

*Pravin Bihari Sharan**

Discriminatory Treatment of Accident Victims

The subject of this brief article is the discrimination caused by different amounts of compensation in case of accidental death or injury under different existing rules applied to different types of accidents, and, non-existence of specific laws for many other types of accidents like fire. This paper makes out a case for one single law applicable for all kinds of accidents which brings the best practices in computation of compensation and delivery of justice so that the victims of all types of accidents are enabled to rebuild the lives of victims as fast as possible.

Keywords: Accident victims, Accident compensation, Tort Law, Fire, MACT, Discrimination

Accidents keep happening. Motor accidents are very common, no doubt; but accidents not involving motor vehicles are also not that uncommon. Accidents like fire, building or bridge collapse, stampede, boat capsizes, gas leak, industrial accidents, electrocution, etc., too affect thousands every year.

It is not easy to forget some of the very tragic accidents from the recent past.

- Sixteen people died and nine injured in a five-storey building collapse in Raigad, Maharashtra, on 24th August 2020^[1].
- Eleven workmen died inside their workplace in Visakhapatnam when a massive crane crumbled and crashed on to the ground on 1st August 2020^[2].
- Eleven persons died and about 1000 got injuries in a gas leak accident in Visakhapatnam on 7th May 2020^[3].
- Punjab witnessed a dastardly hooch tragedy which claimed 133 lives in the last week of July 2020^[4].
- Sixteen tired migrant workers, sleeping on the railway track, got crushed and killed by a speeding goods train near Aurangabad, Maharashtra on 7th May 2020^[5].

* Former Regional Manager, National Insurance Co. Ltd. B.R.O, Bengaluru. Email : pravinsharan@gmail.com

- In a devastating fire in Delhi's Anaj Mandi area, 43 people died and 56 got injuries on 8th December 2019^[6].
- In another fire incident in Surat, Gujarat, 22 students died at a coaching centre on 24th May 2019^[7].
- A saree shop in Pune, Maharashtra, caught fire claiming the lives of five people on 9th May 2019^[8].

Many more such accident cases are ingrained in recent memory.

In addition to causing pain, suffering and trauma, accidents completely ruin the financial condition of victims and their families. Therefore, the Motor Vehicles Act has made adequate provisions to compensate the victims^[9]. It is not uncommon for MACTs, High Courts and the Supreme Court to make awards in excess of Rs 50 lakhs^[10a,b,c,d] under the M V Act as the law, and rightly so, does not put any upper limit on the injury or death compensation which is claimed or awarded on the principles of fault liability. Fifty lakhs of rupees is still a big sum in India, and here is a law, which allows such compensations. It should be noted that as there is no upper limit, the claimants are getting any amount that they can justify, sometimes even more than the amount they claimed. While the number of awards of Rs 50 lakhs and above is increasing, awards in the region of Rs 20 lakhs, which too is not a low compensation in absolute terms, have become common.

Forget about 50 lakhs or 20 lakhs. Compensation of even 5 lakhs in non-motor accidents is difficult to recall except for the aviation accidents (which are covered by an international agreement called Montreal Convention Treaty). The victims and their family members have to depend mainly on ex-gratia amounts announced and paid by the governments. But these amounts are arbitrary, generally very low, and do not take into account the merits of individual cases. Pain and financial loss are the same whether an accident is caused by a motor vehicle or fire or collapse of a building. Similarly, whether the victim was a workman, customer, member of the public or a passenger in a bus, accidents will have the same consequences. However, laws of tort that we have unfortunately, do not provide for a compensation equal to that provided under accidents involving motor vehicles. Some rules prescribe the maximum limit of compensation while others have limits for the consideration of giving compensation. And there are many other types of accidents, which do not have any specific rules that can be applied uniformly. The differences are so wide and arbitrary that at times one wonders why we have so many different yardsticks of compensation and why the maximum limits have been prescribed. Why are the victims of non-motor accidents given lower compensation, which in reality and in comparison to motor accidents is lower? The highly discriminatory treatment meted out to the victims of non-motor accidents calls for a relook and immediate review. Let us therefore examine the rules, that we have, only from the compensation point of view, and the types of accidents for which there are no rules prescribed.

