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An Analysis of Operational Aspects of Motor Vehicle Jurisprudence: A Comparative Perspective

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ABSTRACT

Motor Vehicle Act is one of the most comprehensive legislation regulating and combating the issues and problems pertaining to all major facets, existing issues and components of the motor vehicle related domain. It may be regulation, practices, procedures adopted for granting permits, license, safety at roads, roads infrastructure or granting compensation in any accident case. Although the parliamentary and legislative intent with the judicial precedents are tackling the complexities involved in Motor Vehicle Act 1988 and its amendment in 2019. But there are a few major highlighting issues such as just compensation, tortious liability, no fault liability & liability of insurance companies; international road safety jurisprudence under Motor vehicle Act and the role of insurance companies requires more deliberations and explanations. The present research article is dealing with the major specific deliberations involved in the motor vehicle Act in the light of judicial precedents and legislative intent.

I. INTRODUCTION

The rate of motor vehicle accidents and the intricacies generated by motor vehicles on the road is a phenomenon which is well known to one and all in India. Alarming rates and rapid increase of motor vehicle accidental negligence cases are at a rise. As rightfully observed by the Committee on Road Safety and Traffic Management “of all the system that people have to deal with on a days to day basics, road transport is the most complex and the most unsafe mode of transportation”² Road safety is the basic and utter concern for every citizen. The causalities generated by the tragic incidents at roads require a careful understanding and a liberal approach towards the injured or deceased. Just compensation is term which has a very wide meaning. Just means something which is fair and satisfying. On the aspect of liability, mere dependence on the motor vehicle statues & rules is not a correct approach; there must be a resort towards common law principles. Common law principles are the source code as to

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² Ministry of Road Transport and Highway, Sundar Committee on Road Safety and Traffic Management, Para 1.2.

the civil codified law. The author will try to provide a brief in sight understanding as to tortious liability in Motor Vehicle Claims. There is a need to bring more social awareness in order to educate people about just compensation and the principle of liability in motor vehicle accident cases. The main objective of a welfare state is to promote social awareness. The amendment act of Motor Vehicle Act passed in 2019 has introduced several new provisions which cope up with the issue of just compensation, safety on roads & infrastructures, liability of insurance companies. The Motor vehicles (Amended) Act, 2019 seems to have a multidimensional and multi sector approach, where the legislature has incorporated different aspects 'to create an efficient, safe and corruption free transport system in India.³The author in the current article shall try to give a deeper understanding as to concept of Compensation, liabilities in motor vehicles Act along with international jurisprudence in the context of the common law principles and persuasive precedents.

II. BACKGROUND

In order to get a better understanding and picture as to just compensation, liability principle, breach of policies we need to understand the root cause for these violations. Road accidents in India are increasing at a tragic and alarming rate. According to the National Crime Records Bureau (NCRB), the number of road accidents taking place annually has now passed the 1,35,000 mark, which works out to a worrying average of 15 accidents per hour every day.⁴ The causes of road accidents are manifold such as to name a few shall be crossing the red light, not giving a proper lane side to, over speeding, overtaking, drink and drive, driving at a wrong side and many more. These are the causes which lead to development of new jurisprudences in motor vehicle regime and procedures.

III. A COMPARATIVE STUDY OF COMMON LAW AND CIVIL LAW

As it is a well-known fact that every legislation's source is common law. Common law lays down the founding stone for every law and legislation. Similarly, Motor Vehicle Act 1939 or 1988 or its amendment in 2019 is also derived from Common law only. The definition of common law is Common law draws from institutionalized opinions and interpretations from judicial authorities and public juries. Similar to civil law, the goal of common law is to establish consistent outcomes by applying the same standards of interpretation.⁵ On the other hand Civil law is the codified set of common laws. Civil laws are well arranged form and a

³ Statement by Shri Nitin Gadkari (Honourable Minister of Road Transport and Highways), Press release by Press Information Bureau, Government of India, Ministry of Road transport and Highways.

⁴ Transport research wing and NCRB (National Crime Records Bureau); visited ncrb.gov.in website on 01/08/2020.

