

Road Accident and Victim Compensation: The International and National Framework

Dr. Vijay Chaudhary*& Poonam**

*(Assistant Professor, HPUILS, Himachal Pradesh University, Shimla
Email: Vijaychaudhary80@gmail.com)

** (Ph.D. Research Scholar, Himachal Pradesh University, Shimla
Email: pantpoonam@rocketmail.com)

Abstract:

The protection of life and personal liberty is a fundamental right of every citizen. With the unequalled increase in the number of motor vehicles, there is also an increase in motor vehicle accidents on the roads. Every year many people lose their lives due to these accidents. The sufferers are ultimately the victim and his family. Road Accidents are number one non unnatural death causing situation in India. Roads are meant for helping the people move from place to place and providing safe and convenient mode of movement, but Roads have become the source of casualty and Accident and causing death. The victim of crime is entitled to compensation for the caused damage. Various efforts have been made to protect the victim and his family by providing compensation to them not at national but at international level.

Keywords: Accident, Victim, Compensation, Life, Death, Disablement.

Introduction:

We all know what a road is or think we do, but have we ever stopped to consider the full meaning of a road and the bearing it has on our everyday life? In this series you have already read about our food and if you were asked what the most essential things in a man's life you are would probably say food, clothing, and housing. The air you breathe is also essential, of course, but it is free. We don't bother about it very much in the same way that we don't bother about roads because they are free, or at least they appear to be. In actual practice we pay a great deal for the benefit of having roads, but as we pay indirectly, we don't seem to notice it. In the earliest days of man's life on this earth, he probably did not know or care what a road was. He must have spent a considerable part of his time in avoiding being attacked or eaten up by large monsters from which he had to escape by the only means known to him along some jungle path or over a river, by means perhaps of a fallen tree or some such primitive bridge. From his cave, where he and his family lived, he had some hunting or fishing ground to which he used to make successive trips and he probably wore away the grass along a definite track. This, today, we call a path. For thousands of years the inhabited parts of the earth were probably covered by nothing more elaborate than pathways made by men and animals, for in the same way as man makes a path so do animals hence the terms sheep track or goat track."

The next stage in the evolution of the road was probably brought about by man's inventive mind thinking out a roller which eventually turned into a wheel by which he found that he could move his agricultural produce or the bodies of the animals he flew back to his cave and his family. We have all heard of the Roman Chariot. The Romans used to have races in these machines as exciting as the motor races we have today and in some of the old, buried cities in Italy the ruts worn by these Roman chariots can be seen worn into the solid stone which paved the streets of Pompeii and Herculaneum, cities submerged over nineteen centuries ago by the ashes of the volcano Vesuvius. In those days men fought from chariots, and the ochre with their bows and arrows went forth to battle on wheels just as troops do today. The Romans are famous as road makers, and many of their roads are in existence today, one of the best known being the Appian Way, construction of which commenced in 312 B.C.

The protection of human life is of supreme importance, because the 'status quo ante' of one's life cannot be restored if life is lost, as revivification is beyond the capacity of man. With the unparalleled upsurge in the number of motor vehicle accidents on the roads, the precious life of a foot pedestrian, a scooterist, a cyclist and an occupant of motor car, has been put to a great peril and menace. Road Accidents are number one non unnatural death causing situation in India. Roads are meant for helping the people move from place to place and providing safe and convenient mode of movement, but Roads have become the source of casualty and Accident and causing death.

Concept of Road Accident and Victim Compensation

Fatalities and injuries resulting from road traffic accidents are a major and growing public health problem not only in India but all over the world. Road safety continues to be a major developmental issue, a public health concern and a leading cause of death and injury across the world. At least one out of 10 people killed on roads across the world is from India, according to the World Health Organization. The cost of road accidents is borne not only by the victims and their family, but by the economy in terms of untimely deaths, injuries, disabilities, and loss of potential income. It is indeed a matter of great concern that despite the continuing efforts of the Government in this regard and our commitments for halving fatalities we have not been able to register significant progress on this front. The development of the concept of compensation and liability can be traced both historically and theoretically. Historically the concept of compensation and liability in crude sense was not only part of Hammurabi's code but also existed in development sense in ancient Greek city-states. The concept of compensation was also not new to India and existed in more developed sense than the present. The Manu in Chapter VIII, verse 287 clearly says that: "If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole. He further in verse 288 says that: He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage".

