

The Motor Vehicle Act 1988: A Critical Evaluation

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Abstract: Every accident is a notice that some thing is wrong with man, method or materials.

In modern time the number of people who get killed in the motor vehicle accidents is growing day by day. Road accidents is 2015, 5 lakh people in wich 1.38 losing their life and remaining injured.

In U.P. 33 thousands people effected in road accident in which 23 thousands people losing their life and remaining injured. According to U.P. Police record in whole country 1300 accidents in every day.

The legislature amended the Motor vehicles Act, 1939 by inserting several new section and in 1988, a new Motor vehicle Act replaced the old one. This act studies various new rights created by the Motor vehicles Act, 1988 for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of amotor vehicles. In present time the motor vehicle amendment bill 2016 passed by the Lok Shabha.

The Motor vehicles Act as a public welfare legislation since it deals with comprehensively about the road accident involving motor vehicles and also enabling the victims to claim compensation. The Motor vehicle Act, 1988 provide only life expectancy of legal representative beneficiaries which is based on nature of job, age and status of future of injured person. But not provide the monetary value of human life and measure of damages of any organ of human body. It should be entitled to recover damages if the principle of social justice should have any meaning at all.

The main object of the present research work is to analysing the existing system of awarding compensation to the victims of motor accidents. Further analysing to traffic administration system, is according to modern time or not. The result of the study may provide the criteria to evaluate the legislation and Judicial philosophy in the matter awarding comensation and traffic administrative system in motor accidents.

I. INTRODUCTION

With the development of civilization, Act of negligence have become actionable wrong. The motor vehicle Act, 1988 is based on "No Fault" liability.

Road accidents kills more people than aids and cancer and other disease. India is infamous for featuring among the top countries with the hightest number of fatal road accident. According to the government statistics 1.5 lakh people end up losing their lives annually on our roads. The sad and alarming bit is that year, after the number of fatalities related to road accidents is not decreasing but it is increasing.

Every year five lakh road accidents are reported in the country in which 1.5 lakh people lose their lives. Government is committed to reduce the accident and fatalities by 50% in the five years.

The number of people are killed in the motor vehicle accident. It is growing day by day. The main source to such helpless people and their dependents is the compensation that they are entitled to receive under law. But right from, 1956, motor accident compensation law has been in a state flux. It was in that year that the legislature amended the motor vehicle Act 1939 by inserting several new sections. Over the years many more amendments followed and in 1988, a new motor vehicle Act, 1988 replaced the old one.

There are various new rights created by the motor vehicle Act, 1988 for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of the moter vehicle.

According National crime records bureau data, at least 43 children and teen below 18 years get killed everyday in road accident in India.

National Crime records Bureau data also shows that up had the maximum number of children and teens killed in road accident in 2015-2, 610 out of total fatalities of 15, 633².

The motor vehicle Act, 1988 contains 217 sec. and 14 chapters.

In present the motor vehicle Act (amendment Bill) 2016 contains 223 sec. out of which Bill aims to amend 68 sections whereas chapter 10 has been deleted and chapter 11 is being replaced with new provision to simplify third party insurance claims and settlement process.

II. THE JURISPRUDENTIAL ASPECT

The motor vehicle Act, 1988 comes under the Civil Law. The Law enforced by the state is called the Civil Law. The force of the state is the sanction behind this law. Civil law is essentially territorial in the nature as it applies within the territory of the state concerned. The term civil law is derived from the Roman word "Jus Civile". Austin and Holland prefer to call civil law as "Positive law" because it is enforced by the sovereign political authority. However, Salmond justifies the terms 'Civil Law' as the law of the land. He argues that positive is not necessarily confined to the law of the land.

Civil law means law of the state, Law of the country or Law of the the Land i.e. the Legal system itself Salmond defines civil law as the law of the state as applied by the courts in the administration of justice.

Law is a command enforced by some sanction. It is a rule of action to which men are obliged to make their conduct conformable, Life can not be evaluated in the term of money. There is no monetary value of human organ. The courts can only grant compensation for the pecuniary and monetary loss caused and some other expenses, but no court can even attempt to grant compensation for loss of life or limb.

In motor vehicle act, 1988 object of the compensation to provide only life expectancy, not the value of human life of the aggrieved person.

The assessment of compensation be made good but can not be said to be foolproof.

There is no exact uniform rule for measuring the value of human life and measure of damages of limb. But the amount of recoverable upon life expectancy legal representative beneficiaries which based on nature of job, age, and future status of the injured person.

III. CONSTITUTIONAL ASPECT

All law in the country whether of the union or of the states, have to conform to the constitutional scheme. constitution is the fundamental law defining and delimiting the principle organs of the government and their jurisdiction as well as the basic rights of man and citizens.

