) furnish to the applicant information and particulars about the accident in Form “A” within thirty days, on receiving the application in Form “C” by the person who wishes to make an application for compensation and who is involved in an accident, or his next of kin, or the legal representative of the deceased, or the insurance company, as the case may be.
- Provided that such information shall be given to the insurance company on payment of a fees of rupees ten only per page;
- f) not to release and impound the vehicle involved in the accident, when it is found that it is not covered by policy of insurance of third party risks, taken in the name of the registered owner, or when the registered owner fails to furnish copy of such insurance policy, and bring this to the notice of the Magistrate having jurisdiction over the area, where the accident occurred.
- g) report to the Magistrate mentioned in clause (f), as to why the registered owner has not been prosecuted for offence punishable under section 196 of the Act, where such prosecution has not been preferred, despite existence of facts constituting such an offence
- (2) The duties enumerated in sub rule (1) shall be construed as if they are included in section 23 of the Police Act 1861 and any breach thereof shall entail consequences envisaged in that law.

DUTY OF POLICE

Subsection (6) of section 158 of m.v. act, 1988, was added by way of amendment in 1994 to Section 158 casts a duty on the officer in charge of the police station to forward a copy of the information (FIR)/report regarding any accident involving death or bodily injury to any person within 30 days from the date of information to the Claim Tribunal having jurisdiction and also send one copy to the concerned insurer. This subsection also casts a duty on the owner of the offending vehicle, if a copy of the information is made available to him, to forward the same to the Claims Tribunal and the insurer of the vehicle. **Vimla Devi & Ors. Versus National Insurance Company Limited & Ors. 2018 0 Supreme(SC) 1140 and Bajaj Allianz General Insurance Company Vs. Union Of India & Others Writ Petition (Civil) 534 of 2020 order dated 16.3.2021.**

10. Police Reports under sub-section (6) of section 158 of the Act and action thereon.-

- (1) The report in terms of sub-section (6) of section 158 of the Act by the police shall mutatis mutandis be in Form “A”.
 - (2) On receipt of report mentioned in sub-rule (1) , the Claims Tribunal shall go through the same and may call for such further information or material as considered necessary for proper and effective action in accordance with sub-section (4) of section 166 of the Act.
 - (3) The Claims Tribunal after examination of the report, further information /material, if called for, shall register the claim case thereon and, then, issue notice for appearance to all parties concerned, which would include the victim(s) of the accident, or his/her legal representative(s), as the case may be, driver, owner and insurer of the vehicle(s) involved, in Form “H”.
 - What is clear from the decisions noticed above, owner’ of a vehicle is not limited to the categories specified in Section 2(30) of the M.V. Act. If the context requires, even a person at whose command or control the Vehicle could be treated as its owner for the purposes of fixing tortious liability for payment of compensation
- VAIBHAV JAIN (s) VS. HINDUSTAN MOTORS PVT. LTD. 2024 INSC 652**

- **CENTRAL MOTOR VEHICLES RULES (1989), R.159 - POLICE OFFICERS** - Forwarding of information regarding accident involving death or bodily injury by police to tribunal is mandatory requirement directions have been issued to state government and union territories to instruct all concerned police officers about need to comply with requirement - further direction given to inspector general of police to make periodical checking to ensure compliance and take appropriate action against erring officials.

(B) **MOTOR VEHICLES ACT (59 OF 1988), S.158(6) - MOTOR VEHICLES - WORDS AND PHRASES** - expression 'as soon as' used in S. 158(6) - implies that there has to be promptitude in action. **AIR 2007 S. C. 2696 "GENERAL INSURANCE COUNCIL V. STATE OF ANDHRA PRADESH"**

DOCUMENTS TO BE SENT BY THE POLICE OFFICER TO THE TRIBUNAL (F.A.R.)

- (A) The certificate of insurance;**
- (B) The certificate of registration;**
- (C) The driving license; and**
- (D) F.I.R.**
- (E) Medical certificate of injuries or post mortem report or the death certificate**
- (F) In the case of a transport vehicle, certificate of fitness referred to in section 56 and the permit, relating to the use of the vehicle.**

Along with his observations regarding the cause of accident, involvement of the vehicle in question and accident caused was due to negligence or the cause of action was to give the color of accident .

- As F.I.R. Is a part of the claim case , it cannot be ignored. **NATIONAL INSURANCE COMPANY VS. RATTANI AND OTHERS (2009) 2 SCC 75 : 2009 AIR SCW 992 : AIR 2009 SC 1499**
- The question of negligence has to be determined not only on basis of averment in the F.I.R. But also from the evidence deduced **UNITED INDIA INSURANCE COMPANY VS. SMT. SUSSHILA DEVI (1995) 2 BLJR 1275.**
- Claim petition - Locus to file - Term 'Legal representative' - Its sweep cannot be controlled by provisions of fatal accidents act - dependent of deceased - cannot be denied right to make claim unless there is justification in consonance with principles of justice, equity and good conscience. **(PARA 12) MONTFORD BROTHERS OF ST. GABRIEL AND ANR. V. UNITED INDIA INSURANCE AND ANR. AIR 2014 SUPREME COURT 1550**
- In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. :**Radhakrishna and Anr Vs. Gokul and Ors. 2017(2) PLJR 141 see also United India Insurance Company Ltd Versus Sanjeev Kumar Singh M. A. No.122 of 2015 disposed of on 26-03-2019**

WHO ARE CLAIMANTS

WIFE



CHILDREN



PARENTS



MINOR DEPENDENTS

LEGAL REPRESENTATIVE, see **Sadhana Tomar & Ors. Versus Ashok Kushwaha & Ors.** 2025 Live Law (SC) 309



- **EVIDENCE ACT**

- Strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. **Anita Sharma** and Ors. v. **New India Assurance Co. Ltd.** and Anr **AIR 2021 SUPREME COURT 302**
- User of vehicle has to be established by cogent evidence **FAHIM AHMAD Vs. UNITED INDIA INSURANCE CO. LTD [2014] 2 Supreme 633**
- As the claimant has assessed the age of the deceased and mentioned it in the claim petition with date of birth in precise, hence the evidence deduced by the claimant against its aforesaid case is not admissible in the eyes of law as no evidence can be given against the pleading. **National Insurance Company Ltd. Vs. Sri Laleshwar Prasad Sharma 2019 (1) BLJ 107**

MOTOR VEHICLES ACT AND INDIAN PENAL CODE, 1860 .

