

MOTOR VEHICLE ACT: BENEFICIAL LEGISLATION STRIVING TO PROVIDE JUST COMPENSATION

The Pune Hit and Run case, in which two young people were killed by a young lady who was allegedly sitting behind the wheel of a fast Porsche and driving it recklessly and carelessly, had created a stir on social media. This episode sparked a heated discussion about our current and future criminal laws, with many calling for harsher penalties to discourage such careless behaviour.

Previously, Section 304A of the Indian Penal Code provided a two year imprisonment for causing death by rash and negligent act that does not amount to culpable homicide. With new criminal laws which came into force from July 1, 2024, Section 304A of the Indian Penal Code has been replaced by Section 106(2) of the Bhartiya Nyaya Sanhita (BNS) which provides a stricter punishment of “0-10 years” in “hit and run case”. However, a nationwide strike by the All India Transporters against the harsher punishment for causing death in a Hit and Run Case has compelled the government to put section 106(2) of BNS on hold with a press release stating that Section 106(2) will be invoked only after due consultation with the All India Motor Transport Congress.

All these deliberations and discussions have provided a bird eye view to our citizens qua the criminal aspect of Hit and Run Case but have failed to address the tortuous liability in motor vehicle accident cases which is being governed by The Motor Vehicle Act, 1988 in our country. The Motor Vehicle Act is a beneficial legislation which has been framed with the object of providing relief to the victims or their families by way of just compensation either by the owner of the motor vehicle or by the authorised insurer of the motor vehicle as third party insurance.

This article aims to deal with “just compensation” granted to the dependants of the victims of motor vehicle accident along with the relevant provisions and case laws.

INTRODUCTION

Data published on the Ministry of Road Transport and Highways' (MORTH) official website indicates that there were 4,61,312 traffic incidents in 2022, 1,68,491 of which resulted in fatalities and 4,43,366 in injuries. There were 11.9% more traffic accidents in 2022 than there

were in 2021. Motor vehicle accidents have significantly increased as a result of both population growth and the number of motor vehicles on the road. In addition to killing one person, these incidents cause havoc for the deceased's entire family, who not only endure psychological and social suffering but also financial hardship because the victims are sometimes the only provider for the family.

The purpose of granting compensation within the ambit of the statute is not to provide assistance psychologically and socially as money cannot renew a physical frame that has been battered but only to provide assistance financially as far as money can compensate and ease the future life of the dependents.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

Chapter XI of the Act outlines the regulations regarding insurance for third-party risks. Essentially, a third-party risk insurance policy is an agreement in which the insurance provider commits to compensate the insured individual (vehicle owner or driver) if they are sued or found legally responsible for injuries, fatalities, or damages caused to a third party. In India, having third-party insurance is mandatory for all vehicles, and the recipient of the insurance benefits is always the third party affected by the actions of the insured party (vehicle owner or driver).

In the event of a death or injury resulting from a motor vehicle accident, the insurance provider that holds the Third Party Insurance Policy for the vehicle will be responsible for providing compensation to the claimants or dependents of the deceased.

STATUTORY PROVISIONS

Section 165 of the Act lays down that the State Government, by notification in the official gazette, may constitute one or more Motor Accident Claims Tribunal, for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Section 166 specifies that an application for compensation in case of accident may be made by

- i. The person who has sustained the injury, or,
- ii. The owner of the property, or,
- iii. Agent duly authorised by the person injured, or,
- iv. Any or all Legal representatives of the deceased

Section 168 deals with the power of the Claims Tribunal to grant an award by determining the amount of just compensation which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or by any of them, as the case may be.

Thus, a conjoint reading of Section 165, 166 and 168 clearly provides that in case of any accident, the person injured or his agent (in case of injury) or the legal representative of the deceased (in case of death) shall file an application under section 166 before the Claims Tribunal specifying all the facts and circumstances of the case and the Claims tribunal, after hearing the parties may pass an award determining the amount of just compensation in favour of the aggrieved person. Provided there is no legal fault at the hands of the driver or owner of the vehicle, in practical discourse the amount of compensation is always paid by the insurance company which is holding the Third Party Risk Insurance Policy of the Vehicle.