⁵ <https://www.investopedia.com/terms/c/common-law.asp>; visited on 05/08/2020

regularized form of provisions derived from common law. In order to get a more authentic response, a short survey was conducted by the author in order to draw a proper conclusion as to the genesis of Motor vehicle Act. The survey was conducted on a group of people consisting of a total of 100 people who are well versed with the operation of motor vehicle act. They were asked as to the genesis of the Motor Vehicle Act, whether it is common law or civil law? Seven of the ten were of the opinion that Motor Vehicle Act is genesis of common law. Whereas twenty seven of them were of the opinion that it is the genesis of civil law. Two left were confused.

Figure 1: Results showing genesis as to Motor Vehicle Act

As per the survey reports and the majority opinion, the author is also of the view that Motor Vehicle Act and its incidental welfare social provision are the genesis of the Common law Regime. Common law recognizes four basic levels of fault.⁶

1. Negligence
2. Recklessness or wanton conduct
3. Intentional misconduct
4. Strict liability (regardless of fault)

These four are the major aspects on which the Motor Vehicle Act regime and policy revolves around. All these four aspects are the major derivatives for the reforms brought up in the Motor Vehicle Act from its inception. Negligence is a form of carelessness which refers to do an act without care. It's a kind of inadvertent conduct. Recklessness refers to the intentional disregards to rules, regulations and safety of others. Under common law, individuals who have caused a car accident have committed a "[tort](#)," a private wrong against another (but not rising to the level of an intentional tort or crime). Those who have committed torts are referred to as "tortfeasors" under the law. Many automobile insurance policies use the word "tortfeasor" to refer to people who are at least partly at fault for an accident⁷. Intentional misconduct's best example is drink and drive cases. Strict liability provisions are well inserted in the Act as it prescribes for compensation and penalty in cases where there is no fault on the part on injurer as well. It is easy to conclude that the common law system is the genesis as to the Motor Vehicle Act. Although common law alone itself is not suffice and

⁶Ref to <https://injury.findlaw.com/car-accidents/fault-and-liability-for-motor-vehicle-accidents.html> visited on 05/08/2020

⁷ Ibid at 5

wont redress the issue at hand, so there is a need of civil laws. Civil laws provide a proper remedy along with procedural guidelines.

IV. QUANTUM OF 'JUST COMPENSATION':

The question of compensation is a most prominent and highly debated issue. Just compensation is a concept which is based and quantified upon the expenses incurred in hospitalization charges, medicinal charges, treatment charges, and attendant charges, Loss of earnings & amenities, future treatment. The issue of compensation can be noted and seen since independence. Law commission in its 51st report was also concerned and dissatisfied regarding the position as to compensation for personal injuries caused by automobiles. The dissatisfaction can be attributed partly to defects in the law, and partly to the inherent nature of the situation. Remedies suggested for removing this dissatisfaction have been of various kinds, extension of common law liability, insurance for liability and social security, or variants or combinations of one or more of these three.⁸ All these factors are the set stones in order to award just compensation. Quantum of compensation is determined as per the status of a person. One who is well to do may not be in a desperate need of compensation. However, a financially downtrodden victim in need of economical assistance badly affected by an accident is exploited in a harsh manner as he has no proper approach or resort to assess the way in which he/she can claim compensation. Lack of legal knowledge, going to courts or any other forums is an expensive matter as it will require a lot of expenditures in form of court fees and other miscellaneous charges.

A correct and a proper pleading for claims shall take a lot of time and procedural formalities. As to principles of measure of damages under this Act the amount is to be determined as appears to the tribunal to be just. The fair and just compensation regime in Motor Vehicle Act has travelled a long way from the time of independence. The Supreme court of India has also widened the horizons of Just compensation by not only relying on the multiplier method. Views of the Supreme Court has always been liberal and with a wide horizon which can be witnessed in the case of *Nagappa vs Gurudayal*⁹ wherein it was held that Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may

⁸ Law commission of India 5st report on compensation for injuries caused by automobiles in Hit and Run cases , September 1972.

⁹ AIR 2003 SC 674

pass such award. Only embargo is - it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. Further, the Supreme Court has added other dimensions to the calculation of compensation such as the medical costs incurred by the victim during the litigation, cost of future medical expenses, compensation toward mental agony and physical pain, and compensation toward loss of consortium and cost of litigation.¹⁰ The author shall also try to give a better prospective as to quantum of just compensation by citing a few developed nations' judgments.