- M.V. Act, 1988 is a complete code in itself in so far as motor vehicles are concerned. [**National Insurance Co. Ltd. v. Annappa Irappa Nesaria**, [\(2008\) 3 SCC 464](#) : (2008) 2 SCC (Cri) 99 : (2008) 1 SCC (Civ) 945; **Gottumukkala Appala Narasimha Raju v. National Insurance Co. Ltd.**, [\(2007\) 13 SCC 446](#) : (2008) 2 SCC (L&S) 662]
- However, there is no bar under the M.V. Act or otherwise, to try and prosecute offences under the IPC for an offence relating to motor vehicle accidents. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**
- Offences under Chapter XIII of the MV Act are compoundable in nature in view of Section 208(3) of the MV Act, whereas offences under Section 279, 304 Part II and 304A IPC are not.
- If the IPC gives way to the MV Act, and the provisions of CrPC succumb to the provisions of the MV Act as held by the High Court, then even cases of culpable homicide not amounting to murder, causing death, or grievous hurt, or simple hurt by rash and negligent driving, would become compoundable. Such an interpretation would have the consequence of letting an offender get away with a fine by pleading guilty, without having to face any prosecution for the offence committed. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

ADJUDICATION OF CLAIMS

**JHARKHAND MOTOR ACCIDENT CLAIMS
TRIBUNAL RULES 2019**

FILING OF PETITION

The petition for compensation is to be filed under

- **SECTION 164** of the MOTOR VEHICLES ACT, 1988 under no fault to the limit of Rs.5,00,000/- for death or Rs. 2,50,000/- in case of grievous hurt. As per the amendment.
- **Section 166** of MOTOR VEHICLES ACT, 1988 under fault basis. The proviso states that any person, who has accepted the compensation under section 164 his claim petition under this section shall lapse.
- Petition under **SECTION 164 A OF MOTOR VEHICLES ACT, 1988** is to be filed for interim Relief for the relief of the claimants which is adjustable from the main award as per the amendment.

CLAIM PETITION

The claimants are merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. The standard of proof beyond reasonable doubt could not have been applied. **Sunita And Others Versus Rajasthan State Road Transport Corporation And Another AIR 2019 SUPREME COURT 994 : 2019 0 Supreme(SC) 161**

A motor accident claim petition does not abate even after the death of the injured claimant. The right to sue survive to his heirs and legal representatives in so far as loss to the estate is concerned the loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.

The Oriental Insurance Company Limited VS. Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representative Narinder Kahlon Gosakan and Another
CIVIL APPEAL NO. 4800 OF 2021 (arising out of SLP(C)No.2873 of 2021) decided on
AUGUST 16, 2021

JHARKHAND MOTOR ACCIDENT CLAIMS TRIBUNAL RULES 2019

- Deals regarding compensation arising out of accident.

Rule 3 :- Duties of investigating police officer in motor accident cases.- and to report to the Tribunal

4. Duties of the registering authority.- It shall be the duty of the concerned registering authority to.

a) submit a detailed report in Form “D” to the Claims Tribunal regarding a motor vehicle involved in an accident or licence of the driver thereof within fifteen days of the receipt of direction in Form “E”;

- b) furnish within fifteen days, the requisite information in Form “D” on receiving the application in Form “F”, by the person who wishes to make an application for compensation or who is involved in an accident arising out of use or his next of kin, or to the legal representative of the deceased or to the insurance company, as the case may be.

- Provided that information shall be given to the insurance company on payment of rupees ten only per page.

- 5. . Duties of the insurance company.- It shall be the duty of the divisional manager of the insurance company, as expeditiously as possible, to
 - a) move an application in Form “C” before the investigating police officer with prescribed fees and gather full information about the accident, at the earliest, after receiving information about it, or on receipt of notice from the Claims Tribunals under rule 13;
 - b) ascertain and verify facts about insurance of motor vehicle(s) involved in the accident and confirm the same to the Claims Tribunal within thirty days of receiving notice of the claim case;
 - c) move application before the concerned registering authority in Form “F” and gather information about the motor vehicle(s) involved, and the driving licence(s) held by the driver(s) thereof as per details mentioned in Form “D”;
 - d) deposit with the written statement in the Claims Tribunal, the amount equivalent to the compensation, awardable on the principle of no fault liability under section 140 of the Act in such cases where the information received in Form “A” and Form “D” confirms death or permanent disability to have been caused as a result of the use of the motor vehicle covered by the insurance certificate/policy issued by it.

- 6. Prohibition against release of motor vehicle involved in accident.
- (1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.
- (2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule (1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

- **7. Presumption about reports.**
- The contents of reports submitted to the Claims Tribunal in Form “A” and Form “D” by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary.
- **8. Applications.**
- (1) Every application for payment of compensation shall be made in Form “G” and shall be accompanied by as many copies, as may be required, to the Claims Tribunal having jurisdiction to adjudicate upon it along with the fee prescribed thereof in rule 9.
- **ANNEXURES TO THE APPLICATION**
- F.I.R. In respect of the application
- Medical certificate of injury
- Post mortem report / death certificate in case of death
- Certificate regarding ownership and insurance particulars of the vehicle involved
- (3) The Claims Tribunal may also require the applicant to furnish the following information to satisfy itself that spurious or a collusive claim has not been preferred:-
- a) full particulars of all earlier accidents in which the applicant or the person deceased, as the case may be, has been involved;
- b) the amount of compensation paid in such earlier accidents, name and particulars of the victim, and of the person who paid the damages; and
- c) connection of persons mentioned in clause(b), if any with the applicant.
- (4) Any application which is found defective on scrutiny may be returned by the Claims Tribunal for being re-submitted after removing the defects within a specified period not exceeding two weeks.
- (5) Every application for compensation shall be registered separately in appropriate register prescribed as per rule 36.

- **Rule 11. Examination of applicant.-**
- **Rule 12 Summary disposal of application.-** summary dismissal of the application the tribunal may dismiss the application if on examination of applicant no sufficient ground found.
- **Rule 14. Notice to parties involved.-**
- **Rule 15. Appearance and examination of the parties.**
- **Rules 16. Local Inspection.**
 - Gives the Tribunal the power to visit the site at which the accident occurred for the purpose of making local inspection or examining any persons likely to be able to give information relevant to the proceedings.
- **Rule 17. Inspection of the vehicle.**
- **18. Power of summary examination.-**
 - The Claims Tribunal during the local inspection or at any other time at a formal hearing of a case pending before, it may, examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not and whether any or all of the parties are present or not.