Seventh schedule to the constitution of India enumerates the subject matter of laws and thus demarcates the division of responsibility between the state and Union. Entry 23 of the Union list of the Seventh Schedule the subject matter of the motor vehicle in dealt by the central government.

The road users have a fundamental right to life and liberty which shall include duty of the state to ensure safety on roads and to ensure due process of law for expeditious payment of compensation in the event of injury or death of the road user arising out of permitting the use of motor vehicle on the road.

IV. MOTOR VEHICLE IN ANCIENT INDIA

The history of transport is largely one of technological innovation Advances in technology have allowed people to travel farther, explore territory and expand their influence over larger and larger areas.

Even in ancient times, new tools such as foot coverings, skis and snowshoes lengthened the distances that could be travelled.

The first earth track were created by humans carrying goods and often followed trails. Tracks would be naturally created at points of high traffic density. As animal were domesticated, horses, oxen and donkeys became an element in track.

Creation with the growth of trade, tracks were often flattened on widened to accommodate animal traffic. Animal drawn wheeled vehicles were probably developed in the Ancient Near East in the 4th or 5th millennium BC and spread to Europe and India in 4th millennium BC and China in about 1200 BC. The Romans had a significant need for good roads to extend and maintain their empire and developed Roman roads.

The first car ran on India's road in 1897. Prior to independence in the 1940s India had no automobile industry to speak of cars were brought into the country in a knocked down condition from England.

V. THE MOTOR VEHICLE IN MODERN INDIA

The motor vehicles Act, 1939 (Act 4 of 1939) on the English Road Traffic Act, 1930, remained on the statute book for about five decades. Recently, the law relating to motor vehicles has been re-framed by the enacting the motor vehicles Act, 1988 (act 59 of 1988), but certain hardships and practical difficulties have been experienced in the working of the new Act even though it is only five years old.

149th Law commission Report recommended to the government of India on removing certain Deficiencies in the motor vehicle Act, 1988.

In present time the motor vehicles (Amendment) bill-2016 passed by the Lok Sabha.

VI. JUDICIAL APPROACH

Judiciary interpret the law from time to time. Judicial approach on the vehicle Act can be gracefully observed through the following case laws.

In the view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands Vs Fletcher¹, from the point of view of the

pedestrian the road of this country have been rendered by the use of the motor vehicles highly dangerous.

In Hit and run cases¹ where the driver of the motor vehicles who have caused the accident are not known are increasing in number where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case should be entitled to recover damages of the principle of social justice should have any meaning at all.

The important provisions include increase in compensation for Hit & run case from Rs. 5000/- to Rs. 2 lakh it also has provision for payment of compensation upto 10 lakh in road accidents fatalities.

PT PARMANAND KATARA VS. U.O.I.

The Supreme Court of India instructions have been issued by the ministry to all the State Government emphasising the need for providing medical aid to road accident victims without waiting for the police for completion of the legal formalities. Art 21 of the constitution casts the obligation on the State to preserve life. It is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished social laws do not contemplate death by negligence which amounts legal punishment.

In Madhya Pradesh State Road Transport Corporation Vs. Bhoj Singh.

In this case the bus collided against a tree which caused tyre burst in the rear wheel, causing injury to a passenger. The defence was that the tyre was in good condition and that the burst was that vis major. The evidence was that the bus was overloaded. It was held that the tyre burst was due to overloading and that the driver was negligent in having the bus overloaded.

M.K. Kunhi Mohammed Vs. P.A. Ahmed Kutty¹. In this case the Supreme Court has made certain suggestion to raise the limit of compensation payable as a result of motor accidents in respect of death and permanent disablement in the event of there being no proof of fault on the part of the person involved in the accident and also in hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicle involved in the accident.

In Bipal Bashi Das Vs. Oriental Insurance Co. Ltd. in this case where the extremist had hired a vehicle causing death of one and injury to other passengers, death was held to have arisen out of use of motor vehicle.

In New India Assurance Co. Ltd. Vs. Sheeja in this case where the driver taken his taxi to workshop and gas cylinders exploded in the course of repair, the accident was held to have arisen out of use of motor vehicle.

In Pepsu Road Transport Corp. Vs. Kulwant Kaur. In this it was held by the Supreme Court that Sec. 140 as it came into effect from 01.07.1989, is not retrospective. Hence the provision amended with effect from 14.11.1994 is also not retrospective. Therefore, in accident which occurred on 30.11.1982 and decided on 16.07.1984, the claimant was entitled only Rs. 15,000 as per provision of sec. 92A of the Motor Vehicles Act, 1939.

Malati sardar Vs. National Insurance company Ltd. and others.