A. Judicial Deliberations:

In the Landmark judgment of *H. West & Son Ltd. v. Shephard*¹¹, it was held that "Comparable injuries which can be recognized should be compensated with comparable awards. By common assent awards must be reasonable and must be assessed with moderation." In another landmark case *Phillips v. Western Railway Co.*¹² it was held that one cannot put the plaintiff back again into his original position, but there should be a common sense that victim cannot sue for it again. This is the only occasion where he should be compensated in a reasonable manner. Victim is the person who has done no wrong and still is suffering at the hands of other.

In *Ward V James*¹³, Lord Denning gave a three multi dimensional approach for just compensation which must be followed and the glimpses of the same can be noted in Indian Legislations and judicial deliberations: Firstly, in the cases where the body is wrecked or brain is destroyed then in such cases a conventional compensation should be awarded which has been derived from experience or other comparable cases. Secondly, there must be uniformity in awarding the compensation, if there is not uniformity then that shall lead to utter dissatisfaction in the minds of the society at large. It will be a kiosk situation. Third and the last there should be predictability. Predictability refers to the prediction as to the sums of damages to be awarded to a victim which shall be a peaceful approach.

The three folded approach adopted by Lord Denning was well followed by Indian Legislators. There is a well settled legislation providing the formula for the calculation to be awarded as per the classification of injuries. It leads to uniformity and peace in society. Experienced members of the tribunal are discharging their duties with a socialistic and welfare approach. Although attempts had been made in order to provide a fair mechanism for

¹⁰ *Krishnakumar V, vs. State of Tamil Nadu*, AIR (2015) SC 4283

¹¹ 1963 2 WLR 1359

¹² (1874) 4 QBD 406

¹³ (1965) 1 All ER 563

awarding just compensation but still there are cases where the legislature has left few lacunas or loopholes which is filled by the judicial by its different modes of interpretation. Issue of just fair compensation is existing since independence. Judicial interpretations since independence is filling the gaps and providing a uniform guideline to the legislature in motor vehicle cases. The apex court has evolved standard method of calculating the amount of just compensation.¹⁴

Standards for calculation:

The standard method being followed by the courts involves following steps:

- (i) Calculate the income of the deceased with future prospects
- (ii) Deduction for personal and living expenses of the deceased
- (iii) Selection of multiplier
- (iv) Computation of compensation
- (v) Misc. heads

The above standard mentioned method has been quite useful in determining the compensation to be awarded to the victim or his legal heirs. The skills and education of the deceased victim are quite significant in calculating the quantum of compensation. It must be kept in mind that the skill of a deceased, standard of living, educational qualifications must be considered while deciding the compensation under the Motor Vehicle Act. Higher the skill, the more should be the compensation. Skilled and unskilled labour and their classification is necessary in order to arrive at a just compensation.¹⁵

That, the amount of compensation must be reasonable and must be assumed with moderation, regards must be had to awards in comparable cases, the sums awarded should, to a considerable extent, be moderate.¹⁶ The Supreme Court in *Shekhupura Transport Co. v. N.I.T. Insurance Co.*,¹⁷ held that for fixing compensation under Motor vehicle Act, the general principle that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other hand any pecuniary advantage, which from whatever source comes to them by reason of death, that is, balance of loss and gain to a dependent must be ascertained. In the case of *Ramla and others vs National*

¹⁴National Insurance Co. V Pranay Sethi, (2017)16 SCC 682

¹⁵ Gopinath B, Jagnoor J, Nicholas M, Blyth F, Harris IA, Casey P, et al. Prognostic indicators of social outcomes in persons who sustained an injury in a road traffic Injury, International journal of law 2015; pg 15

¹⁶ Vinod Kumar Srivastava v. Ved Mitra Vohra, A.I.R. 1970 M.P. 172

¹⁷ A.I.R. 1971 S.C. 1924

Insurance Co. Ltd¹⁸, it was held a “just compensation” is one which is reasonable on the basis of evidence produced on record. Evidence in the case is one of the major facets in deciding compensation in motor accident cases.