Section 173 provides for the statutory right of appeal wherein the claimant/s can challenge the award passed by the Claims Tribunal by preferring an appeal before the concerned High Court within 90 days from the date of the passing of the award.

LANDMARK JUDGMENTS

1. Sarla Verma and others Vs Delhi Transport Corporation and anotherⁱ

Before passing of this Judgment by the Hon'ble Apex Court, there were huge discrepancies and inconsistency in the methods adopted by the Claims Tribunal in calculating and granting just compensation. In the present case, the Apex Court laid down clear principles with respect to future prospects, multiplier and deductions while calculating the compensation. The Hon'ble Court further held that the *Multiplier* shall be determined with respect to the age of the deceased and laid down the following table:

Age	Multiplier
For age groups 15 to 25	18
For age groups 26 to 30	17

For age groups 31 to 35	16
For age groups 36 to 40	15
For age groups 41 to 45	14
For age groups 46 to 50	13
For age groups 51 to 55	11
For age groups 56 to 60	9
For age groups 61 to 65	7
For age groups 66 to 70	5

2. **National Insurance Company Limited v. Pranay Sethi & Ors.**ⁱⁱ

The 5 Judge Bench of the Hon'ble Apex Court affirmed the principles laid down in the *Sarla Verma Case (supra)* and concurred the principles with respect to the Future Prospects and deductions.

a. Future Prospects

If the deceased had a permanent job and was below the age of 40, then 50% has to be added as future prospects in his actual salary (salary less tax). 30% has to be added if the age of the deceased was between 40-50 years and in case the deceased was between the age of 50 to 60 years, the addition should be 15%.

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

b. Deductions

With respect to the deductions towards personal and living expenses of the deceased, the Hon'ble Apex Court held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six. Further there shall be deduction of 50% (1/2) in case the deceased was unmarried. However, if the bachelor has a large family dependent on him/her, like a widowed mother and

non-earning siblings, only 1/3rd would be deducted from his/her salary as personal and living expenses.

c. Conventional Headings

The Court further held that 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 Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads.

d. Just Compensation

The Hon'ble Court further explained the concept of 'just compensation' and observed that the concept of 'just compensation' must be viewed through the spectrum of reasonableness, fairness and equitability and the Tribunals/ Courts shall make sincere efforts to grant a just compensation.

3. Magma General Insurance Company Ltd. Versus Nanu Ram @ Chuhru Ram and Ors.ⁱⁱⁱ

In this case, the Hon'ble Supreme Court affirmed the view as laid down in the Pranay Sethi Case with respect to the conventional headings and gave a comprehensive interpretation to consortium and specified that it includes spousal consortium, parental consortium, as well as filial consortium. Thus, the compensation under the headings of Loss of Consortium was given to each claimants/ dependents and not only spouses.

4. Nagappa vs. Gurdayal Singh and others^{iv}

In this case, the Hon'ble Apex Court held that under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just compensation' which is reasonable in the facts relying upon the evidence produced on record, irrespective of the amount so claimed by the claimants.

5. Raj Kumar v. Ajay Kumar^v

This case specifically dealt with the cases of personal injury wherein the the Hon'ble Apex Court laid down the heads under which the compensation can be granted in case of personal injury:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalisation, 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 expense.

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).

6. Kishan Gopal and another vs. Lala and others^{vi}

In this case, a minor child aged about 10 Years died in the road accident. The Hon'ble Court accepted the notional income as Rs. 30,000/- and as per the age of the parents i.e. 36 years, the loss of dependency was calculated applying the multiplier of 15 at Rs. 4,50,000/- and a sum of Rs. 50,000/- was awarded under conventional heads, awarding a total sum of compensation of Rs. 5,00,000/-.

7. Kurvan Ansari @ Kurvan Ali & another vs. Shyam Kishore Murmu and another^{vii}

In this case, a minor child aged about 7 years died in a road accident. Taking notional income as Rs. 25,000/-, applying the multiplier of 15, calculating the loss of dependency as Rs. 3,75,000/- and adding Rs. 55,000/- in conventional heads, the Hon'ble Apex Court awarded Rs. 4,70,000/- as compensation.