- **RULE 19. Power to direct medical examination.-**
- The Claims Tribunal may, if it considers necessary, direct, in Form “J”, any medical officer or any board of medical officers in a government or municipal hospital to examine the injured and issue certificate indicating the degree and extent of the disability, if any, suffered as a result of the accident, and it shall be the duty of such medical officer or board to submit the report within fifteen days of receipt of direction.
- **RULE 20. Co-opting of persons during inquiry.-**
- (1) The Claims Tribunal may if it thinks fit, co-opt one or more persons possessing special knowledge with respect to any matter relevant to the inquiry, to assist in holding the inquiry.
- (2) The remuneration, if any, to be paid to the person(s) co-opted shall in every case be determined by the Claims Tribunal.
- **RULE 21. Application for claim on principle of no fault liability:-**
- (1) Every application in case of claim under Chapter X of the Act, shall be made in part II of Form “G”.
- **RULE 21. Application for claim on principle of no fault liability:-**
- (1) Every application in case of claim under Chapter X of the Act, shall be made in part II of Form “G”.
- (2) The Claims Tribunal shall, for the purpose of adjudication of the application mentioned in this rule shall follow such summary procedure as it thinks fit.
- (3) The Claims Tribunal shall not reject any application made as per the provisions of Chapter X of the Act on ground of any technical flaw, but shall give notice to the applicant and get the defect rectified.
- (6) The Claims Tribunal in passing an award on such application, shall also issue directions for apportionment, if required and for securing the interests of the claimants, following the provisions of rules 27 and 28.

• **RULE 22** FRAMING AND DETERMINATION OF ISSUES

After considering the written statement

- The inquiry **UNDER SECTION 168** and the summary procedure that the claims tribunal has to follow do not contemplate the controversy arising out of claim application being decided in piecemeal. The claims tribunal is required to dispose of all issues one way or the other in one go while deciding the claim application. The objection raised by the insurance company about maintainability of claim petition is intricately connected with its liability which in the facts and circumstances of the case is dependent on determination of the effect of the additional premium paid by the insured to cover the risk of the driver and other terms of the policy including terms of the policy contained in para 5. Since all issues (points for determination) are required to be considered by the claims tribunal together in light of the evidence that may be let in by the parties and not in piecemeal, **AIR 2010 SUPREME COURT 2591 "BIMLESH V. NEW INDIA ASSURANCE CO. LTD."**.

THE ISSUES TO BE DETERMINED BY THE TRIBUNAL

The issues to be determined by the tribunal to arrive at the loss of dependency are :

- (I) Additions/deductions to be made for arriving at the income;
- (II) The deduction to be made towards the personal living expenses of the deceased;
- (III) The multiplier to be applied with reference to the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions.

SETTLEMENT OF CLAIMS IN CASE OF DEATH

- Three facts need to be established by the claimants for assessing compensation in the case of death :
- Age of the deceased;
- Conflict between the dates of birth mentioned in the School Leaving Certificate and the Aadhar Card, the dates of birth mentioned in the School Leaving Certificate should be given primacy and considered as the authoritative document for determining the age of the deceased . **SAROJ & ORS. VERSUS IFFCO-TOKIO GENERAL INSURANCE CO. & ORS., 2024 LiveLaw (SC) 837 : 2024 INSC 816**
- **Income of the deceased;** The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased **SMT. ANJALI AND OTHERS Vs. LOKENDRA RATHOD AND OTHERS AIR 2023 (SC) 44**
- The number of dependents.

DEPENDENTS

- **FATHER**

The father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent **Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. MANU/SC/0606/2009 : (2009) 6 SCC 121** see also **Munna Lal Jain and Ors. Vs. Vipin Kumar Sharma and Ors. (2015) 6 SCC347**

- **SISTER**

In the absence of evidence to the contrary, brothers and **sisters** will not be considered as dependants, because they will either be independent and earning, or married, or be **dependent** on the father. : **Radhakrishna and Anr Vs. Gokul and Ors. 2017(2) PLJR 141** see also **United India Insurance Company Ltd Versus Sanjeev Kumar Singh M. A. No.122 of 2015 disposed of on 26-03-2019**

- **MAJOR SONS**

The major sons have their own source of income and were not dependent on the deceased and **If able to prove dependency they may be considered as dependent** **National Insurance Company Limited Versus Birender and Ors. AIR 2020 (SC) 434 : Seema Rani And Others Vs. The Oriental Insurance Co. Ltd. And Others_2025 INSC 192**

- **LEGAL REPRESENTATIVE**

Society in which the deceased lived may also be claimants, if it proves its dependence on the deceased **Montford Brothers Of St.GABRIEL Vs. United India Insurance [2014] 3 SCC 394** see also **Sadhana Tomar & Ors. Versus Ashok Kushwaha & Ors.2025 Live Law (SC) 309**

STEPS TO BE TAKEN FOR DETERMINATION OF CLAIMS:-

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AIR 2009 SUPREME COURT 3104 "SARLA
VERMA V. DELHI TRANSPORT
CORPORATION"

STEPS TO BE TAKEN

- **STEP 1 (ASCERTAINING THE MULTIPLICAND)**

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand.

- **STEP 2 (ASCERTAINING THE MULTIPLIER)**

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this court. The multiplier should be chosen from the said table with reference to the age of the deceased.

- **STEP 3 (ACTUAL CALCULATION)**

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family. Thereafter, a conventional amount Where the deceased is survived by his widow, another conventional amount should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

QUESTIONS FOR DETERMINATION

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**AIR 2009 SUPREME COURT 3104 "SARLA VERMA V.
DELHI TRANSPORT CORPORATION"**

QUESTION (I) - ADDITION TO INCOME FOR FUTURE PROSPECTS

- An addition of 50% of actual salary to the actual salary income of the deceased towards future prospects.
- Where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), The courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.
- The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation. cannot be denied in cases of self-employed persons or those employed on a fixed salary. **KAVITA NAGAR & ORS. Versus THE ORIENTAL INSURANCE CO. LTD. 2024 LiveLaw (SC) 894 see also Kirti and Anr. Etc. v. Oriental Insurance Company Ltd. AIR 2021 SUPREME COURT 353**

QUESTION (II) - DEDUCTION FOR PERSONAL AND LIVING EXPENSES

- It became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was a married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under second schedule to the act, in respect of claims **UNDER SECTION 163-A OF THE MOTOR VEHICLES ACT, 1988**
- Where the deceased was married, the deduction towards personal and living expenses of the deceased, **should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.**

- Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent..
- In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents see also *gian chand vs. Gurlabh singh* [2015] 0 supreme(sc) 1214 because they will either be independent and earning, or married, or be dependent on the father. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.
- Deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased, as that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. The claimants/dependents are entitled to 'just compensation' as a result of the death of the deceased in a motor vehicle accident. The advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death. **SEBASTIANI LAKRA & ORS VERSUS NATIONAL INSURANCE COMPANY LTD. & ANR. AIR 2018 (SC) 5034**