Motor Vehicles Act

The motor vehicles act covers compensation due to accidents involving motor vehicles. The M V Act^[11,12] is the most progressive legislation in this field in India. The most important feature about MV Act is that there is no upper limit fixed for compensation. Over the years, particularly, after the Supreme Court verdict in Sarala Verma case in 2009^[13], the judiciary developed a largely mathematical method of computation, which takes away the elements of subjectivity and bias to a great extent. Moreover, the compensation under MV Act is mainly computed on the basis of age, a multiplier factor attached to the age, loss of income, death or percentage of injury and certain other factors. Victim's future prospects are also taken into account. Additionally, the M V Act provides for special courts, known as Motor Accident Claims Tribunal (MACT), to hear motor accident cases^[14]. Formation of MACT is a major development as it has helped in promoting specialization in computing compensation. Even the court fee is either fully exempted or very nominal. There is no time-bar set for filing claims. Cases can be conveniently filed practically anywhere in India.

Hit-and-Run Cases

Though the M V Act is the most progressive law in this sphere, even this law discriminates against the victims of hit-and-run cases. Earlier the M V Act, 1988, used to provide for a paltry compensation of Rs. 25,000 in case of death, and, Rs. 12,500 in case of injury^[15]. But with effect from September 2019, the amounts have been revised upto to Rs. 2 lakhs in the case of death and Rs. 50,000 in the case of injury/ies under the M V (Amendment) Act^[16], which is a meagre compensation in comparison to that under the motor accidents, where the vehicle in question is identified. Those who got injured, particularly seriously, cannot be expected to catch/identify the vehicle causing the accident. The victims are left blaming their double bad luck. As if the bad luck of meeting with an accident is not enough, it may also be also declared a case of hit-and-run by the police adding to their cup of woes. It is like being bitten by a poisonous snake and struck by lightning as well!

If a tortfeasor is not found, the government must step in to take the liabilities of the absconding tortfeasor and pay full compensation to the victims of hit-and-run cases. As the general insurance companies have the advantage of mandatory TP insurance rules, the government has rightly chosen the General Insurance Council to compensate the victims of hit-and-run cases^[17]. In any case, the cap on maximum compensation must be removed.

Employee Compensation Act or Workmen Compensation Act

This act covers the compensation due to accidents while on duty or arising out of duty. The maximum monthly income for the compensation under the W C Act was capped at Rs. 4000 till

2009^[18], Rs. 8000 till 2015^[19] and Rs. 15000 per month from January 2020^[20]. As many workmen now earn more than Rs 15,000, this provision acts against them and leads to unfair compensation in comparison to that under M V Act. Since there is no cap on the maximum wages and many employers in the organized sectors, particularly in the public sectors, pay higher than 15,000 per month to their workmen, the logic of capping income for compensation is not justifiable. The method of calculation under W C Act is different from that of under M V Act. Again the logic for two different methods giving two different amounts of compensation is not transparent.

Employee State Insurance Corporation Act (ESIC Act)

Like the two Acts mentioned above, Employee State Insurance Corporation Act too makes provision for accidental death benefits to those who are covered under this scheme. However, ESIC compensation model is different from those under other Acts. It does not provide for lump sum payment as under M V Act or under WC Act. Instead, it provides a monthly pension to the widow at the rate of 90% of the last income of the deceased workman^[21]. Life-time pension at the rate of 90% appears to be a very attractive feature, but it does not take into account the possible future wage increments, the future prospects and other factors which are considered under M V Act. If the widow remarries, the pension is stopped. The only advantage is that no litigation is required and the pension is paid by the ESI Corporation itself. However, if a member of the ESIC can make a case for higher compensation, in excess of what he/she is getting as a member of ESIC, under any other law, like the existing motor vehicle laws, there appears to be no justification for not allowing that additional compensation to him/her.