According to Salmond, "Liability or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong". According to Markby, "The word liability is used to describe the condition of a person who has a duty to perform". Whenever a person is injured, he loses something that may be his bodily part, functioning of his body, mental peace or anything alike. The development of the concept of compensation and liability can be traced both historically and theoretically. Historically the concept of compensation and liability in crude sense was not only part of Hammurabi's code but also existed in development sense in ancient Greek city-states. The concept of compensation was also not new to India and existed in more developed sense than the present. The Manu in Chapter VIII, verse 287 clearly says that: "If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole. He further in verse 288 says that: He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage".

Meaning:

Generally, victim is a person threatened, injured, or destroyed by an act or omission of another that is man, structure, organization, or institution. Suffering may be caused by another man or another structure where people are also involved.

Section 2 (w)(a) of Code of Criminal Procedure (Amendment) Act, 2010 defines victim as:

"Victim means a person who has suffered any loss or injury caused by reason of act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heirs".

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 defines

Victim as:

A. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

B. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

C. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth, or family status, ethnic or social origin, and disability.

Victim Compensation: Victim compensation may be defined as a payment of damages in form of cash or kind payable by the accused in lieu of harm or injury caused by him to the victim or his family. The victim of crime is entitled to compensation for the caused damage. Compensation for damages can be claimed from the offender with added interest from the date of the crime.

Origin and development of Victim

The origin of concept of victim or victimology as a part of criminology may be traced back to 1940s when founders of this branch of knowledge notably Mendelson, Von hentig initially tended to use the term.

The concept of victim or victimization has changed its ancient roots to its modern definition. The field of study that analyses victim is known as victimology and it has evolved as well. victimology examines several factors including victim attitude and conduct their relationship with offenders and societies treatment of them.

The father of victimology is two German criminologists Hans-Von-hentig and Benjamin Mendelson. They studied the behaviour characteristics and vulnerability of crime victims.

A shift in the definition and study of victims came with the women's movement of the 1970's and 80s. Those in the women's movement worked to provide care for victims of rape and domestic violence, creating Rape Crisis centres and other forms of support and advocacy. As a result of victimology studies in 1970s and beyond and social movements such as feminism, today there are many different support groups and organizations dedicated to helping victims' families and friends of missing persons, parents of murdered children and mothers. Against drink and driving are just a few of the groups that provide counsel and support to victims and their families. Even the terminology has changed as many victims now prefer to call themselves "survivors".

Categorization of Victim

Mendel Sohl studied Victims since their contribution to crimes and classify them into following categories:

1. Completely innocent victim for example children person in sleep.
2. Victims with minor guilt and victims of ignorance such as pregnant women.
3. Voluntary victims such as the one who commits suicide or are killed by euthanasia.
4. Victims who are more guilty than the offender such as persons who provoke others to commit suicide.
5. Criminal types of victims who commit offences against others and get guilt or hurt by others in self-defence.

Victims of sexual offences

Victim privacy and personal integrity gets violated that in term causes physical and psychological harm and for many its effect is a long term one, impairing the capacity for personal relationship, altering their behaviour and values and generates endless fear. Victims who report for sexual offences suffers at each stage after reporting the police, during investigation, during medical examination of victim of rape or at the trial. The witness of victim also suffers harassment, humiliation, financial loss, loss of time. All these resulting in mental pain and suffering to the victim. Though constitution of India provides for equal justice and free legal Aid under article 39-A but in practice criminal justice system does not adequately compensate the victim of rape for pain, suffering and loss of earning. In the end, even the offender is punished, victim does not gain anything as there is no scheme to rehabilitate and treat that victim.

Victims of motor accident cases

victims of accident are those who sustain bodily injury, causes either permanent or temporary disability or the legal representative of deceased who dies because of accident case. It may arise because of use of motor vehicle, railway train, aircraft, a ship, or wide operating machine in a factory. The victims of accident have the right to claim compensation under statute. There is no such right of other victim though compensation has been awarded in few cases by a discretion of Courts.