QUESTION (III) - SELECTION OF MULTIPLIER

- The table in ii schedule to mv act multiplier actually used in second schedule to mv act (as seen from the quantum of compensation)

• (1)	(2)	(3)	(4)	(5)	(6)
• Upto 15 yrs	-	-	-	15	20
• 15 to 20 yrs.	16	18	18	16	19
• 21 to 25 yrs.	15	17	18	17	18
• 26 to 30 yrs.	14	16	17	18	17
• 31 to 35 yrs.	13	15	16	17	16
• 36 to 40 yrs.	12	14	15	16	15
• 41 to 45 yrs.	11	13	14	15	14
• 46 to 50 yrs.	10	12	13	13	12
• 51 to 55 yrs.	9	11	11	11	10
• 56 to 60 yrs.	8	10	09	8	8
• 61 to 65 yrs.	6	08	07	5	6
• Above 65 yrs.	5	05	05	5	5

The multiplier to be used should be as mentioned in **Column (4) of the table above**

QUESTION (IV) - COMPUTATION OF COMPENSATION

- In this case as noticed above the salary of the deceased at the time of death was rs. 4,004. By applying the principles enunciated by this court to the evidence, the high court concluded that the salary would have at least doubled (rs. 8008/-) by the time of his retirement and consequently, determined the monthly income as an average of rs. 4004/- and rs. 8008/- that is rs. 6006/- per month or rs. 72,072/- per annum. We find that the said conclusion is in conformity with the legal principle that about 50% can be added to the actual salary, by taking note of future prospects. **AIR 2009 SUPREME COURT 3104 "SARLA VERMA V. DELHI TRANSPORT CORPORATION"**

MINIMUM WAGE

In absence of any salary slip etc. Nature of job, wages under minimum wages act ought to be considered **Kirti and Anr. Etc. v. Oriental Insurance Company Ltd. AIR 2021 SUPREME COURT 353**

and agriculture income of deceased to be added and interest is to be granted on the total amount. **NEETA W/O KALLAPPA KADOLKAR V/S. DIVISIONAL MANAGER MSRTC KOHLAPUR (2015) 0 SUPREME (SC)31 : [2015] 3 SCC 590** see also **Vethambal And Others Versus The Oriental Insurance Company And Others, 2024 LiveLaw (SC) 206 : AIR 2024 SC 1377**

House wife monthly income could not be anything less than given under the Minimum Wages Act. **ARVIND KUMAR PANDEY vs. GIRISH PANDEY., 2024 LiveLaw (SC) 152**

- As per
- National Insurance Company Limited v. Pranay Sethi and Ors.
- AIR 2017 SUPREME COURT 5157**

- **Compensation - Future Prospects**

- **Determination - (I) Self- employed or fix salaried deceased:-** Deceased below 40 years, addition of 40%; between 40 to 50 years, addition of 25% and between 50-60 years, addition of 10% of established income to be made.
- The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.

Kirti and Anr. Etc. v. Oriental Insurance Company Ltd. AIR 2021 SUPREME COURT 353

- **(II) Deceased with permanent job :-** Deceased below 40 years, addition of 50 %; between 40 to 50 years addition of 30% and between 50 to 60 years, addition of 15% of actual salary to income of deceased towards future prospects to be made.

Deduction for personal and living expenses - Should be one third (1/3rd) where members of dependent family are two or three - One-fourth (1/4th) when number of dependent family members is 4 to 6 - And one-fifth (1/5th) where the number of dependent family members exceeds six.

- **The Compensation on multiplier basis must be a just compensation and it should neither be a bonanza nor a source of profit** **R. VALLI AND OTHERS Vs. TAMIL NADU STATE TRANSPORT CORPORATION LIMITED Civil Appeal No. 1269 of 2022 Decided on : 10-02-2022 2022 (2) BLJ 160**
- The social status of the deceased is to be kept in perspective, in the absence of definite proof of the income where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. **KUBRA BIBI & ORS. versus ORIENTAL INSURANCE CO LTD & ORS. 2023 LiveLaw (SC) 697** see also **DEEPAK SINGH ALIAS DEEPAK CHAUHAN Vs. MUKESH KUMAR AND OTHERS_Civil Appeal No....of 2025 (Arising out of SLP(C) No...../2025 @ Diary No. 236 of 2024) Decided on : 10-02-2025**

- For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma
- (vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.
- Multiplier method is to be applied in cases of injuries also. **AIR 2010 SUPREME COURT 3741 "Yadava Kumar v. Divisional Manager, National Insurance Co. Ltd." See also SANJAY RAJPOOT Vs. RAM SINGH AND OTHERS. 2025 INSC 188**
- (vii) The age of the deceased should be the basis for applying the multiplier.
- (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

Amendments in the Motor Vehicles Act, 1988

- The Central Government has notified that Sections 50 to 57 and 93 of the Motor Vehicles (Amendment Act) 2019 will come into force with effect from April 1, 2022.
- **Sections 51 to 57** of the 2019 Amendment Act wholly replaced Chapter XI of the Motor Vehicles Act 1988 which dealt with insurance of motor vehicles against third party risks.
- These provisions also made substantial amendments to **Sections 163, 166, 168 and 169 of the MV Act 1988** in relation to the filing of claims before Motor Accidents Claims Tribunal.
- **Section 161 inserted to the 1988 Act** via Section 50 of the 2019 Amendment Act, which provides for increased compensation in cases of hit and run, also gets operationalised with effect from April 1.
- Section 93 of the 2019 Act **omits the second schedule of the 1988 Act** which provided for structure formula for compensation on no-fault basis under Section 163A.

- **Time-limit of six months for filing claim**
- Sub-section(3) proposed to be added to Section 166 states that the claim petition has to be filed **within six months of the date of accident.**
- **Survival of claim to the estate of claimant after his death**
- By incorporation **a new sub-section, Section 166(5)**, with a non-obstante clause which says that the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not. As per the present law, a claim for personal injury would abate on the death of the claimant, and would not survive to his estate, due to the operation of Section 306 of the Indian Succession Act.
- **Hit and Run Scheme**
- The compensation payable for victims in 'hit and run' out of the scheme fund **under Section 161 has been enhanced to Rs. 2 lakhs in case of death, and Rs. 50,000/- in case of bodily injury**, from Rs.25,000/- and Rs.12,500/- respectively.
- **Motor Vehicle Accident Fund**
- The Bill seeks to introduce a Motor Vehicle Accident Fund **under Section 164B**, which is to be augmented by a special tax or cess. The Fund is to be utilized for giving immediate relief to victims of motor accidents, and also hit and run cases. The compensation paid out of the fund shall be deductible from the compensation which the victim may get in future from the Tribunal.