The Railway Act

The Railway Act also provides compensation to the victims of accidents involving trains. However, it has capped the maximum limit of compensation at Rs. 8,00,000 only for death or serious injury including cost of medical treatment. The maximum limit was only Rs. 4,00,000 till 2016. It was increased to 8 lakhs with effect from 01-01-2017^[22]. Even the increased limit of Rs. 8 lakhs is far lower in comparison to M V Act. Like the Labour Courts under the EC Act, there are special quasi-judicial courts called Railway Claims Tribunals (RCT) under this Act too; however, RCTs take much more time than MACTs in passing awards.

Public Liability Insurance Act

Less said the better about the Public Liability Insurance Act provisions about compensation for death and injury. Enacted in 1991, after the unprecedented Bhopal Gas tragedy of 1984, it is a comparatively recent legislation, yet the most discriminatory. It allows death compensation at a fixed sum of Rs. 25,000 and for injury at Rs. 12,500 per head^[23]. There has been no amendments to

the Act after 1991. It was an extremely low compensation even in 1991; it is “chicken feed” from today’s standards. The recent Vizag gas leak accident was covered under this very same Act. Thankfully the chief minister of Andhra Pradesh magnanimously paid one crore each to the kins of all 12 dead persons^[24], otherwise the victims and their families would have been left in a helpless condition.

Fatal Act, 1855

There is a very old legislation called Fatal Act, 1855, which covers all kinds of accidental deaths. The main problems with this Act are: (a) it does not cover injury, not even very serious injury; (b) though it does not fix any upper limit, it does not prescribe any principles or parameters for fixation of compensation; (c) the litigation under this law is not common, and (d) it has not been made beneficial for the victims.

Accidents not Covered by any Law

However discriminatory and unscientific these laws are, the specific rules for compensation for some types of accidental deaths and injuries. There are many other types of accidents, which are not covered by any law. The incidents of fire are the most glaring omissions from the scope of any law. Despite the high profile *Uphaar Cinema* Fire tragedy in Delhi in 1997, which killed 59 people and injured 103, there are no specific laws which cover fixation of compensation for death and injury due to fire accidents. In the absence of any specific law, the Association of Victims of Uphaar Fire Tragedy had to file a writ petition in the high court for compensation. Admitting the writ petition in the year 2000 in the face of stiff opposition from the learned advocates of the respondents, the honourable Delhi High Court observed: “... civil suits are lengthy, dilatory and expensive”.^[25] This case exposed the absence of appropriate rules for such tragedies in India. The honourable Supreme Court too agreed with the stand of the Delhi high Court on admissibility of the writ petition. Finally in 2011, the Supreme Court gave a uniform award of Rs. 7,50,000 to the kin of the dead and Rs. 1,00,000 each to every injured person. However, conscious of the fact that uniform compensation does not meet the ends of justice, the honourable Supreme Court instructed the Delhi High Court to award compensation in death cases and district courts in injury cases in accordance with the parameters standardized in Sarla Verma case under M V Act to those who were not satisfied with the uniform award^[26].

We have witnessed numerous other major fire accidents in India. Some of them are mentioned below:

- In Haryana, Mandi Dabwali fire in 1995 (dead – 400, injured – 160).
- In Tamil Nadu, Kumbakonam school fire in 2004 (dead – 94).

- In West Bengal, AMRI Hospital fire in Kolkata in 2011 (dead – 89, injured – 71).
- In Delhi, Anaj Mandi fire (dead – 43, injured – 50), in 2019
- In Kolkata, leather factory fire in 2006 (dead – 30, injured – 18).
- In Gujarat, Surat Coaching Centre fire in 2019 (dead – 22, injured - 19).
- In Karnataka, Bengaluru, Carlaton Towers fire in 2010 (dead – 10, injured – 60).

Likewise, fire accidents keep happening every year leaving the victims to their fate without proper legal support system and are left to fend for themselves.

