LAW COMMISSION OF INDIA

ONE HUNDRED AND FORTY-NINTH REPORT

ON

REMOVING CERTAIN DEFICIENCIES IN THE MOTOR VEHICLES ACT, 1988 (No. 59 OF 1988)

1994

K. N. SINGH
(FORMER CHIEF JUSTICE OF INDIA)

CHAIRMAN
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GOVERNMENT OF INDIA
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NEW DELHI - 110 001
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D.O.No.6(3)(25)/94-LC(LS) Dated : February 11, 1994

Dear Prime Minister,

I have great pleasure in forwarding herewith the 149th Report of the Law Commission of India on the subject **"Removal of certain deficiencies in the Motor Vehicles Act, 1988 (No.59 of 1988)'.** This is the sixth Report after the constitution of the 13th Law Commission.

2. The subject was taken up by the Law Commission suo motu with a view to make the law simpler, remove deficiencies in the existing law, to prevent litigation on technicalities and also to remove the anomalies in the 1988 Act. This report is, however, confined to provisions relating to 'no fault liability' and the liabilities incurred by insurers, owners and users of motor vehicles where any person or property suffers damage in an accident involving the vehicle. The Commission has made appropriate recommendations giving solutions to the problems and also suggested amendments in the Motor Vehicles Act, 1988.

3. The Commission trusts that the recommendations, when accepted and acted upon, will go in a long way to give adequate relief to the victims of road accidents or their legal representatives.

With warm regards,

Yours sincerely,

(K.N. SINGH)

Hon'ble Shri P.V. Narasimha Rao,
Prime Minister and
Minister for Law, Justice & Company Affairs,
NEW DELHI

Encl: As above

LAW COMMISSION OF INDIA

ONE HUNDRED AND FORTY-NINTH REPORT

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REMOVAL OF CERTAIN DEFICIENCIES IN THE MOTOR VEHICLES ACT, 1988 (NO.15 OF 1988)

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CHAPTER 1

INTRODUCTION

1.1 The Motor Vehicles Act, 1939 (Act 4 of 1939), based 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 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. This Report discusses the amendments needed to the Act in the light of this experience.

1.2 The frequency of accidents caused by motor vehicles and the pitiable plight of the victims of such accidents and their dependants have been the subject matter of comment by the Supreme Court in a number of cases[1]. During recent years, the number of road accidents in the country have increased more alarmingly. Almost every day one finds in the newspapers sad tales of road accidents. The number of road accidents in the country during 1989-91 was 8,37,601. The number of persons killed during the aforesaid period was 1,65,222. The State-wise break up of the road accidents and the number of persons killed in such accidents in India during 1989-91 is contained in Annexure-I. There is, therefore, an urgent need for streamlining the mechanism through which the victims or their legal representatives are compensated for their loss in such accidents so that they may be able to

receive expeditiously an appropriate amount as compensation for the damages sustained by them. It is felt all-round that victims of motor accidents and their legal representatives, where the accident is fatal, besides having grievously suffered as a result of the unfortunate event, are subjected to the agonies and uncertainties of a legal battle for a number of years for receiving the damages due to them through the process of Court. Of late, Lok Adalats have been settling the cases of such nature but it has been found that the victims or their legal represen-tatives are compelled to be satisfied with a paltry sum out of the damages claimed by them. Such persons have no other option but to settle the dispute because they do not know for how many more number of years they will have to litigate for receiving the damages. In the backdrop of these and other related matters, the Law Commission has suo motu taken up the exercise of finding a solution to some of the problems relating to the Motor Vehicles Act and giving their appropriate recommendations thereon. These are discussed below.

1.3 In India, there are a number of legislations dealing with the topic of wrongful deaths[2]. Of these, the Fatal Accidents Act, 1855 deals generally with the liability for compensation for wrongful deaths (including deaths resulting from motor accidents). The Law Commission in its 111th Report[3] considered the provisions of the Fatal Accidents Act, which deal with some aspects of the same species of liability as the one with which we are here concerned and

it made certain recommendations but those recommendations have not so far been implemented. It would, therefore, be proper that the Government considers both reports together to avoid anomalies and inconsistencies between the two enactments. Some of the areas where the other enactments impinge upon the present topic of discussion are also referred to at the appropriate places of this Report. There are also several shortcomings in the Motor Vehicles Act, 1988 which need to be set right. The more important of these inadequacies may be briefly touched upon at this stage.

1.4 Section 140 of the Motor Vehicles Act, 1988 provides for payment of compensation on "no fault" basis but the scope of the section is limited as it applies only where the victim dies or is permanently disabled. It does not provide for any relief in respect of injuries other than permanent disablement. The Commission has felt it necessary to widen its scope and coverage. The amount of compensation, both in case of death and permanent disablement, seems to be inadequate and requires reconsideration.

1.5 There appears to be infelicitous drafting, want of clarity and overlapping in Section 147 of the Motor Vehicles Act, 1988. These drafting defects and obscurities have caused difficulty in interpretation of Section 147 and

therefore it requires amendment.

1.6 Under the Motor Vehicles Act, 1988, on the death of a person in a motor accident, the 'relatives' and 'dependants' of the deceased are entitled to claim compensation. Similar provisions exist in the Fatal Accidents Act, 1855 and the Railways Act, 1989 but there is no uniformity in the definitions of 'relative' and 'dependant' under the Motor Vehicles Act, 1988. There is, therefore, need to bring uniformity in the aforementioned expressions.

1.7 The choice of remedies provided under Section 167 is unhelpful, particularly, when vastly different remedies are provided under the Workmen's Compensation Act, 1923, Employees' State Insurance Act, 1948 and other laws. This requires redrafting of Section 167.

1.8 The aforesaid difficulties have prompted the Law Commission to reconsider these questions suo motu with a view to make the law simpler, remove deficiencies in the existing law, to prevent litigation on technicalities and also to remove the anomalies in the 1988 Act.

1.9 With the above object in view, we proceed to examine and analyse the deficiencies in the Motor Vehicles Act, 1988. The present Report is confined to the provisions of the Motor Vehicles Act, 1988 (Act 59 of 1988) relating to the liability incurred by insurers, owners and users of motor vehicles where any person or property suffers damage in an accident involving the vehicle.

1.10 It may be recalled that the Commission has also made various recommendations relating to the amendments in the Motor Vehicles Act and its ancillary provisions in its 51st, 85th, 106th and 119th Reports.

Footnotes (Chapter 1)

1. See, for example, State v. Darshna Devi AIR 1979 SC 855 and Concord Insurance Co. v. Nirmala Devi AIR 1979 SC 1666.

2. These are the Legal Representatives' Suits Act (XII of 1855), the Fatal Accidents Act (XIII of 1855), the Workmen's Compensation Act (VIII of 1923), the Employers' Liability Act (XXIV of 1938), the Employees' State Insurance Act (XXXIV of 1948), the Merchant Shipping Act (44 of 1958), the Carriage by Air Act (69 of 1972), the Motor Vehicles Act (59 of 1988), the Indian Railways Act (24 of 1789) and the Public Liability Insurance Act (6 of 1991).

3. 111th Report dated 16.5.1985 which has recommended a legislation proposed to be named "Wrongful Deaths Act, 1985" to replace the Fatal Accidents Act, 1885.

CHAPTER 2

NO FAULT LIABILITY

2.1 Chapter X of the 1988 Act deals with liability without fault in certain cases and Chapter XI of the Act is titled as **"Insurance of Motor Vehicles against third party risks".** Section 140 in Chapter X, reads as follows:

> "(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
>
> (2) The amount of compensation which shall be payable under sub-section (1) in respect of death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.
>
> (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any

other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

2.2 A perusal of the aforesaid provisions reveals that the liability to pay compensation of ad-hoc amount is based on the principle of no fault liability. Thus, in a claim under this section in respect of death or permanent disablement of a person resulting from an accident, the claimant is not required to establish that such event occured due to any wrongful act, neglect or default of the owner or owners of the vehicle or of any other person[1] or that there was no contributory fault, neglect or default on his part. The amount of compensation fixed in respect of death of any person is Rs.25,000/-and in case of permanent disablement Rs.12,000/. The object of the aforesaid provision is to obviate a protracted trial into nuances as to the extent of negligence of either of the parties or as to the amount of compensation to which the injured/deceased should be entitled. Further, the financial solvency or otherwise of the

owner of the motor vehicle is also not taken into consideration. The victim of the accident or his legal representatives are entitled to receive from the insurance company, irrespective of the fault on the part of the vehicle owner or contributory negligence on his part, the amounts specified in section 140(2)[3]. This provision does not preclude the victim from claiming a higher compensation against the owner of the vehicle, in case he can prove the same.[4] There are, however, two limitations in section 140: (i) it is applicable only where the victim dies or is permanently disabled on account of an accident arising out of the use of a motor vehicle, (ii) the compensation provided for is the fixed amount mentioned in the section.

2.3 Experience shows that motor vehicle accidents, of manifold nature, occur wherein the injuries sustained by the victims are severe but not resulting in permanent disablement or death of the victim. A question arises whether such cases should be compelled to be contested in ordinary civil court or should those victims also be entitled to claim ad hoc amounts. It is a matter of common knowledge that pedestrians, cycle and three wheeler users on road mostly belong to poor class of our society who are victims of road accidents. Such victims, as in cases of permanent disablement, are also required to meet medical expenses etc., and the injuries may even result in considerable absence from their work-place resulting in loss of earnings. If those who

depend for their daily bread on the day's wages are made to suffer such loss, their families suffer, but Section 140 does not provide any ad hoc relief to this category. This results in great hardship and suffering to the poorer section of the people. We are therefore of the view that some amount of statutory compensation even for injuries less severe than those set out in section 140 should be prescribed.