*Gohar Mohammed v. Uttar Pradesh State
Road Transport Corporation, 2022 LiveLaw
(SC) 1040 : 2023 (1) PLJR 228 (SC)*

The guidelines issued by the Court :

- i) On receiving the intimation regarding road accident by use of a motor vehicle at public place, the SHO concerned shall take steps as per Section 159 of the M.V. Amendment Act.**
- ii) After registering the FIR, Investigating Officer shall take recourse as specified in the M.V. Amendment Rules, 2022 and submit the FAR within 48 hours to the Claims Tribunal. The IAR and DAR shall be filed before the Claims Tribunal within the time limit subject to compliance of the provisions of the Rules.**

If the claimant(s) takes recourse under Section 164 or 166 of the M.V. Amendment Act, as the case may be, he/they are directed to join Nodal Officer/Designated Officer of the insurance company as respondents in the claim petition as proper party of the place of accident where the FIR has been registered by the police station. Those officers may facilitate the Claims Tribunal specifying the recourse as taken under Section 149 of the M.V. Amendment Act.

ADJUDICATION OF CLAIMS

THE CENTRAL MOTOR VEHICLES (FIFTH AMENDMENT) RULES, 2022

Section 164C empowers the Central Government to make Rules and Rules 164 C (m to z) deals with the adjudication of the Claims (m) the details of settlement, the time limit for such settlement and the procedure thereof under sub-section (2) of section 149;

- (n) the extent of exemptions and the modifications under the proviso to sub-section (3) of section 158;
- (o) the other evidence under sub-section (5) of section 158;
- (p) such other agency to which the accident information report as referred to in section 159 may be submitted;
- (q) the time limit and fee for furnishing information under section 160;
- (r) the higher amount of compensation in respect of death under clause (a) of sub-section (2) of section 161;
- (s) a sum to be paid as interim relief as referred to in clause (a) of sub-section (4) of section 161;
- (t) the procedure for payment of compensation under sub-section (1) of section 164;
- (u) such other sources from which funds may be recovered for the scheme as referred to in sub-section (2) of section 164A;
- (v) any other source of income that may be credited into the Motor Vehicle Accident Fund under sub-section (1) of section 164B;
- (w) the persons to whom compensation may be paid under clause (d) of sub-section (3) of section 164B;
- (x) the maximum liability amount under sub-section (4) of section 164B;
- (y) the other criteria under clause (c) of sub-section (6) of section 164B;
- (z) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by rules.]

and accordingly the Central Motor Vehicle Rules (Fifth Amendment) 2022 under Rule 150 sub rules (1 to 42) has been framed for adjudication of the claim under the Act.

[164D. Power of State Government to make rules. -- (1) The State Government may make rules for the purposes of carrying into effect, the provisions of this Chapter **other than the matters specified in section 164C.**

(2) Without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the other authority under sub-section (5) of section 147; and

(b) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made by rules.]

• **The Central Government vide (Rule 150A) has framed the Rules Regarding**

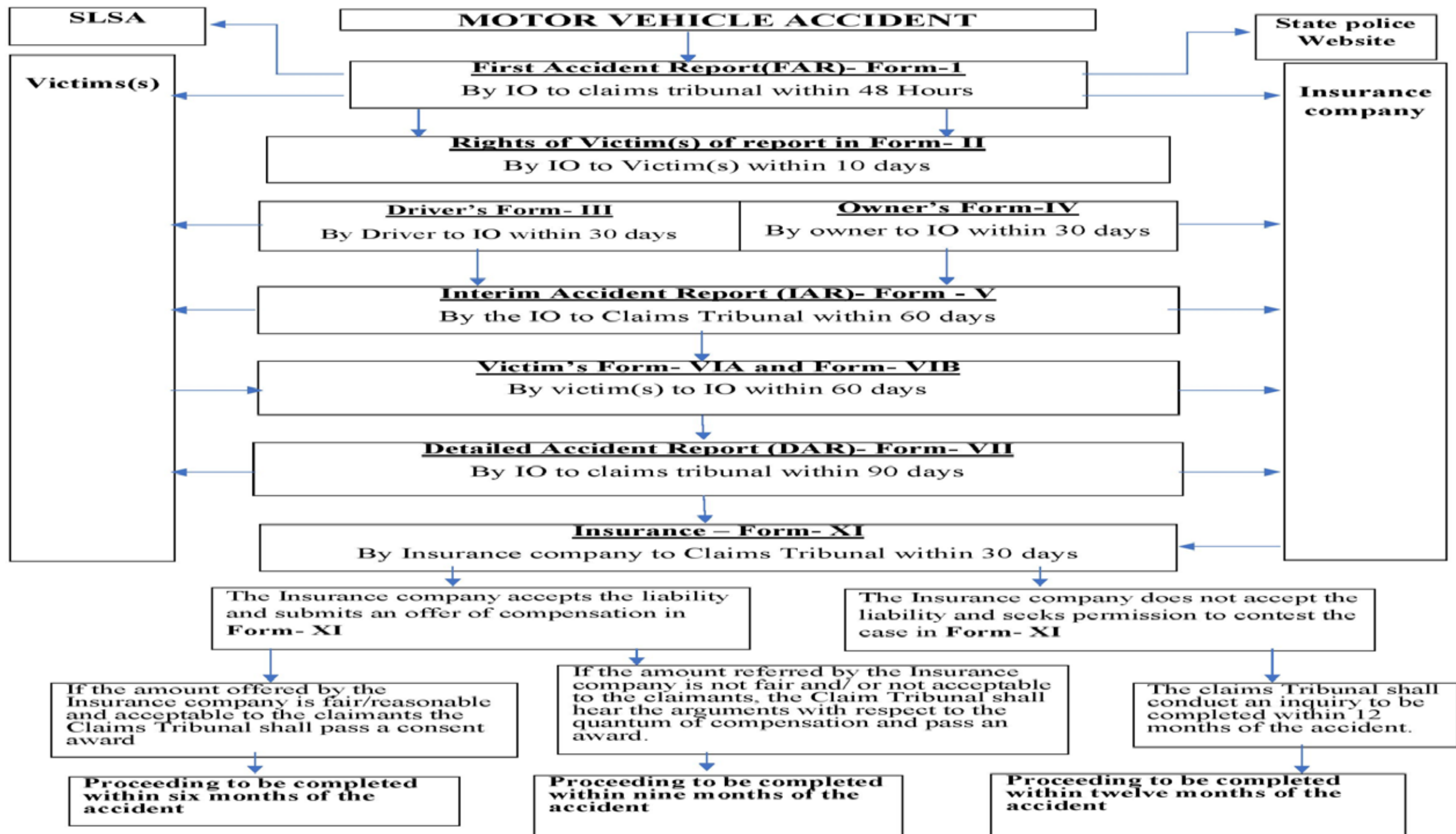
- 1. Investigation of Road accidents by the Police.**
- 2. Intimation of accident to the Claims Tribunal and Insurance Company within forty-eight (48) hours**
- 3. Rights of victims of Road Accident and Flow Chart of the Scheme mentioned in Form II to be furnished by the Investigating Officer to the Victim(s)**
- 4. Driver's Form to be submitted by the driver to the Investigating Officer**
- 5. Owner's Form to be submitted by the owner**
- 6. Verification of the Driver's Form and Owner's Form by the Investigating Officer and Insurance Company**
- 7. Interim Accident Report (IAR) to be submitted by the Investigating Officer to the Claims Tribunal**
- 8. Verification of the Driver's Form and Owner's Form by the Investigating Officer and Insurance Company**
- 9. Victim's Form to be submitted by the victim(s) in respect of minor children**
- 10. Verification of the Victim's Forms by the Insurance Company**
- 11. Investigation of the criminal case to be completed by the police within sixty (60) days of the accident**
- 12. DAR to be submitted by the Investigating Officer before the Claims Tribunal**
- 13. Copy of DAR to be submitted to victim(s), owner/driver of the vehicle(s) involved in the accident, the Insurance Company and the State Legal Service Authority**
- 14. Investigating Officer may seek necessary directions from the Claims Tribunal**