The Hon’ble Supreme Court of India in the matter of Savelife Foundation & Anr. vs Union of India & Anr.¹⁹ has observed as under.

“5. Accident cases require fastest care and rescue which could be provided by those closest to the scene of the accident. Bystanders clear support is essential to enhance the chances of survival of victim in the ‘Golden Hour’ i.e. the first hour of the injury. As per the WHO India Recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved through by providing basic life support during the ‘Golden Hour’. Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and the immediate medical assistance as a necessary corollary is required to be provided and also adequate legal protection and prevention from harassment to good Samaritans.”

In the case of *Kajal v Jagdish Chandra*²⁰ and others, Hon’ble Supreme Court enhanced the extent of awarding just compensation which is more than the amount claimed by a victim. Hon’ble Court awarded an amount of Rs. 21,60,000/- in lieu of the attendant charges. Hon’ble Court opined that Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of ‘just compensation’ within the meaning of the Act. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. This system was recognised by this Court in *Gobald Motor Service Ltd. v. R.M.K. Veluswami*²¹. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life.

In the case of *National Insurance Co Vs Birendr and others*²², Hon’ble Apex court held that, the dependants are entitled for compensation, reckoned on the basis of dependency, due to loss of gross salary (less tax amount, if any) of deceased and future prospects deuction of only one-third (1/3rd) amounts towards personal expenses of the deceased. As regards the

¹⁸ 2019(2)SCC 192

¹⁹ (2016) 7 SCC 194

²⁰ Civil Appeal no 720 of 2020

²¹ AIR 1962 SC 1

²² Civil Appeal Nos. 242243 OF 2020

multiplier '13' applied by the Tribunal and the High Court, the same needs no interference. Multiplier, future aspects and dependency were given importance in this case.

In the case of *RamKhiladi and others vs United India Insurance Co.*²³ & others, the Supreme Court of India held that, "it is concluded by this court that the liability under Section 163 A of the Act is on the owner of the vehicle, as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of Insurance could be taken recourse to in cases of accident. As per the contract of insurance, the insurance company shall be liable to pay compensation to third party and not to the owner."

In the case of *Magna Genera Insurance Co. Vs Nanu Ram*²⁴, the Supreme Court emphasized upon the head on loss of consortium in motor vehicle claims. Consortium is a compendious term which encompasses "Spousal Consortium, parental Consortium and filial consortium. The right to consortium would include the company, care, help comfort, guidance, solace and affection of the deceased, which is a loss to his family. Victim or his dependant's should be compensated for the same. In the case of *Jabbar Vs Maharashtra State Road Transport Corporation*²⁵, the principle behind enhanced compensation was explained by the Hon'ble Supreme Court of India. It was held that "Court in large number of cases has laid down that it is permissible to grant compensation of any amount in excess to that one which has been claimed. This Court in exercise of jurisdiction under Article 142 of the Constitution has awarded just and reasonable compensation".

In another landmark case, *Ibrahim Vs Raju*²⁶ Hon'ble Supreme Court of India held that "Under the Scheme of the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action."

At this juncture, the author would like to opine that the judicial attempts and efforts are praiseworthy as the judiciary has awarded compensation in road accident cases. But the question

²³ Civil Appeal 9393 of 2019

²⁴ Civil Appeal No. 9581 of 2018

²⁵ AIR 2019 SC 1097

²⁶ (2011) 10SCC 634

which needs importance is that whether the compensation awarded is sufficient or not. The quantum of compensation awarded needs to be enhanced considering the plight condition of the victim or deceased. The amendment act of 2019 is lacking the key major provisions as to just compensation. In a country like India, there is a need to have a strict regulatory regime tackling the issues of just compensation in motor accident and road accident cases. The author has cited the foreign judgments and international jurisprudence which can prove to be a guiding factor in order to assess the ground reality as to compensation regime in developed countries.