Not only fire; there are several other types of accidents, victims of which do not know how and where to seek legal recourse for compensation.

- Chennai building collapse in 2014 (dead – 60),
- Kolkata flyover collapse in 2016 (dead – 50, injured – 80),
- Hyderabad flyover collapse in 2007 (dead – 20, injured – 50),
- Stampede at Elphinstone railway station, Mumbai, in 2017 (dead – 23, injured – 39),
- East Godavari boat capsized in Andhra Pradesh in 2019 (dead – 12),

There are several other very tragic accidents, like a steel strip impaling a car on Camac Street, Kolkata, killing the driver in 2003^[27]; people dying due to collapse of boundary walls; children getting washed away into open drains or falling in unused, open bore wells; electrocution by coming in contact with exposed live wires. These accident victims are not covered specifically by any law, thus putting their kin to extreme sorrow and hardships.

Even the motor vehicle accidents, when other vehicles are not involved but have happened due to the negligence and wrong doings of municipal corporations or road authorities like death and injury due to fall from/of bikes because of potholes. These are not covered by MV Act. In addition to these types of accidents, there are other man-made tragedies like deaths and injuries due to hooch or food poisoning.

Solution: One Single Law for Compensation for Victims in All Accident Cases

As discussed above, we do not have rules that allow victims of many types of accidents to claim their dues and proper compensation. Some of the laws that exist for some other types of accidents are discriminatory and without justifiable logic. The accidents causing death and injury may be different in type and nature, but the principle of compensation for death and injury remains the same. The principle of compensation must not change due to change in nature and type of accidents. Therefore, a “just solution” for the discriminatory treatment of victims should be simple. There should one single law for computation of compensation which is applicable to the

victims of all types of accidents. For the purpose of easy reference this law may be called “Accident Compensation Act” (AC Act). The honourable Supreme Court, as early as on October 13, 2011, emphasized the necessity for such a law while delivering the Uphaar Cinema case verdict. The most relevant part of this verdict is quoted here, “Need for a comprehensive legislation dealing with tortious liability of the State, its instrumentalities has been highlighted by this Court and the academic world on various occasions and it is high time that we develop a sophisticated jurisprudence of Public Law Liability”^[28].

One single law would introduce uniformity and greater clarity in the complex subject of compensation for human life loss and pain caused and endured. The members of the public, victims and lawyers will not have to deal with multiple laws and their interpretations. It will be comparatively easy for the advocates and judges to understand and appreciate the nuances of one single law and awarding a verdict instead of having to master and manipulate multiple rules according to the subjective whims and fancies. It will provide succour to the victims and their family members and will end the unjust and illegal discrimination against different victims depending on their ‘status in society’.

Scope of the Proposed Accident Compensation Act (ACA)

The AC Act should cover all kinds of accidents which cause death or injury. It should define accidents in the broadest possible terms to include fire accidents, building or bridge collapses, death and injury due to gas leaks and hazardous substances, motor vehicle accidents due to faulty road design, potholes or water logging, drowning in open drains, falling into open bore well pits, all kinds of industrial accidents, accidents while on duty, stampedes, boat capsizes, etc. The proposed Act should cover even those accidents which are covered by the existing laws, like the MV Act, the Railway Act, the PLI Act, the WC or EC Act, the ESIC Act, etc., for residual liability so that uniformity can be maintained amongst all victims as far as financial compensation and treatment by law is concerned.

In addition to all kinds of accidents, the proposed AC Act should also cover all types of human activities, which may not be defined as accidents in the most traditional sense of the word, but which may cause death or injury due to hooch, food poisoning, etc. This law must not distinguish among the victims on the basis of their status in life – a workman, non-workman, contract employee, customer, prospective customer, visitor or member of the public, the rich and influential – as the consequences of accidents are the same for everyone – injury and/or death. The law must enable the judiciary to calculate a just compensation on the basis of principles of fairness and correct compensation and should not be barred by maximum limits in incomes or compensations. The only criteria for assessment of compensation, under the proposed act, would be fairness and no exterior considerations should have any bearing.