- 15. Duty of the Registering Authority to verify the documents
- 16. Duty of the hospital to issue MLC (Medico Legal Case) and Post-mortem Report
- 18. Examination of FAR, IAR and DAR by the Claims Tribunal
- 19. Duty of the Investigating Officer to produce the driver(s), owner(s), claimant(s) and eye witness(es) before the Claims Tribunal
- 20. Duties of Police shall be construed to be part of State Police Act
- 21. Claims Tribunal shall treat DAR as a claim petition for compensation under sub-section (4) of section 166 of the Motor Vehicles Act, 1988
- 22. Cases of rash and negligent driving
- 23. Duty of the Insurance Companies to appoint a Designated Officer within ten (10) days of the receipt of the copy of DAR
- 24. Duty of the Insurance Companies to appoint a Nodal Officer and intimate the State Police.
- 25. Duty of Insurance Companies to verify the claim
- 26. Form XI to be submitted by the Insurance Company before the Claims Tribunal within thirty (30) days of DAR
- 27. Consent award to be passed where claimant(s) accepts the offer of Insurance Company
- 28. Claimant(s) to respond to the offer of the Insurance Company within thirty (30) days

- 29. In case of non-settlement, the Claims Tribunal shall conduct an enquiry and pass an award within thirty (30) days
- 30. Cases where the Insurance Company disputes the liability If the Insurance Company disputes the liability to pay the compensation, it shall disclose the grounds of defence in Form-XI.
- 31. Duty of Claims Tribunal to elicit the truth Before passing the award on the basis of the DAR, the Claims Tribunal shall satisfy itself that the statements made in the DAR are true and shall satisfy itself with respect to the genuineness of the claim as well as all the relevant facts. The Claims Tribunal may consider examining the parties under section 165 of the Evidence Act, 1872 (1 of 1872).
- 32. Examination of the claimant(s) before passing of the award (1) The Claims Tribunal shall, before or at the time of passing of the award, examine the claimant(s) to ascertain their financial condition/needs, mode of disbursement and amount to be kept in fixed deposits. (2) The Claims Tribunal shall ensure that the following documents of the claimants are taken on record before the disbursement of the award amount: – (a) Aadhaar Card and PAN Card; (b) Details of the Aadhaar Linked Bank Account(s) of the Claimant(s) near the place of their residence along with the proper endorsement; and (c) Two sets of photographs and specimen signatures of the claimant(s).

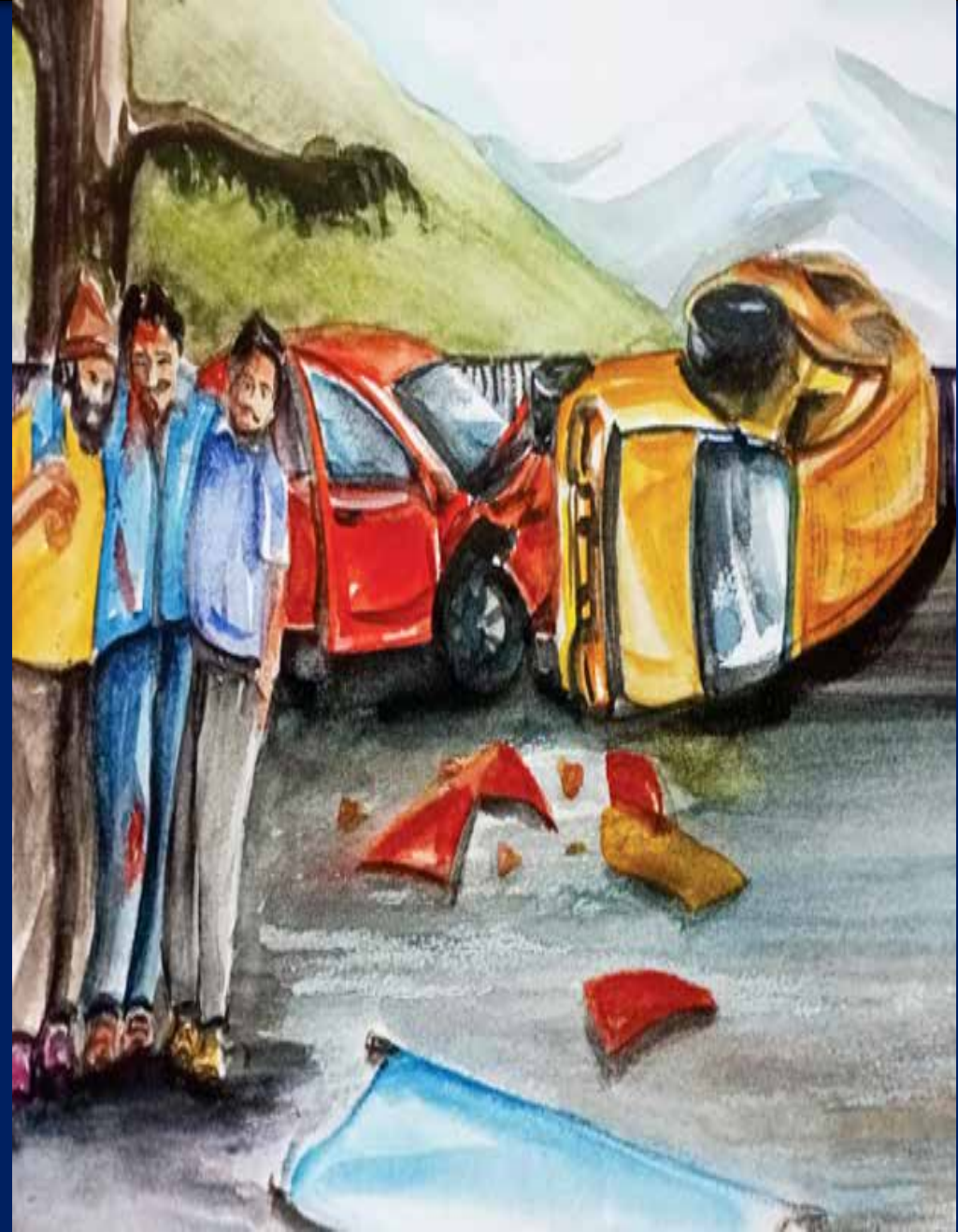
33. Written submissions to be filed by the parties before the Claims Tribunals