2.4 The amounts fixed viz., Rs.25,000/- in case of death and Rs.12,000/- in case of permanent disablement are woefully inadequate[5]. When a person dies in a railway accident, he gets compensation on the scale mentioned in the schedule to the Railway Accidents/Compensation Rules, 1989 which goes up to Rs.2 lakhs in cases of death or permanent disablement[6]. If a person below 12 years of age dies in plane accident, his legal representatives are entitled to a sum of Rs.2.5 lacs and if the victim is more than 12 years of age the compensation would be to the extent of Rs. 5 lacs.[7] But if a person dies in a motor vehicle accident, the amount of compensation payable to him is so paltry that it does not come to even a fraction of the amount payable in the case of a plane accident. There appears to be no valid justification for such a disparity. In either case, it is the insurance cover from which compensation is available for payment. The need for removing such disparity and anamolous situation has been emphasised by the Supreme Court in Manjushri's case[8] as under:-

"Our country can ill-afford the loss of a precious life when we are building a progressive society and if any person engaged in industry, office, business or any other occupation dies, a void is created which is bound to result in a serious set back to the industry or occupation concerned. Apart from that the death of a worker creates a serious economic problem for the family which he leaves behind. In these circumstances, it is only just and fair that the Legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human life on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000/- or larger sums and yet when death comes to him not through a plane but through a motor vehicle, he is entitled only to Rs. 2,000/-. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle? Such an invidious distinction is absolutely shocking on any judicial or social conscience and yet section

> 95(2)(d) of the Motor Vehicles Act seems to suggest a such distinction.... We would also like to suggest that instead of limiting the liability of the insurance companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a Court in the special circumstances of each case".[9]

The above observations were reiterated in a subsequent decision[10] also. Besides, as already stated it appears inequitable that persons who suffer injuries not resulting in death or permanent disablement should be left without any redress. Such persons also need immediate ad hoc relief in the form of compensation.

2.5 While there is, therefore, a case for the enhancement of the amounts of compensation fixed under S.140, we do not think that the scales of compensation in respect of air or railway accidents can be usefully adopted here. So far as air accidents are concerned, (a) the provisions are governed by international conventions, (b) the passengers carried generally belong to an affluent class, the loss resulting from the death or injury to whom is likely to be evaluated at the notified figures, and (c) it is open to the carrier to exonerate itself from his liability wholly or partly by proving that the damage was caused by, or contributed to by the negligence of the injured person.[11] So far as railway accidents are concerned, they commonly involve a large

number of persons and a fixed ad hoc scale of compensation on "no fault" basis has been evolved to avoid protracted proceedings in such cases. On the other hand, the assessment of individual compensation is less cumbersome in the case of motor vehicle accidents and an elaborate adjudicatory machinery has also been constituted under the Act. Even under the Railways Act, such individual assessment is envisaged in cases of injuries other than those specified in the Rules.[12] In principle too, the specification of a rigid formula of fixed compensation as final without any regard to the circumstances of the deceased/injured would appear to be incorrect and unjust.

2.6 Taking note of the above considerations and even keeping in view that what section 140 provides for is a "no fault liability" without prejudice to claims for higher compensation after enquiry and adjudication, it is clear that the amount of compensation payable under the section is inadequate and, therefore, it needs to be raised. We are of the view that Section 140 should be modified to provide for compensation even in respect of injuries less severe than the ones set out presently in the aforesaid section. It is, therefore, recommended that the amounts of compensation payable under Section 140(2) be fixed as follows:

(i) In the case of death - Rs.1,00,000

(ii) In the case of permanent disablement- Rs.60,000

(iii) In the case of serious injury not resulting in death or permanent disablement - Rs. 5,000

Footnotes

(Chapter 2)

1. Sub-Section 3 of section 140.

2. Sub-section 4 of section 140.

3. Section 140 does not make mention of the insurance company, but this follows from the languages of S.147 in Chapter XI.

4. Section 141.

5. It is interesting to see that Schedule I to the recent Public Liability Insurance Act (6 of 1991) incorporates these limits. It, however, provides relief for temporarily partial disability and also for damage to private property.

6. Section 127 of the Railway Accidents Act, 1989 read with the rules made thereunder.

7. See notification (S.O. 1018) issued by the Ministry of Civil Aviation and Tourism published in the Gazette of India, Part II - Section 3 - Sub-section (ii) dated 11.4.1992 p.1943.

8. AIR 1977 S.C. 1158, decided in the context, not of Section 140 of 1988-Act, but of a complicated scale regarding the limits of statutory insurance cover spelt out in S.95(2) of the 1939 Act, in respect of goods and public passenger vehicles. In respect of other vehicles, the insurance cover had to be co-extensive with the liability of the insured.

9. In this context, the recommendations of the 85th Report of the Law Commission (Chapter 5) may also be seen. The legislature has preferred to prescribe fixed sums as ad-hoc compensation leaving parties to litigate for higher compensation at their choice.

10. Kunhimohammed v Ahmedkutty, AIR 1987 SC 2158.

11. Rule 22 of the First Schedule to the Carriage by Air Act, 1972.

12. Rule 3(3) of the Railway Accidents (Compensation) Rules, 1990 and the Schedule thereunder.

CHAPTER 3

COMPULSORY INSURANCE COVER

3.1 Chapter X of the 1988 Act deals with liability without fault in certain cases, while Chapter XI, deals with the insurance of Motor Vehicles against third party risks. Chapter XII pertains to the constitution of Claims Tribunals, the procedures to be adopted by them and other provisions incidental thereto. Although Chapters X and XI are titled differently, there is a common feature that they relate to meeting the claim of the victims of a motor vehicle accident from and out of the insurance cover. Section 95 of the 1939 Act and Section 147 of the 1988 Act set out the requirements of a policy of insurance and the limits of liability thereunder. The present study deals with the language of Section 147(1) of the 1988 Act which is almost identical with that of Section 95(1) of the 1939 Act. The only material difference between the two is the omission, from Section 147(1), of clause (ii) of the proviso to Section 95(1) of the 1939 Act. Sub-section (1) of Section 147 of the 1988 Act is quoted below for ready reference:

> "(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons

specified in policy to the extent specifed in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occured in a public place."

3.2 An examination of Section 147 of the 1988 Act reveals that sub-clause (ii) of clause (b) of sub-section (1) suffers from infelicitous drafting, want of clarity and avoidable overlapping.[1] The language of the sub-clause which seems to require the taking out of an insurance policy which insures the specified persons "against the death of or bodily injury to any passenger ....." is clearly infelicitous as, obviously, no insurance policy can insure any one against death or bodily injury. One would, therefore, think that what the sub-clause intends to say is that the specified persons should be insured "against any liability which may be incurred by them in respect of the death of, or bodily injury to, any passenger....." and that the sub-clause should be recast accordingly.[2]

3.3 Quite apart from the infelicitous wording of the sub-clause, there is apparently an overlapping between sub-clauses (i) and (ii) of clause (b) in their scope. Sub-clause

(i), read by itself, is very wide. It requires the owner or user of a vehicle to take out an insurance policy to cover any liability which he may incur "in respect of the death of, or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of his vehicle in a public place." This clause, prima facie, is applicable to all motor vehicles including public service vehicles. Likewise, the use of the expression "any person" and the reference to any "third party" (which obviously takes in any person other than the insurer and the insured) makes the requirement all embracing. Sub-clause (i) is, therefore, comprehensive enough to require the owner or user of any motor vehicle including a "public service vehicle" to take out an insurance policy that would cover the risk of death or injury to the person or damage to the property of any person including any passenger in such a vehicle. In this view, since the language of sub-clause (i) is wide enough to include cases covered by sub-clause (ii) as well sub-clause (ii) seems redundant.

3.4 However, before recommending the omission of sub-clause (ii), we may examine the question whether the legislature has inadvertently framed the aforesaid clauses or whether there is some other way to reconcile the two clauses, making them meaningful. An answer to this question requires a study of the legislative history of Section 95 of the 1939 Act, which corresponds to the present Section 147.

Section 95(1)(b), as originally inserted in the 1939 Act, read as under:-

> "(1) In order to comply with the requirements of this chapter, a policy of insurance must be a policy which -
>
> (a) xxx xxx xxx
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-.
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place....

Provided that a policy shall not be required - (emphasis supplied)

> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment that then a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee -
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle, engaged as a

conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurence of the event out of which a claim arises, or

(iii) to cover any contractual liability."

An examination of the proviso shows that it contained three exceptions. One of these exceptions excluded a public service vehicle from the need to carry insurance "against death or injury to passengers" unless it was one on which passengers were carried for hire or reward.[3] Thus, save in cases covered by the proviso to sub-section (1) of Section 95, the section applied to all vehicles including public service vehicles and the requirement to carry a policy of insurance against liability for causing injuries to all persons, including passengers was mandatory even in the case of public service vehicles. This interpretation was plain on the terms of clause (b) of Section 95(1) of the 1939 Act and as earlier pointed out, on the terms of sub-clause (i) of clause (b) of

Section 147(1) of the 1988 Act as well.

3.5 Section 95(1) of the 1939 Act was amended by Act No. 56 of 1969. Clause (b) was substituted by a new clause consisting of sub-clauses (i) and (ii) in the same terms as sub-clauses (i) and (ii) of clause (b) of Section 147 (1) of the 1988 Act, earlier extracted. There was a minor amendment in the opening words of the proviso (which is irrelevant for our present purposes), clause (ii) of the proviso was omitted and clause (iii) redesignated as clause (ii). The Statement of objects and reasons for this amendment[4] reads as under:

> "This amendment requires that a policy of insurance of a motor vehicle under Chapter VIII covers the following additional matters, namely:-
>
> (1) damage to any property of a third party;
>
> (2) death or bodily injury to any passenger of a public service vehicle even though the owner or the driver of the vehicle may not be responsible for the accident, provided there is no contributory negligence on the part of the passenger."