V. INDIAN LEGISLATIVE INTENT: BENEFICIAL LEGISLATION

Motor Vehicle Act 1988 amended in 2019 has also brought forward a regime where the compensatory aspect has got more attention and importance. The new provisions inserted in the Act shall ensure that the road infrastructure, road safety, driving regulations and other procedural aspects of designated authorities are fulfilled legally. The author shall try to compare the provisions of old Act and the new amended act. Provisions as to penalty and compensation in hit and run cases have been enhanced. Section 159 of the amended act now casts a duty upon the Police officer in order to properly investigate the case and submit a report as to facilitate the claim settlement. Report of the Police officer shall be submitted in the claims tribunal. Report of the officer shall be crucial in deciding the claim. However, the author is concerned with the report and the conduct of the officer. Integrity and conduct of the officer shall be a major touch stone in such a case. In 1988 Act, there were no specific provisions which provided for multiplying the penalties. In the amended act, two new sections 210A and 210B are introduced. Section 210 empowers the State Government to multiply the penalties as per they think fit, but cannot be less than 1X and cannot be greater than 10X. Section 210 B enforces the penalty on the enforcing authorities for committing an offense under the act.

Compensatory quantum in hit and run cases has also been enhanced. In Section 161 of the 1988 Act, the compensation awarded in hit and run cases was meager as INR 12,500 was awarded in grievous injury cases and INR 25,000 was awarded in death cases. This has been amended by the 2019 Act, where INR 50,000 or more may be awarded in grievous injury cases and INR 2,00,000 or more is awarded as per the facts and circumstances of a case. Further the amending act of 2019 has brought up a new scheme incorporated under section 162 of the amended Act. The Scheme shall prove to be highly significant for the victims of motor accidents. Section 162 lays down for a scheme which shall be regarding the crucial

hour treatment in case of motor vehicle accidents which is called as golden hour scheme. The Ministry of Road and safety has prepared the draft of the same recently. The schemes provides for immediate cashless treatment in cases of motor vehicle accidents. Section 168 of the amended Act is having a more socialistic welfare approach. Section 168 of the 1988 Act laid provisions as to refund in certain cases. But the aspect of refund has been omitted now. The Claims tribunals shall award the just compensation under section 1988 of the amended act.

Even the amendment to the act provides for an enhanced compensation in cases of no fault liability under section 164 if the accident results in the death or grievous hurt respectively. The amount of compensation in cases of death has been enhanced to INR 5, 00,000 and in cases of grievous hurt to INR 2, 50,000. Interim relief schemes are brought forward in order to provide immediate monetary assistance to the victims. Section 164B of the Act provides for the motor vehicles Accident fund. The intent of the legislature has been quite clear to give as much possible assistance as to the victims of the motor accident accidents. The major object of the fund is to provide compulsory road insurance cover to all road users. There shall be credit by the Central government in the fund. The funds shall be used to compensate the victims, dependants and representatives of hit and run cases, grievously hurt patients. This section shall work in consonance with Section 162 of the amended act. Section 164 C and 164 D has been added into the motor vehicle in order to ensure an effective regime with regards to the motor vehicle regulation. The Central government has been provided power in order to make rules with respect to all ancillary, incidental and related matters in motor vehicle insurance, claims as to provide a justifiable and regulatory mechanism. Section 164D empowers the State governments to make rules and regulations with respect to the matters not covered under section 163C. This additional power granted to the State governments shall ensure that there is no blanket or vacant in motor vehicle regulations. Section 166(3) of the amended act provides that the limitation for claim application shall be 6 months. Any claim made after the 6 months shall not entertained by the Claims Tribunal.

VI. INTERNATIONAL JURISPRUDENCE

The author opines that international jurisprudence with respect to motor vehicles is necessary to be understood. There are various theories and principles with respect to motor accident claims, just compensation and liability round the globe. Let us have a look at different sort of systems prevailing around the globe. A social economical welfare study is being conducted in order to understand the international jurisprudence.