Victims of Social Offences

Social offences include crime of atrocities committed based on caste and hatred. On Commission of atrocity the victim suffers not only bodily or mental pain but also eminent feeling of insecurity which is not present in the victim of any other crime. Even after recovery of bodily injury he continues suffers mental pain. During rest of his life his physical strength is deteriorated making him unfit in his profession and occupation which also affects the economic condition of victim. This results into deterioration physical, mental, educational, social, economic, and sociological status of victim. Victim suffers direct financial losses, and he must spend lots of money on treatment besides his wealth is wasted in litigation. Commission of atrocity affects adversely on the education progress not only of the victim but also of his family members.

Victims of Abuse of power

Victims of abuse of powers includes those persons who are either victims of illegal detention or police atrocities custodial violence of like. Every individual has inalienable right to life and personal liberty that has guaranteed by Article 21 therefore this Article became a support of poor against government lawlessness. Supreme Court has attempted to fill lacuna in the field of compensation for police accesses by using its power under Article 32 of Indian Constitution. Article 22 of constitution of India protects every individual from illegal detention.

International perspectives on Road Safety and Victim Compensation

Though the law relating to payment of compensation to victims of crime has seen rapid development only in the last several years, it is not wholly a new concept invented in modern times. In almost every important ancient legal system of the world, there are references indicating the existence of the institution of paying compensation to victims. There was no distinction between tort and crime in those old days as we find today. For centuries an individual in society used to become the victim of offences perpetrated by his fellow human beings. These were designated as private offences. The State ultimately, as a part of its responsibility to maintain law and order, comes to the rescue of such victims of crime and provides for sanctions against the wrong doers.

United Nations Economic and Social Commission on for Asia and the Pacific, report on Road Safety in India – Status and Challenges, 2017.

The report first emphasized the importance of road safety where it observed that in 2015 over 5 lakh people died due to road accidents. Further the report emphasizes that India, a part of the Brasilia declaration, has committed to reduce the number of road accidents and deaths by 50 percent. Further in the report the commission describes the major challenges in road safety in India such as motorization, urbanization, migration, and its impact on the nation. In the next part the commission describes the National Road Safety Policy which the government has approved and explains different facets of the policy.

Brasilia Declaration, 2015, Second Global High-level Conference on Road Safety

In 2015, India became a signatory of the Brasilia Declaration, committing to cut down road deaths by half in the country by 2020. Almost exactly four years ago, during the second global high-level conference on road safety in Brasília, India committed to reduce its road deaths rate by 50 per cent. The declaration convinced to the inclusion of a target, within Sustainable Development Goal (SDG) 3 of the 2030 Agenda for Sustainable Development, to "by 2020, halve the number of global deaths and injuries from road traffic accidents" and affirming our willingness to intensify both national action and international cooperation with a view to meeting this target.

United Nations Conference on Trade and Development Report on Road Safety Considerations in Support of the 2030 Agenda for Sustainable Development

The report was prepared as part of UNCTAD's contribution to the progress of implementing road safety targets in the context of the 2030 Agenda for Sustainable Development. It concentrates particularly on the international regulatory framework, highlights the potential relevance of implementing relevant existing conventions and other international instruments in the field of road safety, and overall, underlines the importance of supportive legal and regulatory framework to improve the achievement of the sustainable development goals. The report recognizes that both sustainable transport and sustainable, inclusive, and high-quality infrastructure, are of cross-cutting importance for increasing economic growth and attaining the SDGs. It highlights the concerted efforts, activities and initiatives undertaken by many international organizations and other bodies in the field of road safety.

Road Accident and Victim Compensation in India

The Government of India has been engaged in various deliberations and discussions to overcome road accidents vis a vis road safety and ensure compensation to the victims of road accident. As a result, many legislations have been passed by the Government such as The National Highways Act, 1956, Motor Vehicle Act, 1988, the Central Road & Infrastructure Fund Act, 2000, The Control of National Highways (Land & Traffic) Act, 2002, The carriage by Road Act, 2007 and The National Highways Authority of India Act, 1988 etc. However, the specific legislation to regulate motor vehicles was the Motor Vehicle Act, 1988. The Government of India continued its attempt to improve the road safety in the country by amending the legislation in the year 1994, 2000, 2001 and 2015. Even after these amendments, effective mechanism relating to victim compensation could not be achieved. The persistence of the government to ensure compensation to victims was reflected in the latest Motor Vehicle (Amendment) Act, 2019. Though this effort of the Government is appreciable, but the initial period of its implementation has raised various concerns for the common man. It would be worth examining the reasons for these concerns to make the legislation more people friendly.