While the amendment made it clear that the insurance policy had -

> (a) to cover the liability of the insured in respect of death of, or injury to, or damage to the property of, third parties by vehicles; and
>
> (b) to compensate passengers to whom death or

injury was caused where the vehicle was a public service vehicle and the passengers were carried on it for hire or reward,

the substitution of two sub-clauses in the place of the earlier single one created some ambiguity.

3.6 The Supreme Court had occasion to interpret the amended provisions of Section 95 of the Motor Vehicles Act, 1939 and to examine the difference between the scope of sub-clauses (i) and (ii) of S.95(1)(b) in the case of Minu B. Mehta v Bal Krishna.[5] It overruled the general principle enunciated by the High Court[6] that the insurance company would be liable to compensate a person who died or was injured in any motor vehicle accident irrespective of any fault or negligence on the part of the driver of the vehicle. The Supreme Court observed -

> "Under Section 95(1)(b)(i) of the Act, it is required that policy of insurance must be a policy which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. It may be noted that what is intended by the policy of insurance is insuring a person against any liability which may be incurred by him. The insurance policy is only to cover the liability of a person which he

might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore obvious that, if the owner has not incurred any liability in respect of death or bodily injury to any person, there is no liability and it is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions as they stand do not make the owner or insurance company liable for any bodily injury caused to a third party arising out of the use of the vehicle unless the liablity can be fastened on him. It is significant to note that under sub-clause (ii) of Section 95(1)(b) of the Act the policy of insurance must insure a person against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Under Section 95(1)(b) clause (ii) of the Act, the liability of the person arises when bodily injury to any passenger is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability

> incurred by the person. It may be noted that the provisions of Section 95 are similar to Section 36(1) of the English Road Traffic Act, 1930, the relevant portion of which is to the effect that a policy of insurance must be a policy which insures a person in respect of any liability which may be incurred by him in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle on road. The expression "liability" which may be incurred by him is meant as covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and that liability alone is covered by the insurance policy." (underlining added).

It is evident from the aforesaid decision that the purpose of the insurance policy visualised under the Act is only to indemnify the insured against a liability which he has incurred in law towards third parties, and that where there is no such liability incurred by the insured the insurer cannot also be fixed with any liability. However, it would appear that the Supreme Court attached importance to the difference in language between sub-clauses (i) and (ii) and, by the words underlined in the above extract, interpreted sub-clause (ii) of Section 95(1)(b) of the 1939 Act (as amended by Act No.56 of 1969) to mean that the policy of insurance taken by the owner of a public service vehicle

should provide compensation to any passenger of the vehicle for death or bodily injury caused by or arising out of the use of the vehicle in a public place irrespective of whether there was any fault on the part of its owner, agent or driver, or not.

3.7 As earlier pointed out,[7] one view could have been that the opening words of sub-clause (ii) reflect ambiguous and inept drafting, as there can be no insurance against death or injury[8] and that there is nothing in the difference in language between the two sub-clauses which requires sub-clause (ii) to be interpreted as making the owner or user of the vehicle liable to pay compensation even without any fault on his part. This would tantamount to something more than what a policy of indemnity to the insured, insuring him only against a liability incurred by him, can achieve. However, since the sub-clause has now been interpreted by the Supreme Court in Minu B. Mehta's case (supra), the question does not remain res integra. Sub-clauses (i) and (ii) have, therefore, now to be understood as explained by the Supreme Court and the apparent overlapping in the two sub-clauses, referred to earlier,[8] disappears.

3.8 Although it is possible to reconcile sub-clauses (i) and (ii) of clause (b) of S.147(1)[9], their continuance in their present form seems inadvisable for the following reasons. In the first place, it can give room for an argument that sub-clause (ii), which deals with public

service vehicles, is exhaustive of the insurance cover needed to be taken by owners of such vehicles. In other words it can be contended, that such vehicles are liable to take out insurance cover only against death or injury to passengers carried by them for hire and not against the wider liability envisaged in sub-clause (i) to third persons and goods of third parties. The argument may seem far-fetched but it is advisable to clarify that this is not so. Secondly, the purpose of inserting sub-clause (ii), as mentioned earlier, was to impose a no-fault liability as, but for a specific provision, the insurance can be effective only in cases where there is fault attributable to the owner of the vehicle, as explained by the Supreme Court. It is patent that there should be insurance cover against death or permanent disablement of any person, even where there is no proof of any fault on the part of the owner of the vehicle causing the accident or his agent or servant, as experience has shown that benami ownership of vehicles and the involved language of insurance policies can easily be exploited to render a victim's remedies nugatory unless he can have direct recourse against an insurance company, irrespective of issues of fault, contributory negligence and the like. To meet this difficulty the 1939 Act was amended and S.92-A was inserted to impose a no-fault liability on the owners of all vehicles in cases of death or permanent disablement caused to third parties by motor vehicle accidents. Since S.92-A creates a liability on

the owners even in no-fault cases to compensate persons so affected, the language of the earlier sub-clause (i) itself becomes adequate to achieve the desired purpose and the continued retention of sub-clause (ii) has been rendered an unnecessary surplusage. Thirdly, there is a certain extent of redundancy between the provisions of S.92-A and S.95(1)(b)(ii). Whereas the former creates a no fault liability only in respect of death or permanent disablement and also imposes a limitation on the amount of compensation that would be payable in such cases, the insurance under the latter would cover any kind of injury to passengers and the extent of compensation that would be payable also remains unspecified and hence limitless. Also, with the omission of clause (ii) of the proviso to S.95(1) of the 1939 Act, the no-fault liability on the part of public service vehicles would get extended even to gratuitous passengers who have not paid, or evaded payment of, hire for their carriage in the vehicle. It was perhaps not the intention of the legislature to create a no-fault liability towards passengers of public service vehicles different from that of other vehicles. Indeed, such differentiation may even amount to discrimination violative of Article 14 of the Constitution.[10] For these reasons, and particularly in view of S.92-A of the 1939 Act (and its corresponding provision in S.140 of the 1988 Act), it is clear that sub-clause (ii) of S.147(1)(b), corresponding to the earlier S.95(1)(b), is unnecessary, redundant and otiose.

It can be deleted without detracting, to the slightest extent, from the efficacy of the remedies open to victims of road accidents. We recommend accordingly.

3.9 We think that sub-clause (i) should also be amended to make it clear that the insurance policy also covers the no-fault liability of the owner or user of the vehicle under S.140 of the Act. We, accordingly, recommend the substitution of the following clause (b) in place of the existing clause (b) of S.147(1):

"(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him (including the one under section 140) in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

3.10 Clause (i) of the proviso to S.147 is also very ambiguous in its wording. The purport, apparently, is that insurance cover is not necessary in respect of liability on account of death or personal injury of the employees of the insured. This is apparently because such liability would be normally covered by the Workmen's Compensation Act, 1923 and it need not be covered by insurance. But the proviso reads as if it requires a policy to be taken specifically covering the liability under the said Act in respect of injury to the employee. Even assuming this, the language of the proviso can be improved upon. Secondly,

it is not clear why the need for a policy is restricted only to the cases of employees who fall within one of the three descriptions.

(a) conductor or ticket examiner of a public service vehicle;

(b) the driver of the vehicle in all cases; and

(c) an employee who is a passenger on a goods vehicle.

There could be employees other than the driver, conductor or ticket examiner travelling in a private or public service vehicle in the course of their duties, the liability for injury to whom due to an accident to the vehicle may be covered by the 1923 Act. Thirdly, the language of the proviso is also very clumsy and repetitive, the words "arising out of and in the course of his employment" and "in respect of the death of or bodily injury to" being repeated over twice. If the only idea is that a policy of insurance need not extend, in the case of employees, beyond the cover provided by the 1923 Act, it could perhaps be expressed in much simpler words. The proviso needs to be recast in this regard.

3.11 The above drafting inadequacies apart, we are of the opinion that the first exception carved out by the section is totally uncalled for and gives rise to certain unintended anomalies. The extent of liability of a person injured or killed in a motor vehicles accident is determined by the Tribunals constituted under the Act on general

principles for determination of damages for tortious liability. These principles envisage the assessment of damages with reference to the facts and circumstances of each individual case by taking into account several factors, such as the age of the victim, his earnings, his expectation of life at the time of the accident, the extent to which he was providing financial support to his kinsmen and so on. Of late, the amount of compensation awarded by these Tribunals are generous, substantial and in tune with the economic conditions of the present day. On the other hand, the Workmen's Compensation Act (Act 8 of 1923) is an enactment framed at the beginning of the century and the scales of compensation provided by it in S.4 are inadequate and divorced from present day realities and values[10]. If we examine the proviso keeping this essential difference in mind, it would be apparent that while the owner of a motor vehicle and his insurer will be liable to third parties who may be injured in an accident involving the vehicle to the fullest extent of the loss or injury caused to the victim, the liability, where the victim happens to be an employee of the owner, will be restricted to the limited extent specified in the Workmen's Compansation Act, 1923[11]. It could not have been the intention of the legislature to create such a wide disparity. This may perhaps even amount to discrimination violative of the Constitution. It is, however, sufficient to say that this limitation on the extent of compulsory insurance qua workmen to the extent of

the liability under the 1923 Act and its restricted application only to the categories of employees specified in the proviso, cannot be justified.