The AC Act should normally cover only fault liability. It will be the responsibility of the claimants to prove the role and negligence of the tortfeasors. Payment will be made by the tortfeasors and their insurers, if any, either jointly or severally.

Quantum of Compensation on Fault Lines

The AC Act will incorporate the table of age and multiplier which was given in the verdict by the honourable Supreme Court in Sarala Verma case in 2009^[29] and which was also mentioned in a non-motor case by the Supreme Court in the Uphaar Cinema Fire case. In addition to the age and multiplier, the AC Act should mention what should be taken as income, what should be deducted from, and what should be added to the income. It should be clearly mentioned by the proposed AC Act that any ex-gratia payment by the central, provincial or local governments or government bodies, including public sector companies and employers above a given amount (say Rs. 5 lakhs), should be deducted from the award.

The multiplier system of computation is valid only for those victims who are not below 15 years of age. Compensation for victims who are below 15 is a more complex matter. The proposed Act should have a separate section giving broad guidelines on compensation for unborn child and those below 15 years. However, in the absence of any acceptable scientific system of calculation of compensation for these minor victims, it may be alright for this rule to prescribe age-wise maximum limits of compensation. Medical expenses and other expenses, in all cases, must be paid in addition to the compensation.

Drop ‘M’ from MACT and Make it “Accident Claims Tribunal” (ACT)

The proposed Accident Compensation Act (AC Act) should empower all MACTs to hear all types of accident compensation cases and not only motor vehicle accident cases to facilitate litigation by the victims. No one can argue that MACTs are the best places for litigation. The MACTs too suffer from certain drawbacks. However, an analysis of both the plus and minus factors will suggest that MACT is still the best bet to hear all types of accident compensation cases. MACTs have already been constituted in all districts in the country. In fact, most of the districts have more than one MACTs, and, many subordinate courts too have MACTs. Awareness amongst the advocates in district and subordinate courts about accident cases and relevant provisions for compensation has increased very substantially. There is a large number of advocates, on both the sides – claimants and respondents – who have developed at least the minimum expertise on the issues involved in the calculation of compensation. Most of the judges in MACTs do appreciate the nuances in this kind of litigation and write verdicts with flawless logic and correct

justification. Though the number of cases pending before the MACTs is very large, still many cases are being decided within a year of the incidents. Increased focus on Lok Adalat has reduced the pendency period of law suits. At present, the judiciary organizes Lok Adalats three or four times in a year. Now-a-days it is also possible to organize Lok Adalats on digital platforms every day 24x7 hours. Such digital Lok Adalats may go a long way in reducing pendency period for compensation cases.

Conclusion

It is true that the number of victims of motor vehicle accidents is very large, but the number of victims of other kinds of accidents is not small either. If one single comprehensive law like the one suggested in this paper - *Accident Compensation Act* - is enacted, it will take away the uncertainties from the lives of thousands of victims. In any case, different parameters for computation of compensation for human life is neither logical nor acceptable. Therefore, the proposed Accident Compensation Act will be a progressive step, which will make the society more humane, liveable and just.

References

- [1] Available at: <https://timesofindia.indiatimes.com/city/mumbai/raigad-building-collapse-live-updates/liveblog/77735385.cms>
- [2] Available at: <https://www.hindustantimes.com/india-news/10-workers-crushed-to-death-after-crane-collapses-in-visakhapatnam-shipyard/story-O5Wmjs1NfAITQ2fvKpluSI.html>
- [3] Available at: https://en.wikipedia.org/wiki/Visakhapatnam_gas_leak
- [4] Available at: <https://www.tribuneindia.com/news/punjab/punjab-hooch-tragedy-135-more-arrested-cm-to-visit-tarn-taran-on-friday-to-meet-kin-of-victims-122962>
- [5] Available at: <https://www.hindustantimes.com/india-news/14-migrant-workers-mowed-down-by-goods-train-in-maharashtra/story-Z6V8QkOY2CGvdKNHv2uPvI.html>
- [6] Available: https://en.wikipedia.org/wiki/2019_Delhi_factory_fire
- [7] Available at: <https://www.ndtv.com/india-news/number-of-deaths-in-surat-coaching-centre-fire-rises-to-22-2043016>
- [8] Available at: <https://www.onmanorama.com/news/nation/2019/05/09/pune-saree-shop-fire-workers-suffocated.html>
- [9] Section 168, MV Act, 1988, Available at: <http://legislative.gov.in/sites/default/files/A1988-59.pdf>