Several reports have been submitted to the government of India over the years with the object of improving motor vehicle legislation. It is disheartening to note that many of these major recommendations given in these reports have still not been accepted in any substantive sense. Similarly, across globe, various expert organizations are working to improve road safety. India being a developing nation should consider the recommendations of these organizations. India has its distinction of being one of the countries with the highest number of road accidents and the longest response time in securing

compensation. The accident victims are doubly unfortunate, firstly in getting involved in an accident yet not getting compensation. Secondly procedural delays in settlement of claims. In the light of these issues the study shall endeavor a comprehensive framework plan on road safety and the compensation to the victims of road accidents.

Conclusion

Victim is essential and inseparable part of Crime. Despite being a part of Crime, his status is only limited to report about the crime and appear in court as a witness. Victim is the ultimate sufferer from both sides that is from accused side i.e., the injury suffered by him and from the side of prosecution i.e., the delay in delivery of justice. There are different categories of victims, the victims of Road Accident are one of the categories which needs serious concern by the Government authorities because with the modernisation and increase in road networks rapidly there is also increase in road accidents which does not only affects the victim of road accidents but also affects the family and dependents of victim. Various steps have been taken by the Indian courts to provide protection and compensation to victims through writs and various declarations by international agencies like United Nations have made which strongly favours the support of victim by paying adequate compensation for injury suffered by him due to road accidents.

Suggestions

1. The problem of road accidents in India also gets aggravated due to mixed nature of road traffic on its roads – with pedestrians, bicycles, mopeds, scooters, motorcycles, auto-rickshaws, taxis, vans, cars, trucks, and buses sharing the same road space. In other words, the same road network is used by different categories of motorized and non-motorized vehicles, of varying width and speed. To reduce the exposure to risk, there is a need not only to segregate fast moving from slow moving vehicles and heavy from light vehicles but also enforce speed limit on fast moving vehicles.
2. Road traffic fatalities and injuries are, to a great extent, preventable, since the risk of incurring injury in an accident is largely predictable and many countermeasures, proven to be effective, exist. The most effective way to reduce fatalities and injuries would be through an integrated approach involving close collaboration of many sectors.
3. Progress is being made in many parts of the world where multisectoral strategic plans are leading to incremental reductions in the number of road accidental fatalities and injuries. Such strategies focus on four key factors that contribute to the risk of occurrence of a road accident – exposure, behavioral factors, road environment, and vehicle factors. Perhaps the least used of all road safety intervention strategies are those that aim to reduce exposure to risk.
4. The risk in road traffic arises out of a need to travel – to have access to work or for education or leisure pursuits. Therefore, there is a need to promote not only regional economies in such a way that reduces the need for long-distance travel but also self-sufficient compact townships which would reduce the need for short-distance travel within the cities.

References:

1. V.D Mahajan, Jurisprudence & Legal Theory 365-266 (Eastern Book Company, New Delhi, 5th edn.,2012).
2. SanjayKumar Singh, “ RoadTrafficAccidentsinIndia:IssuesandChallenges” 25 TransportationResearch Procedia 4708-4719 (2017).
3. S.N Pendse, Oaths and Ordeals in Dharamsastra 24(M.S. University, Baroda Publications, 1985
4. Karman Andrew: Crime Victim: An Introduction to Victimology7 (2003)
5. United Nations Economic and Social Commission on for Asia and the Pacific, report available at <http://creativecommons.org/licenses/by/3.0/igo/>.
6. Brasilia Declaration on Road Safety,2015.
7. ManuSmriti,Chapter-VIII,Verse287, p.82.
8. Parmanand Katara v. UOI & others, 1989 AIR 2039

9. <https://www.rand.org/content/dam/rand/pubs/reports/2006/R3999.pdf>
10. https://unctad.org/system/files/official-document/dtltlb2017d4_en.pdf.