3.12 Secondly, the proviso also leads to another, perhaps unintended, consequence. It implies that an employee injured in a motor accident may, in certain cases, be entitled to make a claim for relief under the 1923 Act. If he does so, the employer, to meet the liability, should protect himself by taking out a policy of insurance which is compulsory under this section to cover such liability. But such an employee has also the alternative remedy of claiming compensation under this Act and, if he exercises the option[12], the liability of the employer would arise under this Act and not under the 1923 Act. Presumably, therefore, the compulsory insurance cover under the proviso will not cover the case. The employee has, therefore, to decide not only as to which of the two remedies will fetch him higher compensation, but also to take a decision as to whether it will be worthwhile to opt for the, perhaps higher, relief he may get under this Act at the risk of losing the insurance protection otherwise available to him. This is by no means an easy choice for an illiterate or semi-literate workman and the enforcement of such a difficult option will not advance the cause of justice.

3.13 Thirdly, the proviso ignores the impact of the provisions of the Employees' State Insurance Act (Act 34) 1948, which may be attracted in some of these cases. The

proviso does not define the extent of the insurance cover necessary in those cases. Logically, the proviso should have been amended to make it clear that no insurance cover would be necessary in cases which get insurance protection under the 1948 Act.

3.14 In this situation, there are two possible courses that can be adopted. One would be to exclude compulsory insurance cover against any liability towards employees, leaving the employees to agitate their claims against the employer in other fora available to them - under other enactments or by way of suit - and leaving the employer-owner an option to take out such insurance cover in respect of death or injury to an employee as he may consider advisable. The other alternative would be to do away the exclusion, provided in the statute, of the need to provide compulsory insurance against liability to employees (save in respect of certain categories) and put all employees in the same position as other persons who might be killed or injured in a motor vehicles accident. In our opinion, the second course is preferable as there is no justification to distinguish between employees and other persons in the matter of compensation for death or injury caused due to motor accident.

3.15 For these reasons, we are of the opinion that the aforesaid part of the proviso has outlived its usefulness and lost its rationale and should be omitted. It is, therefore, recommended that the proviso should be amended

to read thus:

> "Provided that a policy referred to in this sub-section shall not be required to cover any contractual liability".

3.16 As already discussed, the statute had originally provided several limitations on the scope of the compulsory insurance cover. Fortunately, all those limitations have since been removed and it is now provided that, in the case of death or injury to any person, the insurance should cover the entire extent of actual liability (S. 147(2)(a)). However, in respect of damage to, or loss of, property, the compulsory insurance cover is limited to Rs.6,000/- under S. 147(2)(b).

3.17 We are of the opinion that the restriction of amount under clause (b) requires to be amended altogether. Apart from the fact that the amount specified in the clause is insignificant in the context of the steep rise in the value of goods carried by motor vehicles or likely to be damaged in a motor accident, we think that the insured should be required to be covered for his full liability even in respect of damage to the property of a third party; there is no logic or principle on the basis of which a partial cover can be stipulated. This is particularly so in view of the revolutionary changes that have taken place in the realm of transport in recent years. The size of the vehicles that ply on public roads, the speed with which these are driven, the weight of the cargo that is carried

on lorries and other vehicles and the nature of the goods transported by motor vehicles have undergone such transformation that the impact of any accident caused by the vehicle is far-reaching and can affect property of high value. In the distant past, an accident arising out of the use of the vehicle in a public place caused damage to third persons and to some property carried on the vehicle which was usually not of considerable value. But accounts of recent accidents show that motor vehicles accidents can inflict heavy losses to properties of third persons. In the first place, the value of the goods or property of third persons carried on the vehicle has gone up considerably and not always covered by insurance. That apart, it is easy to conceive of incalculable damage caused to property of third parties as a result of an accident. A car, bus or truck may sometimes go out of control and plow down property belonging to third persons. An accident to a truck carrying inflammable substances can very well result in an explosion with far-reaching impact on, and extensive damage to, the property of third parties. A huge lorry carrying a gigantic tonnage of goods, while overturning as a result of an accident, may crush beneath its weight not only human beings but even valuable property of others. Having regard to all these considerations, we think that the amount of insurance in such cases, as in clause (a), should cover the entire liability of the insured towards third parties in respect of any damage caused to their property by the use of the vehicle in a public place. We, therefore, suggest that the existing S.147(2) may be substituted by the

following provision:

> "S.147(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1) shall cover any liability incurred in respect of any accident upto the full amount of the liability incurred by the insured in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place". The proviso to S.147(2) will, however, continue in its present form.

FOOTNOTES

CHAPTER 3

(1) See M.N. Srinivasan, "Beneficiaries under the New Motor Insurance Law", 1992 II MLJ (Journal), 203.

(2) This perhaps is not so, as will be seen later. Moreover, recasting the language as suggested would make the two clauses repetitive.

(3) This exception has been omitted in the 1988 Act.

(4) By clause 54(a)(i) of the Amending Act.

(5) AIR 1977 SC 1248.

(6) Haji Zakaria v. Noshir Cama, AIR 1976 AP 171.

(7) Para 3.2 ante.

(8) Para 3.3 above.

(9) This provision re-enacted in its present form in 1984, takes into account a percentage of the wages of the workman and provides a fixed multiple thereof as compensation depending on the age of the workman. The wage of the workman for this purpose is pegged at a maximum of Rs.1,000/- p.m.

(10) Indeed, even without this provision, it could well be contended that the owner, as employer, cannot be called upon to pay higher compensation than the amounts specified in the 1923 Act and that the insurer's liability, being one of an indemnifier, cannot be higher.

(11) He cannot obviously claim both reliefs. This is made clear by S.167 of the Motor Vehicles Act, 1988.

(12) In such cases, the 1923 Act will not apply. See S.53 of the 1948 Act.

CHAPTER 4

DEFENCES OPEN TO THE INSURER

4.1 S.94 of the 1939 Act made it mandatory that no motor vehicle could be used in a public place unless the user or owner thereof had taken out a policy of insurance covering risks to the insured as well as to third parties. The underlying object was that, if any third party is injured as a result of such user, he should not be left without an effective remedy. However, this protection could have been frustrated by the insurer introducing terms, conditions, exceptions, or limitations in the policy, restricting his liability or releasing him from liability altogether in certain situations. To overcome this difficulty, the Act provided that the policy taken should fulfil the requirements of Chapter VIII of the Act. These requirements were set out in S.95.

4.2 S.96(2) further provided that an insurer could defend an action for compensation on the grounds set out therein, viz.,

(a) that the policy had been cancelled even before the accident took place giving ruse to the liability;

(b) that there had been a breach of one of the three conditions of the policy enumerated in S.96(2)(b); and

(c) that the policy itself was void as it was obtained by non-disclosure, or mis-representation, of material facts. In these three situations, the insurer was

not liable either to indemnify the insured or to satisfy any judgment obtained by a third party against the insurer. But, where there was a violation of conditions contained in the policy other than the three mentioned in S.96(2)(b), the insurer was bound to satisfy a judgement obtained by a third party but could recover the amount paid from the insured. In other words, such restrictive conditions were binding as against the insured but was not as against third persons. This was the effect of S.96(3) which read thus :

> Where a certificate of insurance has been issued under sub-section (4) of Section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the person insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of S.95, be of no effect:
>
> Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person."

4.3 In the 1988-Act, S.149 replaces the S.96 of the 1939-Act, S.149(1), (3), (4), (5), (6) & (7) of the 1988-Act re-enacts S.96(1), (2A), (4), (5) and (6) of the 1939-Act respectively with minor changes not material for our present purposes. S.149(2), however, re-enacts S.96(2) of the 1939

Act with one major difference, viz., the omission of clause (a) thereof. Thus, S.149(2) has only two clauses (a) and (b) which correspond to clause (b) and (c) of S.96(2) of the 1939 Act. In other words, the new Act, in enacting S.149, intended no material deviation from the provisions of S.96, save only the omission of S.96(2)(a). S.149(4), however, repeats the language of S.96(3) of the 1939 Act verbatim, except that "sub-section (4) of Section 95" and "clause (b) of sub-section (1) of Section 95" have been replaced by "sub-section (3) of section 147" and "clause (b) of sub-section (1) of S.147" consequent on the re-enactment of S.95 of the old Act as S.147 with some changes. But it retained the reference to "conditions other than these in clause (b) of sub-section (2)" overlooking that the said "clause (b)" had become "clause (a)" in the new S.149(2). This is clearly a mistake. We, therefore recommend that, in S.149(4) of the Act, the words "clause (a) of sub-section (2)" should be substituted for the words "Clause (b) of sub-section (2)"[1].

FOOTNOTE

CHAPTER 4

1. Reference may be made, in this context, to the article by Shri M.N. Srinivasan (AIR 1992 SC - Journal - 18) pointing out this patent error which calls for rectification.

CHAPTER 5

HIT AND RUN CASES

5.1 There arise, not infrequently, cases in which the vehicle causing an accident speeds away after hitting a human target. For such hit-and-run cases the remedy provided under Ss.140 and 147 is of no avail. To meet this difficulty, S.109A was inserted in the 1939 Act under which a 'solatium fund' was set up from which compensation could be paid to victims of such accidents.[1] S.161 of the 1988 Act, which corresponds to S.109A of 1939 Act, has fixed the amount of compensation payable in such cases as follows:

In case of death	: Rs.8,500
In cases of grievous hurt	: Rs.2,000

slightly increasing the corresponding figures under S.109A which were Rs.5,000 and Rs.1,000 respectively. The intention apparently, is to provide for ad hoc relief irrespective of fault for such cases also as under S.140. There is, however, a small difference in that the "grievous hurt" referred to in S.161 is somewhat wider expression which would cover cases which may not amount to permanent disablement within the meaning of S.142.[2]

5.2 It seems to us that there is hardly any differene in principle between the two situations covered by Ss.140 and 161 in regard to the compensation payable to victims of accidents on an ad hoc basis[3] without prejudice to the right of the victim to pursue his remedies against the offender or his insurer. Nor is there any need to draw up

a different classification for the purposes of this section from that in S.140. We, therefore, suggest that the language of S.161 should be the same as contained in S.140 and recommend that clause (a) of sub-section (1) and sub-section (3) of S.161 be amended appropriately[4].