8. Sumathy and Others Versus Babu and Another^{viii}

In this Case, the Hon'ble Apex Court held that the claimants shall be entitled to a total sum of compensation along with future interest at the rate of 9% per annum from the date of filing the claim petition till its realization.

9. Pramod Sinha Versus Suresh Singh Chauhan^{ix}

In this case, the Hon'ble Apex Court held that it is not mandatory for the claimants to lodge an application for compensation under Section 166 of the Motor Vehicles Act before the MACT having jurisdiction over the area where the accident occurred. The Court observed that the provisions of the Act do not make it mandatory for the claimants to lodge an application for compensation under Section 166 thereof before the MACT having jurisdiction over the area where the accident occurred. On the contrary, sub-section (2) of Section 166 provides an option for the claimants to

approach the MACT within the local limits of whose jurisdiction they (claimants) reside or carry on business or the defendant resides.

METHOD TO CALCULATE THE COMPENSATION

Let us take an example to understand the method adopted by the Courts to calculate the just compensation to be awarded to the dependants of the victim who lost his/her life in a motor vehicle accident.

Age of deceased - 50 Years (Let's assume)

Monthly Income of deceased- Rs. 50,000/- per month

Type of work- Salaried

No. of dependents- 3

Step 1: Calculate the Total Annual income

In the present case, the total income will be $50,000 \times 12 = 6,00,000/-$

Step 2: Determine the Multiplier and multiply it with Annual Income

Since the age was 50 years, the Multiplier shall be 13. Thus the Total Income will come to Rs. 78,00,000 ($6,00,000 \times 13$)

Step 3: Determine the deduction and subtract it from total income

Since the total number of dependents are 3, there shall be a deduction of $\frac{1}{3}^{\text{rd}}$ from the total income. Thus, the total income (after deduction) will be $78,00,000 - \frac{1}{3}^{\text{rd}}$ of $78,00,000 = \text{Rs. } 52,00,000/-$

Step 4: Calculate Future Prospects and add it to the total income

In the present case, since the deceased was a salaried person, with the age of 50 Years, the future prospects shall be 30%. Thus, now the total compensation (after adding future prospects) shall be $52,00,000 + 30\%$ of $52,00,000$ which amounts to Rs. 67,60,000/-

Step 5: Add Conventional Headings

An amount of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- shall be added under the headings of loss of estate, loss of consortium and funeral expenses to the total compensation calculated and finally the amount comes to $67,60,000 + 70,000 = \text{Rs. } 68,30,000/-$

(Note: The amount of 70,000 under the heading of conventional headings shall increase by 10% in every 3 year from the Year 2017)

Step 6: Add Loss of Consortium for remaining dependents

In the present case, since there are 3 dependents and one of the dependents had already received Rs. 40,000/- under the heading of loss of consortium in Step 5, the remaining 2 dependents shall also be given compensation under the heading of the Loss of Consortium. Thus, the final compensation amount shall be $68,30,000 + 80,000 = \text{Rs. } 69,10,000/-$.

For better appreciation of the computation of the claim, a table is being presented hereunder –

Headings	As per Compensation Granted
Income	6,00,000/-
Deduction(3 Dependents)	1/3
Multiplier (Age 50 Years)	13
Future prospect (salaried)	30%
Conventional Headings	70,000
Filial Consortium for other dependents (2 dependents)	80,000
Total	69,10,000/-

CONCLUSION

Over the Years, the implementation and interpretation of the Motor Vehicle Act has made it a people's legislation in true sense, providing fair, equal and reasonable financial assistance to the victims and their families who have lost a support system due to rash and negligent act of others. Thus, the rash and negligent driving creates both criminal and tortuous liability with the former acting as a sword by creating deterrence in the mind of the negligent drivers, the latter acting as a shield for the victims and their family members.

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- i ***(2009) 6 SCC 121***
- ii ***(2017) 16 SCC 680***
- iii ***(2018) 18 SCC 130***
- iv ***(2003) 2 SCC 274***
- v ***(2011) 1 SCC 343***
- vi ***(2014) 1 SCC 244***
- vii ***(2022) 1 SCC 317***
- viii ***(2022) 9 SCC 702***
- ix ***Transfer Petition(s)(Civil) No.1792/2023***