Quebec, Northern Territory in Australia and New Zealand use pure no-fault systems. There are several variants of no-fault. Under pure no-fault," victims must always collect damages from their own insurance companies. No compensation is paid for pain and sufferings" and there are limits on recovery for economic damage such as lost wages and medical costs. Under mixed no-fault," victims of accidents are allowed to opt out of no-fault and sue injurers under the tort system if victims' injuries either exceed a dollar threshold for medical costs or satisfy a verbal threshold such as permanent disfigurement."²⁷The incentive for victims to opt out of no-fault is that, if they sue and win under the tort system, they will be reimbursed for their damage by the injurer and may collect compensation for pain and sufferings as well as for economic damages. Mixed no-fault is used by Colorado, the District of Columbia, Florida, Hawaii, Kentucky, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, Nevada, New York, North Dakota, Pennsylvania, and Utah in the U.S., Quebec in Canada, and Tasmania and Northern Territory in Australia. Another variant of no-fault, referred to as the ex ante choice" system, is used by Pennsylvania, New Jersey and Kentucky. Under it, drivers choose between the no-fault and the tort systems at the time they purchase insurance. If they choose no-fault, then they still have the right to opt out and sue under the tort system if an accident occurs and their losses exceed the threshold.²⁸ All these systems and policies are useful in order to make the transport system more accountable and transparent.

VII. LIABILITY OF INSURANCE COMPANIES:

Insurance Companies do play a major severe role in protecting the interest of the victim injured at the hand of a negligent, reckless or a no-fault driver. The social welfare phenomenon of the Motor Vehicle Act shall be promoted and shall be able to achieve the it's objective only when the motor insurance co. does it job properly in a regularized manner. The liability of the motor insurance companies is well discussed in the amendment Act of 2019 as well. To recall, Section 149 of the amended act provides that the insurance company may provide a settlement of claim to the victim in case of any accident; if the victim gets satisfied then the same shall be recorded in the Claims tribunal. As per omission sub clause 5 of section 149, A Insurance companies must not claim the amount which is being excessively paid by them in cases of third party insurances from the insured.

There are a few other duties casted upon the insurance companies such as not to delay or

²⁷ McEwin, R. Ian (1989), \No-Fault and Road Accidents: Some Australasian Evidence," *Int. Rev. of Law and Economics*; 9(1), pages 13-24.

²⁸ Carroll, Stephen J. and Allan Abrahamsen (1998), \The aspects of a Choice Automobile Insurance Plan on Insurance Costs and Compensation." *Rand Institute for Civil Justice MR-970-ICJ*.

cumbersome the procedure related to claims. The Insurance Company should Endeavour to promote third party insurance in light of strict liability clause. Claimant protection must be evaluated as a two-stage process considering the maximum extent of (financial) protection and the required processual effort to achieve this compensation.²⁹ Regardless of the question of the current framework's ability to allocate liability costs for accidents in a responsibility-based manner, the owner of the vehicle and even producers are indirectly exposed to adverse economic consequences if the process of allocating liability is not structured efficiently and unnecessarily causes additional procession and legal costs.³⁰ A structured framework is the need of the hour in order to impose a liability on the insurance companies. Rates of premium must not be enhanced in an arbitrary manner. The Company must not incorporate new clauses in the policy document so as not to create new legal obligations on the insured. Apart from third party insurance other grounds on which insurance company escapes liability are breach of permit, invalid DL and so on.

Even if there is any violation or breach of policy, insurance companies have been time and again directed to satisfy compensation awarded to the claimants at the first instance and later on, it would be free to recover from insured owners of the offending vehicle. In the matter of *Parmendra Singh vs New India Assurance Company*³¹, Hon'ble Court has observed as under.

“7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the Respondent – Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court. 7.1. This Court in Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.³², held that if the driver of the offending vehicle does not possess a valid driving license, the principle of ‘pay and recover’ can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.

7.2. We deem it just and fair to direct the Respondent – Insurance

²⁹ [Fabian PÜTZ](#), [Finbarr MURPHY](#), [Martin MULLINS](#): European Journal of Risk Regulation, Volume 9, Issue 3 (Symposium on Effective Law and Regulation) pg 548

³⁰ Schroll, C, “Splitting the Bill: Creating a National Car Insurance Fund to Pay for Accidents in Autonomous , Northwestern University Law Review 803, (2015) pg 109

³¹ Civil Appeal No. 5123 OF 2019

³² (2018) 9 SCC 650

Company to pay the enhanced amount of compensation as indicated in Para. 6 above, to the Appellant within a period of 12 weeks from the date of this judgment. The Respondent – Insurance Company is directed to make out a Demand Draft in the name of the Appellant, which can be used for his care for the rest of his life. The Respondent – Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks.”