FOOTNOTES

CHAPTER 5

1. This was in partial acceptance of the Law Commission's recommendation in its 51st Report that in such cases compensation should be paid by the State.

2. Cf. the definition in S.142 of the 1988 Act and S.326 of the Indian Penal Code.

3. It is liable to adjustment in case the victim secures an award directly.

4. See Chapter 12, part, for the proposed amendment.

CHAPTER 6

LEGAL REPRESENTATIVES

6.1 S.166 of the 1988 Act, corresponding to S.110A of the 1939 Act, provides that where death has resulted from an accident, the application for compensation may be made by all or any of the legal representatives of the deceased victim. The expression 'legal representatives' has not been defined in the Act. An earlier report of this Commission had suggested that, for the purposes of this Act also, the definition of the expression in the Fatal Accidents Act, 1855 could be adopted.[1] The Supreme Court in Kunhimohammed's case[2] has not agreed with this view and has suggested that the definition drafted by the Pearson Committee in England[3] and incorporated in the new English enactment on the subject would be more appropriate.[4] Though the Bill was under consideration of Parliament when the Supreme Court made its observations, Parliament did not incorporate a definition of 'legal representative' in the 1988 Act. This omission should be remedied. We think, in the circumstances, that it is necessary to insert a definition of the expression "legal representatives" for the purposes of this Act. We suggest that it may be inserted as an Explanation to Sub-section (1) of S.166 of the Act. What should be the wording of the definition of 'legal representatives'?

6.2 The definition, inserted in England, on the recommendations of the Pearson Commission,[5] and the Law

Commission's Report of 1973[6] is to the following effect:[7]

"(3) In the Act, 'dependant' means -

(a) the wife or husband or former wife or husband of the deceased;

(b) any person who -

(i) was living with the deceased in the same household immediately before the date of the death;

(ii) had been living with the deceased in the same household at least for two years before that date; and

(iii) was living during the whole of that period as the husband or wife of the deceased;

(c) any parent or other ascendant of the deceased;

(d) any person who was treated by the deceased as his parent;

(e) any child or other descendant of the deceased;

(f) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage;

(g) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.

(4) The reference to the former wife or husband of the deceased in sub-section (3)(a) above includes a reference to a person whose marriage to the deceased has been annulled or declared void as well as a

person whose marriage to the deceased has been dissolved.

(5) In deducing any relationship for the purposes of sub-section (3) above -

(a) any relationship by affinity shall be treated as a relationship by consanguinity, and relation of the half blood as a relationship of the whole blood, and the step child of any person as his child; and

(b) any illegitimate person shall be treated as the legitimate child of his mother and reputed father;

(6) Any reference in this Act to injury includes any disease and any impairment of a person's physical or mental condition".

This is a very comprehensive and all embracing definition enabling almost any person related to the deceased to claim compensation.

6.3 The question is whether this definition should be imported verbatim in the 1988 Act as well. It is hardly disputable that the list of persons entitled to compensation under the 1988 Act should, in principle, be evolved, more or less on the same lines as the one drawn up under the Fatal Accidents Act. Unfortunately, the Fatal Accidents Act in India was enacted in 1855, when fatal accidents were not so common as they have become now after the proliferation of fast moving vehicles, but the Act has not undergone any revision thereafter. It was on account of this circumstance that the

Supreme Court of India read into Ss.110A and 110B of the 1939 Act an intention to bring in a much wider category of dependants and was unwilling to accept the importation of the narrow definition as contained under the Fatal Accidents Act of 1855 for this purpose.[8] The Law Commission has had occasion to consider the provisions of the Fatal Accidents Act, 1855 and forwarded its detailed recommendations.[9] That report has discussed at great length the whole question of defining the relatives who should be entitled to receive compensation on the occurrence of the wrongful death of a person. In that report the Commission referred to the definitions in the Fatal Accidents Act of England, the Indian Workmen's Compensation Act, 1923[10] and the Indian Railways Act, 1890[11] and finally recommended the following list of relatives:[12]

> (a) Wife or husband; (b) child; (c) daughter-in-law, if a widow; (d) parent; (e) brother or sister's issue; (f) brother's widow; (g) sister and sister's issue; (h) uncle and uncle's issue; and (i) aunt and aunt's issue.

In this list, the expression "child" is to be understood in a very wide sense so as to include "son, daughter, grandson, grand-daughter, adopted child and a person to whom the deceased stood in loco parentis" and the expression "parent" to include "father, mother, grandfather, grand-mother, step father, step-mother, a person who had adopted a child,[13] and a person who stood in loco parentis to the deceased."

Provisions on the lines of sub-sections (5) and (6) of S.1 of the English Act, as substituted in 1982[14] and a further provision to the effect that "all words in this Act expressive of relationship apply to a child in the womb who is afterwards born alive"[15] were also recommended. This definition has virtually incorporated the provisions of the English definition.

6.4 Recently, while re-codifying the Railways Act, 1989, the Parliament has introduced the definition of 'dependant' for the purpose of enumerating the relatives who can claim compensation on the death of a person in a Railway accident. The definition reads thus:[16]

> "dependant" means any of the following relatives, ...namely:-
>
> (i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or a minor, his parent;
>
> (ii) the parent,[17] minor brother, or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a predeceased son, if dependant, wholly or partly on the deceased;
>
> (iii) the minor child of a pre-deceased daughter, if wholly dependant[18] on the deceased passenger;
>
> (iv) the paternal grand-parent wholly dependant on the deceased passenger."

6.5 We have thus two definitions to choose from.[19] Both

the definitions are much wider than the earlier definition given under the Fatal Accidents Act, 1855 and are comprehensive enough to meet the situations envisaged by the Supreme Court.[20] Actually, it would be appropriate and proper if the definition of "relative" or "dependant" are identical under all the three enactments i.e. Fatal Accidents Act, 1855, Railways Act, 1989 and Motor Vehicles Act, 1988. It would be, therefore, simple to suggest the adoption of the definition already enacted in the Railways Act, 1989 for the Motor Vehicles Act as well, leaving the same to be also incorporated as and when a new version of the Fatal Accidents Act is enacted. But one finds certain defects in this definition. Firstly, it emphasises more the point of dependance of the relative on the deceased than his degree of relationship with the deceased. This emphasis is not really needed in the definition, for the compensation receivable by a relative has to be proportionate to the injury caused to him as a result of the death and, if the relative was not at all dependant on the deceased, the relief due to him will be nil.[21] Secondly, the definition in the Railways Act contains certain discriminatory clauses which may perhaps be challenged in a court, e.g., a minor child of a predeceased <u>son</u> can claim compensation even where he/she is partly dependant on the deceased whereas a minor child of a predeceased <u>daughter</u> cannot claim unless he/she is <u>wholly</u> so dependant. A paternal grandparent is included in the definition whereas a

maternal grand-parent is excluded. Thirdly, the definition does not clarify that the expressions 'child' and 'parent' have to be understood in a wide and comprehensive manner. For these reasons, we are of opinion that it will be more appropriate to adopt the definition proposed in the draft Bill forwarded with the 111th Report with some changes, as indicated later.[22] We recommend accordingly.[23]

Footnotes

(Chapter 6)

1. 85th Report (30.5.1980), para 9.15.

2. AIR 1987 SC 2158.

3. Set out at pages 1695 & 1696 of AIR 1987 SC.

4. See also observations on this issue in Gujarat State Road Transport Corporation v Ramanbhai Prabhatbhai AIR 1987 SC 1690.

5. 1978 Cmnd. 7054.

6. Report No. 56(H.C.) 373.

7. Sec.1 of the Fatal Accidents Act, 1976, as substituted by S.3 of the Administration of Justice Act, 1982.

8. It included only the wife, husband, parent or child of the deceased: second paragraph of S.1A.

9. 111th Report (16th May, 1985) which, apparently was not available to the Supreme Court when it decided Kunhi-Mohammed's case, supra.

10. S.2(d). It contains a list of relatives, based mainly on their dependance on the deceased workman. The scheme of this Act is somewhat different and atleast for the present need not be brought into the legislation under consideration. The Law Commission in its 134th Report (1989) has suggested that the definition be amended to include the wife, husband, children, dependant parents and deceased son's widow and children.

11. Now replaced by the Indian Railways Act, 1989, considered below.

12. Chapter V of the Report.

13. Such a person can be compendiously described as an "adoptive parent".

14. Extracted earlier.

15. These definitions are set out as S.2 and 4(3) of a draft bill titled "The Wrongful Death Bill, 1985". Perhaps the split up of the definition into two provisions was unnecessary.

16. S.123(b).

17. This is not quite clear, as a parent, under cl.(i) qualifies as a dependant only where the child is unmarried or a minor. The distinction appears to be that in the latter case, the parent will automatically come in whereas, if the deceased is married or a major only a dependant parent will be within the definition.