- 34. Deposit of the award amount
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IN CASES OF INJURY

- The Tribunal and court must accurately assess the claimant's functional disability, and the impact on their ability to perform daily work and earning. **Sanjay Rajpoot Vs Ram Singh And Others 2025 INSC 188**
- This means that injured is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. **C.K. Subramania iyer v. T. Kunhikuttan nair (1969) 3 scc 64 : (air 1970 sc 376), r.D. Hattangadi v. Pest control (india) (p) ltd. (1995) 1 scc 551 : (AIR 1995 SC 755) and Baker v. Willoughby, 1970 ac 467.**
- Once the permanent disability is fixed, taking into consideration, its impact on the employment/profession of the claimant, the compensation has to be awarded. **ICICI LOMBARD GENERAL INSURANCE CO. LTD. Versus AJAY KUMAR MOHANTY AIR 2018 SC 2740 : (2018) 3 SCC 686 : 2018 0 Supreme(SC) 208;**



- The various elements of compensation are enumerated as under in cases of disability
- "Pecuniary damages (Special damages)
 - (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.
 - (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
 - (iii) Future medical expenses.
- Non-pecuniary damages (General damages)
 - (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
 - (v) Loss of amenities (and/or loss of prospects of marriage).
 - (vi) Loss of expectation of life (shortening of normal longevity)" **Kajal Versus Jagdish Chand & Ors Air 2020 Sc 776 2020 0 Supreme (Sc) 110 See Also Erudhaya Priya Vs. State Express Transport Corporation Limited AIR 2020 Supreme Court 4284 See Also Master Ayush Versus The Branch Manager, Reliance General Insurance Co. Ltd. & Anr. March 29, 2022 Civil Appeal Nos. 2205-2206 Of 2022 (Arising Out Of SLP (Civil) Nos. 7238-39 Of 2021) 2022 Livelaw (SC) 330 Master Ayush Versus The Branch Manager, Reliance General Insurance Co. Ltd. & Anr. March 29, 2022 Civil Appeal Nos. 2205-2206 Of 2022 (Arising Out Of SLP (Civil) Nos. 7238-39 Of 2021) 2022 Livelaw (SC) 330**
- **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 see also Abhimanyu Partap Singh — Vs. Namita Sekhon And Another Civil Appeal No. 4648 Of 2022 (Arising Out Of SLP (C) No.18886 Of 2019) Decided On : 06-07-2022**
- A government servant having no permanent disability, he wasn't immobilized and he continued to work even after the accident the compensation reduced **New India Assurance Company Ltd v Satish Chandra Sharma & Anr CA 1579/2022 decided on 23.2.2022**

- What requires to be assessed by the tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, **it has to be quantified in terms of money**, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency).
- . We may however note that in some cases, on appreciation of evidence and assessment, the tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the tribunal will adopt the said percentage for determination of compensation." **RAJ KUMAR V. AJAY KUMAR (2011) 1 SCC 343 SEE ALSO AIR 2012 SUPREME COURT 459 "SANJAY BATHAM V. MUNNALAL PARIHAR**
- There cannot be straight jacket formula. It depends upon the facts and circumstances of each case and it varies from person to person who has suffered **Benson George vs Reliance General Insurance Co.Ltd. | CA 1540 OF 2022 | 25 February 2022 Citation: 2022 Live Law (SC) 214**

A government servant having no permanent disability, he wasn't immobilized and he continued to work even after the accident the compensation reduced **New India Assurance Company Ltd v Satish Chandra Sharma & Anr CA 1579/2022 decided on 23.2.2022**

- The Orthopedic Surgeon, deposed that the appellant had suffered nine injuries, and. The whole body disability was medically assessed at 32% The appellant is entitled to loss of future earning on basis of the whole body disability of 32% **Savitha Vs. M/S. Chodamandalam M.S. General Insurance Co. Ltd. And Others —AIR 2020 Supreme Court 3224**

ASSESSMENT OF FUTURE LOSS OF EARNINGS DUE TO PERMANENT DISABILITY

- Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity.
- Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The persons with disabilities (equal opportunities, protection of rights and full participation) act, 1995 ("the disabilities act", for short). But if any of the disabilities enumerated in section 2(i) of the disabilities act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.
- The percentage of permanent disability is expressed by the doctors with reference to **the whole body**, or more often than not, with reference to a **particular limb**. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, **obviously cannot be assumed to be the extent of disability of the whole body**.
- If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%).
- If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body **cannot obviously exceed 100%**.

COMPOSITE NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE

- Composite negligence' refers to negligence on part of two or more persons. Where a person is injured as a result of negligence on part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them.