S.C. held that, the award of the claims tribunal in absence of any failure of justice can not be set aside even if there was merit in the plea of territorial jurisdiction. The provisions of S. 166(2) of the M.V. Act, 1988 is a benevolent provision for the victims of accidents of negligent driving. The provision for the territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting parties in such cases, has its business.

In such cases, there is no prejudice of any party. There is no failure of justice.

CASE Smt. Mangula Devi under of ...
Vs.

Commercial motors, Chhedhi Lal & sons ...

In this case although the case of Shivagi Dayanu Patil (Supra) was a case of no fault of liability under Sec. 92-A of old motor vehicle Act, 1939 and Smt. Rita Devi was also a case of no fault of liability under Sec. 163-A of New Motor Vehicle Act, 1988 but in both the cases the Hon'ble the Apex Court has held that the death was caused due to an accident "Arising out of use of motor vehicle".

Thus by interpreting the expression "arising out of use of motor vehicle". The same expression "arising out of use of motor vehicle" has been similarly used under sec. 165(1) of the New Motor Vehicle Act.

The scope of the provisions of Sec. 165(1) of the motor vehicle Act 1988 in the wake of decision of the Hon'ble apex court in Kaushnuma Begum's case (Supra) it seems that rules of strict liability of owner of mischievous things propounded in Rylands and Fletcher's case, have been embodied under the provisions of Sec 165(1) of the New Motor Vehicle Act, but without incorporating any of exceptions of the rules.

The legal position of the provision of Sec.163A (1) of Motor vehicle Act are substantive in nature as it confers new favour or remedy and creates new obligations, even then the intent of legislature can be gathered from language employed under sub-section (1) of section 163A of motor vehicle Act and object sought to be achieved by it, wherein the legislature by using non-obstante clause has clearly mandated that the owner of motor vehicle or authorised insure shall be liable to pay in case of death or permanent disablement due to accident arising out of use of motor vehicle, compensation to the legal heirs or victims as case may be without any cut of date as to whether the accident occurred prior to date of commencement of the aforesaid provisions of the Act or on or after the commencement of the Act. It implies that the mandate of legislature can be complied with only when claims Tribunal award compensation to the victims or legal heirs in situations, visualised under the provisions of aforesaid section.

Allahabad High Court held that even assuming that the provisions of Sec. 163 A the Act are substantive in nature then have retrospective operation.

CASE Sapna Vs. United India Insurance Co. Ltd.

The principle governing a claim petition for assessing the damages in a case of bodily injury is that while awarding the compensation all relevant factor should be considered so as to

enable the insured to be put in same position as if he had not sustained any injury. The principle of restitutio in integrum may be applied in a case of this nature.

VII. INTERNATIONAL PERSPECTIVE

Road accident has become a serious and incurable problem at Global level within the Advance commerce and Technology.

The Road Traffic Accidents the leading cause of death injury and tenth leading cause of all death Globally.

Now make up a surprisingly significant portion of the worldwide burden of ill health. An estimated 1.1 million people are killed in road crashes each year, and as many as 50 million are injured occupying 30% to 70% of orthopaedic beds in developing countries.

Over the last few years road safety has received increasing international attention. In January 2010 members of U N Road safety collaboration who are consortium partners to the new Bloomberg Philanthropies funded Road safety in 10 countries project. Visited Combodia, China, India and Vietnam. Consortium partners from EMBARQ, GRSP, Johns Hopkins Univ., the world bank and WHO met with counterparts in Ministries of Helath and Transport and their respective colleagues in there countries.

In China and India preliminary discussions were held on the regions within each country where the project may focus as well as the particular risk factors which may be addressed such as drinking and driving, helmet or seat-belt.

In Nov. 2009, Bloomberg Philanthropies announced a contribution of US \$ 125 million the largest single donation to global road safety to date-to support road safety projects in ten countries and moniter progress at global level.

India is among the ten countries where WHO along with consortium partners, and emplementing the Road safety project to reduce death and disability through road traffic injury prevention projects.

The Law of drunken driving under influence vary between the countries in terms of the level of concentration of alcohol in blood.

- ✓ Central Asia Countries between 0.02% to 0.05%.
- ✓ East Asia: China - 0.02% (200-500 fine, 1-3 months licence suspension): 0.08% (up to 15 days prision, 3-6 month license suspension, CNY 500-2000 fine).
- ✓ South Asia: Alcohoh is banned in Pakistan.
- ✓ South east Asia; Combodia, Malaysia and Thailand it is 0.5%. In Laos and Singapore it is 0.08% and strictly enforced in Singapore. In Indonesia and Vietnam there is no statutory limit.
- ✓ Western Asia; In Iran, Kuwait, and Saudi Arabia there is no limit but alcohol is banned and it is zero limit in other country.