18. In contrast to clause (ii), this requires a complete dependance on the deceased passenger.

19. There are also the definitions contained in the Employees' State Insurance Act, 1948, as amended by Act 44 of 1966 and Act 29 of 1989 (S.2(6A)) and in the Carriage by Air Act, 1972 (Explanation to S.5(2)). It is, however, sufficient to consider the two definitions referred to as they cover all categories of persons who may be affected by the death in question. It is, however, necessary, as pointed out earlier, that all these definitions should be so amended at some point of time as to bring in uniformity in an area where so much anomaly prevails.

20. In Kunhimohammed v. Ahmedkutty AIR 1987 SC 2158 and Gujarat State Road Transport Corporation v Ramanbhai, AIR 1987 SC 1690.

21. Sec. 1A (third para) of the Fatal Accidents Act, 1855. Also S.6(1) of the draft Bill appended to the 111th Report of the Law Commission. Though not specifically stated so, the principle under the Motor Vehicles Act, 1988 and the Railways Act, 1989, should be the same.

22. Chapter 12, post.

23. Indeed, we would recommend that the definition in the Railways Act, 1989, and other enactments such as the Workmen's Compensation Act, 1923, the Employees' State Insurance Act, 1948, the Carriage by Air Act, 1972 and the Public Liability Insurance Act, 1991 should also be brought in line with this definition.

CHAPTER 7

JURISDICTION OF TRIBUNAL

7.1 S.110-A of the 1939 Act[1] provided that an application for compensation in respect of a motor accident should be preferred before the Claims Tribunal having jurisdiction over the area in which the accident occurred. This provision was approved by the Law Commission in an earlier Report[2] but in a later Report[3] the Commission examined the problem in depth and suggested that it should be made wider to permit the application also being filed before a Bench of the Tribunal having jurisdiction over the area in which the claimant or the defendant resides, carries on business or personally works for gain, at the option of the claimant. The suggestion does not appear to have been considered at the time of the enactment of the 1988 Act[4]. For the reasons set out in that Report, we reiterate the recommendation to amend S.166 of the new Act suitably[5]. In case this is not considered acceptable, there should be a provision enabling transfer of cases from one Tribunal to another in appropriate cases, as recommended by the Law Commission in its 85th Report[6].

FOOT NOTES

CHAPTER 7

1. Inserted by Act 47 of 1978.

2. 85th Report (30th May, 1980).

3. 119th Report (19th February, 1987).

4. The Act was enacted on the terms of Bill No.56 of 1987, which was perhaps prepared before the Report of the Commission could have been examined.

5. See Chapter 12, post, for the proposed amendment. There may be some cases of hardship if the suggestion is implemented but in difficult cases the aggrieved party may move to the Supreme Court for transfer.

6. See para 7.12 of the 85th Report.

CHAPTER 8

LIMITATION PERIOD FOR CLAIMS

8.1 S.110-A(3) of the 1939 Act originally provided that an application for compensation in respect of the injury caused by a motor vehicle accident should be made within a period of sixty days of the occurrence of the accident. The proviso to the sub-section, however, enabled the Claims Tribunal to entertain an application made after the expiry of the said period if it was satisfied that the applicant was prevented by sufficient cause from making the application in time. Act 56 of 1969 amended the sub-section raising the time-limit of 60 days to six months, apparently because the period of sixty days originally prescribed was found to be too short and it caused great hardship.

8.2 The 1988 Act, while re-enacting the terms of S.110-A(3) of the 1939 Act, effected a substantial change. S.166(3) of the 1988 Act, corresponding to S.110-A(3) of the 1939 Act, reads :

> "No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:
>
> Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by

sufficient cause from making the application in time."
By the insertion of the underlined words, the 1988-Act has restricted the power of the Tribunal to condone the delay in filing of the application to a period of six months. In other words, if the application is filed beyond the period of twelve months specified in the proviso, the Tribunal would have no power to entertain the application and be compelled to reject it as time-barred.

8.3 The notes on clauses appended to the Motor Vehicles Bill, 1988 does not give any reason for this change while re-enacting S.110-A of the 1939 Act. Presumably, the Legislature had in mind the handicaps and difficulties in procuring necessary evidence that could arise if an application for compensation is made long after the accident and it therefore considered the outer limit of twelve months adequate to cover all cases and eventualities.

8.4 The Commission has received represenations from various quarters that the new provision, imposing a rigid time limit for making of claims under the Act, is causing serious hardship and that it should be removed.[1]

8.5 The Commission has considered the issue and is of the opinion that the balance of interest lies in favour of prescribing a time-limit which can be relaxed by the Tribunal in appropriate cases. The victims of motor vehicles accidents are, in most cases, poor and illiterate persons whose ignorance of the legal provisions and difficulties in securing legal and financial assistance are formidable. Their interests will suffer

if a rigid time-limit is imposed even though it may be as long as 12 months. Even in other cases, considerable time often is required for ascertaining the necessary details, going through the procedures of obtaining necessary certificates and in travel where the accident occurs at a distant place. Cases are also not uncommon where the injury caused to the victim is of a very serious nature; the victim may be under coma or need hospitalisation or treatment for a long period of time and hence unable to present the application within the prescribed period of twelve months.

8.6 It has been represented to the Commission that in practice too, a large number of applications are being dismissed all over the country on the ground of delay and that the rigid time-limit is also being applied in respect of accidents which occurred before the coming into force of the 1988 amendment[2] resulting even in the dismissal of applications that had been earlier entertained.

8.7 Having considered all aspects of the issue, the Commission is of the opinion that the language of the proviso to S.110(3) is preferable to that of the present provision in S.166(3). The provision, as embodied in the 1939 Act, we think, safeguarded the interests of all concerned persons. It required the filing of application normally within a period of six months and gave power to the Tribunal to relax the requirement only in deserving cases. It is difficult to conceive the various types of situations that could lead to delay in the filing of the application and the imposition of a rigid outer

limit, however liberal, would not always be conducive in the interests of justice. In our view, the better course would be to prescribe a short period of limitation and leave a discretion to the Tribunal to entertain applications after the prescribed period provided sufficient cause is shown rather than to enlarge the period of limitation and make it rigid.

8.8 For the above reasons, we recommend that the words "but not later than twelve months" in S.166(3) be omitted.

FOOTNOTES

CHAPTER 8

1. Letter received from Mr. Mathews J. Nedumpara, Advocate dated 17.12.93 states that some Members of Parliament have brought this to the notice of the Government and that a Private Members' Bill has already been sought to be moved on this subject.

2. Relying on the decision in Vinod Gurudas Raikar v. National Insurance Company Ltd. AIR 1991 SC 2156 that the amendment is retrospective.

CHAPTER 9

IMPACT OF OTHER STATUTES

9.1 S.167 of the Act lays down that when a claim arising under this Act is by a person who is also entitled to lodge a claim under the Workmen's Compensation Act, the person entitled to claim compensation can do so only under either of the Acts but not under both. It has been pointed out earlier[1] that this provision for a choice of remedies in such cases is unhelpful and that a workman or employee injured in a motor vehicles accident (or his dependants, where death results) should have the same remedies, under this Act, as any other person injured or killed in such an accident. S.167, therefore, needs amendment.

9.2 It is also necessary to make a reference to cases where an employee who is injured (or his dependants where he dies) in a motor accident become entitled to payment of benefits under the Employees' State Insurance Act, 1948. It will be salutary to provide that any such claimant also should seek his remedies only under this Act and not the 1948 Act.

9.3 It is also advisable to make it clear that where death results from a motor vehicles accident, the provisions of this Act will over-ride those of the Fatal Accidents Act, 1855. Such a provision is necessary as there are some limitations imposed under the Fatal Accidents Act, 1855 which it is not advisable to import into the present

statute.[2]

9.4 The Motor Vehicles Act is a special enactment codifying all liability arising in respect of motor vehicles accidents, and this Act should be the only code within the four corners of which relief should be sought by persons injured or dependants of persons killed in such accidents, even though there may be some other enactments protecting some special interests (as for e.g. workmen or employees) generally against injuries suffered by them in certain situations (for e.g. in the course of their employment).[3] The Workmen's Compensation Act, 1923 and the Employees' Insurance Act, 1948 are general in nature providing relief to all class of employees engaged in workshops, factories or business premises. These statutes also provide for compensation in the event of death or injury caused during the course of employment but since the Motor Vehicles Act, 1988 is later in time and further as it specially provides for compensation for death and injury arising out of motor accident, this Act alone should apply even to employees who may suffer injury or death on account of motor accident, and the application of other acts should be excluded.

9.5 We, therefore, recommend that the following section should be substituted in place of the present S.167 of the Act:

> "Notwithstanding anything contained in the Fatal Accidents Act, 1855, or the Workmen's Compensation Act, 1923 or the Employees' State Insurance Act,

1948 or any other law for the time being in force, the provisions of this Act alone and no other shall apply where the claim made for compensation is in respect of the death of, or bodily injury to, any person caused by or arising out of the use of a motor vehicle in a public place."

FOOTNOTES

CHAPTER 9

1. See paras 3.10 to 3.14 above.

2. See, for example, the discussion in Chapter 6 above in respect of the persons who are entitled to claim compensation in such cases.

3. Particularly as the benefits provided under this Act are in no way less beneficial than the benefits provided to those employees under those enactments.

CHAPTER 10

DISTRIBUTION OF COMPENSATION

10.1 The only provision of the Act which deals with this topic is Ss. 168(3). It provides that "the person who is required to pay any amount in terms of (an) award" should deposit the entire amount awarded in such manner as the Claims Tribunal may direct within 30 days of the announcement of the award. If the amount is so deposited, it will, presumably,[1] be paid to the respective parties in favour of whom the award has been made, on their making an application to the Tribunal for payment. If the amount is not so deposited, the same will be recovered from the party liable as if it were an arrear of land revenue on an application made by the beneficiary concerned[2].