- [10a] Supreme Court awards 62,27,000 to a young school-going girl for permanent total disability caused in an accident in 2007, vide verdict dated 05-02-2020 in CA 735 of 2020 Available at: https://main.sci.gov.in/supremecourt/2019/19924/19924_2019_11_1502_20257_Judgement_05-Feb-2020.pdf
- [10b] Man who lost a leg in a road accident gets Rs 1.18 crore compensation after Chennai court order. Available at: <https://www.timesnownews.com/mirror-now/in-focus/article/man-who-lost-leg-in-road-accident-gets-rs-1-18-crore-compensation-after>
- [10c] High Court raises compensation for girl who lost leg to Rs 52 lakh Available at: <https://timesofindia.indiatimes.com/city/chennai/hc-raises-compensation-for-girl-who-lost-leg-from-rs19-lakh-to-rs52-lakh/articleshow/66385171.cms>
- [10d] Local court awards Rs 1.8 cr in damages in accident death. Available at: <http://archive.indianexpress.com/news/local-court-awards-rs-1.8-cr-in-damages-in-accident-death/1172140/>
- [11] Motor Vehicle Act, 1988. Available at: <http://legislative.gov.in/sites/default/files/A1988-59.pdf>
- [12] Motor Vehicle (Amendment) Act, 2019, Available at: <https://www.writinglaw.com/wp-content/uploads/2019/12/Motor-Vehicles-Amendment-Act-2019.pdf>
- [13] Supreme Court civil appeal No. 3483 of 2008 (Arising out of SLP [C] No.8648 of 2007) – Sarla Verma Vs DDC. Available at: <https://main.sci.gov.in/jonew/judis/34342.pdf>
- [14] Section 165 of MV Act, 1988
- [15] Section 161 of MV Act, 1988
- [16] Section 161 of MV (Amendment) Act, 2019
- [17] Sub-section 3 of section 161 of MV (Amendment) Act, 2019
- [18] Available at: https://www.casemine.com/act/in/5a979e094a93263ca60b782c#1001_1_FN0001
- [19] Available at: http://egazette.nic.in/WriteReadData/2010/E_1047_2011_004.pdf
- [20] Available at: <http://egazette.nic.in/WriteReadData/2020/215147.pdf>
- [21] Available at: <https://www.esic.nic.in/information-benefits>
- [22] Available at: http://rct.indianrail.gov.in/rct/circular/Gazette_Notification_221216.pdf
- [23] The schedule of The Public Liability Insurance Act, 1991, Available at: <http://legislative.gov.in/sites/default/files/A1991-06.pdf>

- [24] Available at: <https://www.newindianexpress.com/states/andhra-pradesh/2020/may/11/kin-of-eight-vizag-gas-leak-victims-handed-rs-1-crore-each-in-compensation-2141971.html>
- [25] Para 93, Available at: <https://indiankanoon.org/doc/889432/>
- [26] CA 7114 & 7115 of 2003, Available at: <https://main.sci.gov.in/jonew/judis/38766.pdf>
- [27] Available at: <https://timesofindia.indiatimes.com/city/kolkata/Youth-impaled-to-death-in-car/articleshow/46312061.cms>
- [28] Para 19 of the second part of the verdict, Available at: <https://main.sci.gov.in/jonew/judis/38766.pdf>
- [29] Paras: 19, 20 & 21. Available at: <https://main.sci.gov.in/jonew/judis/34342.pdf>