- On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence.
- Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence. **AIR 2008 SC (SUPP) 1646 "T. O. ANTONY V. KARVARNAN" 2008 AIR SCW 2045 : (2008) 3 SCC 748**
- In case of collusion between two vehicle due to negligence of drivers of both vehicles entire responsibility cannot be thrust on any one driver of one vehicle, **if the other vehicle was not insured Oriental Insurance Company Sasaram vs. Ramesh Kumar Upadhaya 2020 (5) BLJ 640**
- It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles involved in accident in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award **Khenyei v. New India Assurance Co. Limited and Ors. AIR 2015 SUPREME COURT 2261**

INTEREST

- Award passed by the claims tribunal – to be treated as money decree – executing court is competent to invoke **Order Xxi, Rule 1, Cpc. Unless The Decree Specifically Provides, The Amounts Have To Be Appropriated As Contemplated Under ORDER 21 RULE 1** – If there is a shortfall in deposit, the amount has to be adjusted towards interest and costs, then it has to be adjusted towards principal – **Sub-rules (4) And (5) Only Provide That Interest Shall Cease To Run On Deposit Being Made** – These provisions do not have relevance with regard to appropriation.
- **INTEREST ACT, 1978 – SECTION 3(3)(C)** – in money suit claim amount consists of principal and interest till the suit is filed – in case of award passed under MV act, the question of inclusion of any interest on the decretal amount does not arise – **SECTION 3(3)(C) NOT ATTRACTED V. Kala Bharathi Vs. Oriental Insurance Company Ltd., Branch Chittoor Decided ON : 01-04-2014**

- **The Gist Of Important Amendments**
- **1. *Omission of Chapter-X*** – Chapter-X (Sections 140-144) of Motor Vehicles Act, 1988 which contained provisions relating to interim compensation on the basis of “*No fault liability*”, has been omitted. In view of the above omission, no interim compensation is payable in motor accident claims.
- **2. *Substitution of Chapter-XI with New Provisions*** – Chapter-XI (Section 145 to 164) of Motor Vehicle Act, 1988 dealing with insurance of Motor Vehicles against third party risks has been substituted with new provisions namely Sections 145 to 164D.
- **The major change in law due to the substitution of Chapter-XI is as under:-**
- **(i) *Section 149(1) - Insurance Company has to appoint a Designated Officer within 10 days*** - The Insurance Company shall, upon receipt of information of an accident, either from the claimant(s) or through Accident Information Report (AIR) or otherwise, designate an Officer to settle the claims relating to an accident.
- **(ii) *Section 149(2) - Offer of Settlement by the Insurance Company*** - The Designated Officer of the Insurance Company has to make an offer for settlement to the claimant(s) before the Claims Tribunal within 30 days in terms of the Procedure prescribed in Central Motor Vehicles Rules

- (iii) **Section 149(3)(a) - Consent Award by Claims Tribunal** – If the claimant accepts the offer made by the Designated Officer of the Insurance Company under Section 149(2), the Claims Tribunal shall record the settlement and pass an award whereupon the Insurance Company shall make the payment within 30 days of the recording of the settlement.
- (iv) **Section 149(3)(b) - If Claimant rejects the offer of te Insurance Company** - If the Claimant rejects the offer made by the Designated Officer of the Insurance Company, the Claims Tribunal shall fix the date of hearing to adjudicate the claim on merits.
- (v) **Section 150 - Duty of Insurance Company to satisfy judgment/ award against persons insured in respect of third party risks** – The insurance company has to pay the amount of compensation notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy. However, the defences of the Insurance Company have been widened and the Insurance Company now can take the defence that the premium paid by the insured through cheque has been dishonoured and that they have not received the premium in respect the policy. The Insurance Company can also take a defence that the owner was driving under the influence of alcohol or drugs as laid down in Section 185.
- (vi) **Section 156 - The death of the insured shall not be a bar to the claim against the Insurance Company** - The death of the insured after the accident shall not be a bar to a Motor Accident Claim.
- (vii) **Section 158 - Duty of the Driver to produce all documents relating to the use of vehicle** - The driver of the Motor Vehicle has a duty to produce all relevant documents relating to the use of vehicle before the Police Officer *namely* Certificate of Insurance, Certificate of Registration Certificate of Pollution Control, Driving License, Fitness, Permit etc..
- (viii) **Section 158(2) - Duty of Owner to produce to the relevant documents relating to the accident** - If the driver of the vehicle does not produce the above mentioned documents, the owner shall produce the relevant documents before the Police Officer.
- (ix) **Section 159 - Duty of Police to file Accident Information Report (AIR) before the Claims Tribunal within three months** -

Section 160 - Duty of the Registering Authority and the Police to furnish particulars of the vehicle involved in the accident to the victim(s)/ claimant(s) - The Registering Authority and the Police shall furnish all relevant particulars relating to the accident to the victim(s)/ claimant(s) upon payment of prescribed fees, namely particulars of the offending vehicle, driver, owner, insurance company, identification marks etc.

(xi) ***Compensation relating to Hit and Run Motor Accident*** - The compensation in respect of *Hit and Run Motor Accidents* has been enhanced from Rs.25,000/- to Rs.2,00,000/- in death cases and from Rs.25,000/- to Rs.50,000/- in grievous hurt cases.

(xii) ***Section 162 - Scheme for Golden Hour*** - The Insurance Company shall provide cashless treatment of victims of road accident in the *Golden Hour* under the Scheme to be formulated by the Central Government. The word “*Golden Hour*” defined in Section 2(12A) means time period lasting one hour following a traumatic injury during which there is highest likelihood of preventing death by providing prompt medical care.

(xiii) ***Section 164 - Compensation on the basis of “No Fault Liability”*** – Section 164 prescribes “*No Fault Liability*” compensation of Rs.5,00,000/- in death cases and Rs.2,50,000/- in grievous hurt cases without any need to prove Section 93 of 2019 Act has omitted the Second Schedule of 1998 Act which provided the Structured Formula for compensation on *No-Fault* basis under Section 163A. Upon accepting the compensation under Section 164, the Claimant cannot claim the compensation under Section 166 of the Motor Vehicle Act.

(xiv) ***Section 164A - Power to make Scheme for interim relief for claimants*** – Section 164A empowers the Government to make Scheme for interim relief to the claimants.

(xv) ***Section 164B - Motor Vehicles Accidents Fund***– Section 164B empowers the Central Government to constitute a *Motor Vehicles Accident Fund* for providing compulsory insurance cover to all road users in India. The Fund shall be utilized for the purpose of treatment of the injured in road accidents, and compensation to the representatives of a person who die or sustain grievous hurt in a *Hit and Run Motor Accident*. Section 164B empowers the Central Government to prescribe compensation to be paid to such persons out of the said Fund. Section 164(C)(2)(w) empowers the Central Government to make Rules in respect of the persons to whom compensation may be paid. The maximum liability amount in such cases shall also be prescribed by the Central Government.

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THANK YOU