10.2 We are of opinion that the rigidity of this provision should be somewhat relaxed by conferring a discretion on the Tribunal, in cases of hardship, to extend the period above-mentioned. Such relaxation is necessary, as the amount of compensation may be quite large and may have to be paid sometimes, not by an insurance company, but by some other person whose financial position may not be very strong. We, therefore, suggest the addition of a proviso in S. 168(3) to the following effect:

> "Provided that the Tribunal may, in appropriate cases and for reasons to be recorded in writing, extend the period above mentioned for making the deposit."

10.3 We may also refer to another aspect on which it would

be better to have statutory clarification. In the initial years, the Tribunals used to direct the payment out of the full compensation money straightaway to the applicants entitled thereto or their agents or representatives. But, this gave rise to several difficulties and malpractices with the result that certain precautionary steps became inevitable.[3] Some of the difficulties, malpractices and situations which need to be provided for are these:

(a) Very often the claimants are poor and illiterate and the compensation amounts are withdrawn and misappropriated by middlemen.

(b) In cases where the claimant is a minor or a person of unsound mind, the payment of compensation amount may have to be deferred and arrangements made for the utilisation of only the income accruing therefrom for the benefit of the applicant. This course may sometimes be advisable also in the case of other claimants who are badly in need of some regular recurring income and the immediate payment to whom of the entire compensation amount may only result in its being frittered away;

(c) Sometimes, even in the case of a person of the above categories whose compensation has to be kept in deposit, situations may arise requiring the immediate payment out of the whole or part of the amount (e.g., where funds are needed for the medical treatment or

higher education of the minor or for the marriage of daughter). There may be many such imponderable situations warranting immediate payment.

10.4 Considering the various circumstances discussed earlier, it appears to us advisable that a reference to these situations should be specifically set out in the statute itself for guidance of the Tribunal. We would like to make it clear that the situations as contemplated by us are not exhaustive; they are merely illustrative and the Tribunal may issue orders for the payment of the compensation at one time or in phases according to the facts and circumstances of a particular case. However, we are of the opinion that the Tribunal should have express power in this respect and for that reason we recommend the insertion of sub-section (4) in section 168 in the following terms:

"(4)(a) The Tribunal may, in an appropriate case, having regard to the disability of the applicant on account of being an illiterate widow, a minor or of unsound mind, or otherwise, direct that the whole or any part of the amount of compensation shall, instead of being paid to the applicant, be kept in deposit or invested in a bank or in other trustee securities for such period and on such terms and conditions as it may consider necessary to safeguard the interest of the beneficiary.

(b) Where any amounts are directed by the Tribunal to be deposited or invested under clause (a) and until they

are disbursed to the applicant concerned, the interest or income accuring thereon from time to time or part thereof may be directed to be paid to the applicant or utilised for his benefit in such manner as may be directed by the Tribunal from time to time;

(c) Where the Tribunal directs the payment out of any amount of compensation under this Act, it may issue such directions or impose such conditions or restrictions as may be necessary to ensure that the compensation reaches, or enures to the benefit of, the intended beneficiary."

Footnotes

(Chapter 10)

1. There is no specific statutory provision in this behalf.

2. S. 174 of the Act.

3. Such precautions have generally been observed in recent years. See, in this context, the guidelines laid down by the Supreme Court in Union Carbide Corpn. & Ors. v Union of India & Ors. (1991 - 4 SCC 584) approving the decision of the Gujarat High Court in Mulibhai Ajarambhai Harijan & Anr. v. United India Insurance Co. Ltd. & Ors. (1982 - 1 Guj. LR 756). See also K.S.R.T.C. v Sussamma Thomas (1933 - 4 Scale 643 at p.650).

CHAPTER 11

PAYMENT OF INTEREST

11.1 Where compensation becomes payable to any person for the injury caused to his person or property or to the legal representatives of a person who has been killed in a motor vehicles accident, it is of utmost importance that the amount of compensation should be paid to the affected persons with the greatest expedition. Indeed, the amount of compensation payable under S. 140 on a no-fault basis or the one payable in the case of a hit and run accident under S. 161 should be paid or deposited in the Tribunal at once by the insurer or the authority administering the solatium fund under S. 163. However, with all the best will in the world and all possible attemps to expedite the relevant procedures, it is inevitable that there would be some delay in the payment of the compensation amounts in such cases. In cases where the aggrieved party has to approach the Tribunal constituted under the Act for the determination of the compensation due to him, more delay is inevitable. There can be no doubt that the aggrieved party should be compensated for the loss and injury resulting to him by these administrative or judicial delays for which he is not responsible. The only manner in which he can be so compensated is by the payment of interest on the amount of compensation determined eventually as payable to him in respect of the period for which payment has been delayed.

11.2 Section 171 of the Act does indeed provide for this

relief. It reads:

> "Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in his behalf."[1]

Provision for payment of interest was made in the 1939 Act by the Amendment Act 56 of 1969 with effect from 2.9.1970 by inserting Sec. 110CC which provided for the grant of interest by any Court or the Claims Tribunal at the time of allowing a claim for compensation and the same provision continues in the 1988 Act as well.[2]

11.3 The following are the salient features of the provision:

(a) The grant of interest is in the discretion of the court. The court may award or refuse to award, interest, at its discretion;[3]

(b) The rate of interest is left to the discretion of the court. In practice it has been seen to fluctuate widely over the years between 4 to 18% per annum;[4]

(c) The section contemplates that interest should start to run only from the date of the application at the earliest but the court has the discretion to award interest commencing from a later date;

(d) The provision seems to envisage a uniform rate[5] of interest on the entire amount of compensation[6]; and

(e) Interest will run, apparently, till the date of actual payment.

11.4 The Law Commission, in its 85th Report, had suggested a revision of S.110CC requiring the Court to award interest at a rate not less than 12% per annum in the absence of special circumstances. The recommendation of the Commission has not been implemented. We also think that S.110CC needs to be amended. In our opinion, it will be better to incorporate the principles of interest payment in the statute more specifically. It may be made clear that the award of interest is mandatory unless cogent reasons exist to justify refusal to grant interest. While generally, in principle, the rate of interest is left to the discretion of the court, subject to its not exceeding the current market rates, to be awarded in each case in the light of its individual facts and circumstances,[7] suggestions have also been made from time to time for specifying the rate of interest[8] or the minimum[9] or maximum[10] rate of interest that should be awarded. In the absence of statutory provision, the award of rate of interest has not been uniform and it has varied from Tribunal to Tribunal. It would therefore be advisable to incorporate statutory provision in this respect. We think, that, as an encouragement to prompt payment, the Tribunal may be given the discretion to specify a particular rate of interest for a stipulated time with a condition that interest at higher rate will become payable in case the amount of compensation is not deposited within the stipulated time.

11.5 Keeping in mind the various aspects discussed above, we recommend the substitution of the following provision in place of the existing S.171:

> "S. 171 Award of interest where any claim is allowed:
>
> (1) Where any Tribunal allows a claim for compensation made under this Act, it may direct that in addition to the amount of compensation, simple interest shall also be paid at a rate of not less than fifteen per cent per annum from the date of the application under S. 166 till the date of payment:
>
> Provided that if the Tribunal is satisfied for reasons to be recorded in writing, that interest at a rate less than fifteen per cent per annum or interest for a shorter period may be awarded in any particular case, it may direct accordingly.
>
> (2) Without prejudice to the provisions of sub-section (1), the Tribunal may in an appropriate case, direct that interest shall be paid at a specified rate if the amount of compensation is paid or deposited within a stipulated period, and that, in default of such deposit, interest beyond the said period shall be paid at a higher rate.

In making this suggestion we are virtually reiterating the recommendations contained in the 85th Report of the Law Commission substituting 15% in place of 12% consequent on the increase in commercial rates of interest in recent years.[11]

Footnotes

(Chapter 11)

1. This corresponds to S. 3(1) and (2) of the Interest Act, 1978 and S. 34 of the Code of Civil Procedure, 1908.

2. S. 171 of the 1988 Act refers only to 'Claims Tribunal'. This, however, makes no real difference as a court hearing appeals from the order of the Claims Tribunal is also competent to grant like relief.

3. It has, however, been held that this is a judicial discretion to be exercised reasonably in the light of the facts and circumstances of each case and that, if interest is not awarded, reasons for not awarding interest should be recorded. In one case, this was done because the amount of compensation was settled without delay and prompt payment thereof assured: Elizabeth Mathew v. Vasudev, 1990 ACJ 461 (Del.).

4. The annexure to Chapter VI of S.S. Minhas on "Law of Compensation for Wrongful Death" (1993) sets out an interesting analysis of the decided cases on this aspect.

5. It has, however, been held that it is open to the Court to provide that the amount should bear interest at a particular rate for a stipulated time and at a higher rate if the amount is not deposited by that time: See New India Assurance Co. Ltd. v. Shanabhai Anjanbhai, 1987 ACJ 688 (Guj.); Commr. NCC Group v. Nirmala Moherana, 1984 ACJ 459 (Ori.); Narmada Choudhary v. MACT, 1984 ACJ 283 (Gau.).

6. In English Law, differential rates of interest on 'pre-trial' and 'post-trial' damages are contemplated; See Cookson v. Knowles (1979) ACJ 216 (HL) and Jefford v. Gee (1970) 2 Q.B. 130 (CA).

7. See para 6.2 of the 63rd Report of the Law Commission on the Interest Act.

8. The Workman's Compensation Act, 1923 specifies a rate of six per cent. The 62nd Report (1974) of the Law Commission suggested that this be enhanced to 9% (para 3.54) while 134th Report (1989) suggested its being stepped upto 15%.