VIII. CAUSES OF ACCIDENTS

In India Road accidents has become a serious and incurable problem. In modern time according to the

government statistics 1.5 lakh people end up losing their life annually in road accidents.

There ae following factors responsible for the road accidents such as:

(1) Over speed driving, (2) poor brakers and road, (3) Over loading, (4) Violation of Traffic rules, (5) Negligence of juvenile driving, (6) driving with mobile talking and eating food, (7) Driving with wrong overtaking, (8) Negligently driving with bicycles / scooters / e-cart and e-rickshaw, (9) Driving with influence of alcohoh, (10) Lack of knowledge of Traffic rules, (11) Driving by untrained Driver, (12) Driving with wrong overtaking and violation of electronic detection, (13) Lack of Traffic Administrative booth and Traffic Police, (14) Lack of Traffic Education Hub, (15) Poor electronic signals, (16) Animals crossing the Road, (17) Patholes in National Highway and street, (18) Driving under the influence of drunken, (19) Running red lights, (20) violation of Road line symbols, (21) Poor maintenance of Road, (22) Riding without Helmet, (23) Not wearing seat Belt, (24) Rush Driving in Fog.

IX. SUGGESTION

- ✓ The government should make working groups for the road safety, namely Engineering, Enforcement, Traffic Education and Emergency care.
- ✓ To promote awareness about road safety issues.
- ✓ To strengthen the system of driving licensing and training to improve the competency of the drivers.
- ✓ Right of way for ambulances and fire brigade vehicles and vehicles for disabled persons.
- ✓ The central government should be established toll free centre acess number to emergency medical help for injured persons.
- ✓ The central government should be established appropriate and safe transport system for injured patient in the form of road ambulance, air ambulance etc.
- ✓ Checking of the over crowed passenger vehicles and cancellation of permit.
- ✓ Improvement of road engineering, concerned departments must inspect roads where frequent accidents occur.
- ✓ The central government should create National register for driving licence and for vehicle registration through "Vahan" and "Sarth" platform.
- ✓ The central government should promote Traffic e-governance system, computersation of services like issuing licence, registration of vehicle, filling of forms, change in address.
- ✓ The central government should promote vehicle which protect the environment just like e-rikshaw.
- ✓ The central government should to constitute a Motor vehicle accident fund. The Fund will provide compulsory insurance cover to all road users in India.
- ✓ The central government should establish high tech vehicle accident hospital with experience doctors, blood bank, ambulance and contain for morderm high technology.
- ✓ The motor vehicle provides to increase the fines and penalties for violation of the provision of the Act.

- ✓ The motor vehicles provides to unauthorised use of vehicles by the Juveniles in this situation the parents / guardians would be liable for the same and penalty would be imposed over them.
- ✓ The motor vehicles provide to facilitate transport solutions for Divyang, the bottlenecks have been removed in respect of grant of driving licence as well as alternation in the vehicles, to make it fit for use of divyang.
- ✓ The motor vehicles provide to Transportation schemes for Divyang provide for road safety.
- ✓ The central government should make easy provision for driving licence for Divyang person such vehicle who easily drive.
- ✓ The central government should make to strict provision in respect of offences like juvenile, drunken driving, driving without trained licence, dangerous driving, over speeding, over loading etc.
- ✓ The gov. should increase traffic police, traffic police booth for good governance of Traffic Administration.

accidents and their dependents. It is primarily the duty of the state to take care of them. The fundamental right to life is the most precious human right and thus forms the arc of all other rights. Therefore the preservation of human right is of paramount importance, because if one's life is lost the status quo ante can not be restored, as resurrection is beyond the capacity of man. Unfortunately the number of death and injuries on account of road accidents is as alarming as any other dreaded disease and need to be controlled by every possible effort on the part of those who. Our a sacred duty towards the preservation of human lives. The legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a human being in its true perspective rather than declaring human lives on the basis of an artificial mathematical formula.

In finaly say that in present time to the motor vehicle Act, 1988 is totally fail to prevent fatal road accident. The central gov. should be amended it according to mordern dynamic society.

X. CONCLUSION

Road accident is a serious and incurable problem at Global and Indian level. It has become a global phenomenon with the advance of commercial and technology in India like any other country. It is serious before traffic administration how to prevent it.

There is no exact uniform rule for measuring the value of Human life and measuring of damages of limb. But the amount of recoverable upon life expectancy of legal representative beneficiaries which based on nature of Job, age and future status of the injured person.

In the welfare state the government undertakes to provide for various services to the benefit of the people, particularly in any democratic country where the government call for the role of welfare and service state. The compensation in accident cases of vehicles under the motor vehicles Act, 1988 and other relevant related laws, belong to the branch of social welfare Legislation which is based more on consideration that the society under the constitution of India wedded to socialism or the social justice is bound to provide for the victims of

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