VIII. CRITICAL ANALYSIS

The author under this head will try to critically analyze the situation existing in foreign country with respect to road transportation system in developed countries. A comparative study shall be conducted in this sub heading in order to understand that where the India system does lack. It is necessary to understand and compare the jurisprudence and the highlighting factors of international jurisprudence with respect to road transportation system. Loopholes of Indian System need to be understood and compared with other jurisdiction in order to strengthen the Indian Motor vehicle Regime. The backbone on the prevention depends on mitigate research on the public health impact of Road Traffic incidents. To find the spectrum of health and other socioeconomic downstream impacts of road traffic incidents, a comprehensive injury registry of real-time data is urgently needed in India like the developed world in search of quality care systems approach including pre hospital care to plug a majority of the loopholes of road safety.³³ Injury registry system is the need of time for the Indian situations.

The European Union–funded project on advanced protection systems introduced passive safety technologies for all road users. The researchers wanted to increase the competitiveness of European road transport business and improve safety technology, appropriate design, and evaluation methods to help increase efficiency of development processes and encompass safety-related issues. The project also developed a new model of crash test dummy, to help assess side-impact accidents.³⁴ In European countries, African Countries the vehicle safety gears inbuilt in the design are a function of safety of the riders particularly in case of four-wheelers and above automobiles. Day-by-day, not only vehicles are increasing in number on Indian roads but also high-speed compliant technologies are imported by the transnational companies adding events of road traffic accidents.

³³ Shekhar C, Gupta LN, Premsagar IC, Sinha M, Kishore J. An epidemiological study of traumatic brain injury cases in a trauma centre of New Delhi (India) J Emergency trauma Shock. 2015, Pg 131 [[PubMed](#)] [[Google Scholar](#)]

³⁴ Alam K, Mahal A. The economic burden of road traffic injuries on households in South Asia, 2016; Pg 11-25: [[PubMed](#)] [[Google Scholar](#)]

The need of preventive maintenance is highly required as poor the provisions incorporated in the Russian and Iranian legislations. Poorly maintained vehicles result in reduced road safety, whereas properly maintained vehicles always safeguard the riders and pedestrians. Many accidents from vehicle failure can be prevented, and many stranded motorists need to know the importance of proper maintenance. New provisions Section 110A and 110 B are incorporated in the amendment act of 2019 which are trying to raise the Indian safety standards in road accident cases. These provisions empower the central government to recall the vehicles back which are inconsistent with environmental standards.

Unfortunately, globally accepted safety features are conspicuously omitted for cost-cutting market competition in India and are provided to only high-end vehicles. Thus, safety norms of vehicles on Indian roads are far behind the international standards that need to be addressed on an urgent basis to save Indian citizens.³⁵ Safety features in low budget and least expensive vehicles in automobiles is a missing factor in Indian automobile industry. A few of these components are introduced in the Indian Regulatory regime by the amendment made in 2019, but ground execution and implementation of the same is under process and is subject to various checks as per situations prevailing in India.

Although the amendment to the act has been enacted and enforced in India. But the ground check in form of implementation and enactment throughout Indian states shall be a huge challenge. Its implementation in its pure form is the need of the hour. Compensatory aspects and social welfare legislation aspects needs to be fulfilled. The author opines that this gap shall be best filled by judicial deliberations and efforts. Hon'ble Supreme court of India, Hon'ble High Courts of India and Respective Regional Motor Vehicle Accident Claim Tribunals have tried to implement the provisions of the Act in its true spirit with the correct interpretation. Road safety & motor vehicles being a Concurrent subject matter list, there is always a possibility of dispute between the states and the centre. This gap needs to be fulfilled in a healthy way and with a positive spirit. Electronic surveillance cameras and CCTV installations are necessary as they are missing in the major parts of the nation in order to catch the violators and penalize them.