9. The 85th Report on the Motor Vehicles Act has suggested that the interest shall not be less than 12% unless the court specifically directs otherwise for reasons to be recorded.

10. Under S. 34 of the Code of Civil Procedure, 1908 the court may award interest at any rate not exceeding the contractual rate of interest or the rate of interest fixed by a commercial bank in relation to a commercial transaction.

11. See Chapter 14 of the 85th Report of the Law Commission (May, 1980) under the Chairmanship of Justic P.V. Dikshit.

CHAPTER 12

RECOMMENDATIONS

For the reasons discussed above, we recommend the following amendments to the Motor Vehicles Act, 1988:

Section 140 :

1. For sub-section (2) of Section 140, substitute the following:

"(2) The amount of compensation under sub-section (1) shall be a fixed sum of rupees one lakh in respect of the death of any person, rupees sixty thousand in respect of the permanent disablement of any person and rupees five thousand in respect of serious injury to any person not resulting in death or permanent disablement." (Para 2.6)

Section 147 :

2. (i) For clause (b) of sub-section (1) of S.147, substitute the following:

"(b) insures the person or class of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him (including the one under Section 140) in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place." (Para 3.9)

(ii) The following proviso be substituted in place of the

existing proviso to sub-section (1) of Section 147:

"Provided that a policy referred to in this sub-section shall not be required to cover any contractual liability." (Para 3.15)

(iii) For the main part of sub-section (2) of Section 147 as at present existing, substitute the following:

"S.147(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1) shall cover any liability incurred in respect of any accident upto the full amount of the liability incurred by the insured in respect of the death of, or bodily injury to, any person or the damage to any property of a third party caused by or arising out of the use of the vehicle in a public place."

The existing proviso to S.147(2) will however continue to read as before. (Para 3.17)

Section 149:

3. In section 149(4), for the words "clause (b) of sub-section (2), read "clause (a) of sub-section (2)". (Para 4.3)

Section 161:

4. In Section 161:

(i) In sub-section (1), for the existing clause (a) substitute the following:

"(a) 'permanent disablement' shall have the same meaning as in section 142."

(ii) For sub-section (3), substitute the following:

"(3) Subject to the provisions of this Act and the

scheme, there shall be paid as compensation, in respect of a hit and run motor accident, a fixed sum, which shall be -

(a) in respect of the death of any person resulting from such accident, rupees one lakh;

(b) in respect of the premanent disablement of any person resulting from such accident, rupees sixty thousand; and

(c) in respect of serious injury other than permanent disablement resulting from such accident, rupees five thousand. (Para 5.2)

Section 166:

5. In Section 166:

(i) the following Explanation may be inserted at the end of sub-section (1):

"Explanation: (1) For the purposes of this section, the expression 'legal representative', in relation to a person dying in an accident, means -

(a) the wife or husband or former wife or former husband of the deceased;

(b) any parent or other ascendant of the deceased;

(c) any child (including a step child or illegitimate child) or other descendant of the deceased;

(d) a widowed daughter-in-law, or the widow of a deceased brother, of the deceased;

(e) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.

(2) For the purposes of clause (1), "child" includes a

child in the womb afterwards born alive, a step child, an adopted child as well as a person to whom the deceased stood in loco parentis; and "parent" includes a step parent, either adoptive parent and either of the persons who stood in loco parentis to the deceased[1].

(3) In deducing any relationship for the purpose of this explanation -

(a) any relationship by affinity shall be treated as a relationship by consangunuity, any relation of half blood as a relationship of whole blood and the step child of any person as his child; and

(b) any illegitimate person shall be treated as the legitimate child of his mother and reputed father[2].

(Para 6.5)

(ii) For the main clause of sub-section (2), substitute the following:

"(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred or the area in which the applicant or any of the respondents resides, carries on business or works for gain, at the option of the applicant and shall be in such form and shall contain such particulars as may be prescribed." (Para 7.1)

(iii) In the proviso to sub-section (3), the words and punctuation "but not later than twelve months", shall be omitted.

(Para 8.8)

Section 167:

6. For Section 167, as existing at present, substitute the

following:

"167. Application of other Acts excluded -

Notwithstanding anything contained in the Fatal Accidents Act, 1855 or the Workmen's Compensation Act, 1923 or the Employees' State Insurance Act, 1948 or any other law for the time being in force, the provisions of this Act alone and no other shall apply where the claim made for compensation is in respect of the death of, or bodily injury to, any person caused by or arising out of the use of a motor vehicle in a public place." (Para 9.5)

Section 168:

(i) In sub-section (3) of S.168, insert the following proviso:

"Provided that the Tribunal may, in appropriate cases and for reasons to be recorded in writing, extend the period above mentioned for making the deposit". (Para 10.2)

(iii) After sub-section (3) of S.168, insert the following new sub-section (4):

(4)(a) The Tribunal may, in an appropriate case, having regard to the disability of the applicant on account of being an illiterate widow, minor or of unsound mind, or otherwise direct that the whole or any part of the amount of compensation shall instead of being paid to the applicant, be kept in deposit or invested in a bank or in other trustee securities for such period and on such terms and conditions as it may consider necessary to safeguard the interest of the beneficiary.

(b) Where any amounts are directed by the Tribunal to be deposited or invested under clause (a) and until they are disbursed to the applicant concerned, the interest or income accruing thereon or part thereof may be directed to be paid to the applicant or utilised for his benefit in such manner as may be directed by the Tribunal from time to time.

(c) Where the Tribunal directs the payment of any amount of compensation under this Act, it may issue such directions or impose such conditions or restrictions as may be necessary to ensure that the compensation reaches, or enures to the benefit of, the intended beneficiary."

(Para 10.4)

Section 171:

8. For Section 171, substitute the following:

"171. Award of interest where claim is allowed - (1) Where any Tribunal allows a claim for compensation made under this Act, it may direct that, in addition to the amount of compensation, simple interest shall also be paid at a rate of not less than fifteen per cent per annum from the date of the application under S.166 till the date of payment:

Provided that if the Tribunal is satisfied, for reasons to be recorded in writing, that interest at a rate less than fifteen per cent per annum, or interest for a shorter period may be awarded in any particular case, it may direct accordingly.

(2) Without prejudice to the provisions of sub-section (1), the Tribunal may in an appropriate case direct that interest shall be paid at a specified rate if the amount of compensation is paid or deposited within a stipulated period and, in default of such deposit, interest beyond the said period shall be paid at a higher rate." (Para 11.5)

(K.N. SINGH)
CHAIRMAN

(S. RANGANATHAN)
MEMBER

(D.N. SANDANSHIV)
MEMBER

(P.M. BAKSHI)
MEMBER (PART TIME)

(M. MARCUS)
MEMBER (PART TIME)

(CH. PRABHAKARA RAO)
MEMBER-SECRETARY

FOOTNOTES

CHAPTER 12

1. A provision corresponding to S.1(4) of the English Act is not included here for the reasons explained in Para 5.7 of the 111th Report.

2. This definition departs in some respects from, but consolidates, the definitions spread over the Sections 2 and 4(3) of the draft Bill appended to the 111th Report.

3. See the discussion in this regard in Chapter 10.

Annexure-I

NUMBER OF ROAD ACCIDENTS AND PERSONS KILLED IN INDIA DURING 1989-91

S.No.	States/UTs	1989		1990		1991	
		Accidents	Persons Killed	Accidents	Persons Killed	Accidents	Persons Killed
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	13423	4458	16042	5211	17371	5753
2.	Arunachal Pradesh	239	59	233	97	204	36
3.	Assam	1956	895	1762	904	1899	867
4.	Bihar	9552	2183	9522	2751	9776	2304
5.	Goa	1813	169	2205	174	2168	180
6.	Gujarat	23823	3509	23823	4077	24908	4308
7.	Haryana	5358	1819	5056	1969	4867	1916
8.	Himachal Pradesh	1060	469	1123	465	1269	414
9.	Jammu & Kashmir	3615	491	2326	371	3927	672
10.	Karnataka	20902	3655	21992	3901	22438	3979
11.	Kerala	16762	1737	20247	1793	21556	1709
12.	Madhya Pradesh	20265	2709	23492	2793	25096	3089
13.	Maharashtra	59045	5785	56982	5427	59418	9884
14.	Manipur	430	129	472	106	369	87
15.	Meghalaya	646	98	540	133	450	104
16.	Mizoram	98	38	80	38	74	28
17.	Nagaland	263	42	237	64	57	40
18.	Orissa	5737	1171	6069	1193	6171	1300
19.	Punjab	1622	819	1621	1133	1483	1019
20.	Rajasthan	9593	3023	10456	3465	11046	3736
21.	Sikkim	105	26	115	26	137	34
22.	Tamil Nadu	32962	6299	34634	6663	32522	6406
23.	Tripura	449	136	408	113	371	102

24.	Uttar Pradesh	13696	6130	16318	7639	15960	7936
25.	West Bengal	15946	2094	16375	2600	16041	2559
UNION TERRITORIES							
26.	A & N Islands	124	15	144	17	86	5
27.	Chandigarh	277	76	250	80	258	60
28.	Dadra & Nagar Haveli	61	10	79	18	50	9
29.	Delhi	7192	1583	7687	1670	8065	1829
30.	Daman & Diu	66	9	91	16	67	7
31.	Lakshadweep	5	Nil	2	Nil	Nil	Nil
32.	Pondicherry	663	82	662	106	724	107
	INDIA	**267648**	**49730**	**281125**	**55013**	**288828**	**60479**