IX. SUGGESTIONS AND RECOMMENDATIONS:

The author would like to give a few suggestions and recommendations in order to strengthen the road safety and motor vehicle regime and its incidents:

³⁵ Josphira M, Shah H, Patel P, Divatia P. Trauma care systems in India – An overview of Indian Transport System, *Indian Highways Journal*, Vol. 42(6), June 2018, Pg.43-55.

- **Technical Innovations**: It is the need of the hour to connect the motor vehicles with internet and new generation technology. It will provide data on mileage, driving patterns, safety regulations & vehicle diagnostics. A small GPS device needs to be connected in the car or any vehicle which shall be giving the information. It shall help the insurance companies to assess the risk properly. Although this suggestion is subject to criticism as it shall intrude upon the privacy of a person and may cause moral & ethical hazards.
- **Responsibility based allocation of costs**: It means that the amount of claim to be claimed should be in proportionate ratio as per to the level of care taken by the owner or driver of the vehicle in maintaining the vehicle and following the rules and regulations. The lesser the care, more should be the amount of claim to be claimed from the driver or the owner of the vehicle.
- **Government Intervention**: There are many instances where it has been noted that there is no proper third party insurance of the vehicle. The government needs to conduct surveys in order to educate the general masses about the importance of the third party insurance.
- **Alternative modes of Road carriage transport**: Compared with road transport, Indian railway systems are six times more energy-efficient and four times more economical, and hence need to be optimally promoted for overall cost-effective traffic loads to carry cargo and passengers across India's gigantic terrain. Mass transport is needed using rail as basic infrastructure, namely, monorail, metro rail, and so on to effectively reduce load on road transport to improve road safety by eventual reduction in vehicle. Furthermore, the fossil fuel used in road transport damages the environment in more than one way including greenhouse gas emission leading to global warming.³⁶
- **Uniformity of legislation**: As the amended Motor Vehicle Act has enacted, but its enforcement is subject to adoption by a few Indian States. It has been argued by non adopting states that the amount of fines & penalties are quite high in nature and are out of the range of a common man. Such non adoption may lead dissatisfaction in general population of the country.
- **Claims Tribunal**: There is acute shortage of Motor Accidents Claims Tribunals that results into pendency of claims and increase the pendency of cases as well. The seating

³⁶ Vyas D, Hollis M, Abraham R, Chandra S, Malhotra A, Purohit H, Pre hospital care training in a rapidly developing economy: A multi-institutional study. 2016; Pg 203. [[PubMed](#)] [[Google Scholar](#)]

of the tribunals needs to be increased with a social welfare approach where the objective should be to assist the victim with his heirs or dependants.

- **Maintenance of National Highways:** Highways should be barricaded from both sides to stop stray cattle coming on road causing accidents. Further, the proper arrangements for reflective lights etc. should also be made in view of the safety of the people.
- **Issues relating to corruption:** Time and again it has been found that fitness certificates are issued without proper enquiry. Strict norms may be implemented to control this menace.
- **Role of IRDA:** The IRDA should play a proactive role to regulate the insurance company with an objective to provide adequate compensation to the people.

X. CONCLUSION

The author in the present paper has tried to discuss the major important concepts in the Motor Vehicle Act regime such as just compensation in the light of strict liability, contributory negligence and no-fault liability along with the recent amendment made in 2019. The amendment Act of 2019 and a few provisions of the same are as well critically analyzed in the current article. Author has tried to address that the just compensation regime is not sufficient as per the situations persisting in India. Amendment Act of 2019 has incorporated a few provisions as to just compensation but those standards are not compatible or fair enough in order to raise standards of a victim or his/her heirs after the tragic incident which had taken place. The plight and the situations faced by the victim and his family get worsened and pathetic. The need of the time is that we need a more liberal & opened approach from the judicial wing of the nation. The judiciary can fill up the gaps which are necessary in order to enhance the compensation quantum. Inclusion of tortious liability and strict liability on the wrongdoer can be sufficed by the judicial wing of the nation. The jurisprudence and the approach of developed countries are quite different from that of Indian Legislation. The concentration and central focus are more towards the victim. The author has discussed the international jurisprudence in the light of common law and its development along with a few decisions of the developed nations which can be a guiding and persuasive factor to deal the situation of compensation and liability under the Motor Vehicle Act in India.
