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**“Dharma is to protect the Needy”**

**Research Article on**

**CLAIM SETTLEMENT REGARDING THE ROAD ACCIDENT  
CASES – A JUDICIAL ANALYSIS**

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## **ABSTRACT –**

*Victim compensation and upliftment is one of the basic principles of the legal system. Laws are made with an aim to protect the interest of the parties, who have faced any kind of loss due to any accident. Protecting the 'right to live' under Article 21 of the Constitution, the guardian has created an obligation on the creator of laws to ensure proper protection of the interest of victims in cases involving threats to life, even when the accused has not committed the act intentionally. One of such legislation is the Motor Vehicle Act, which deals with the concept of victim compensation and no-fault liability. However, while implementing the provisions of any statute, the judiciary identifies various loopholes and lacunas, which were not considered by the legislature, and tries to fill the same by interpreting other provisions of the Act. The same is observed under the Motor Vehicles Act, which had certain issues such as liability of the defendant and quantum of compensation. The legislature solved the former issue by introducing the concept of 'third party insurance' but left the power to determine the amount of compensation in the hands of the judiciary. This increased the discretionary powers in the hands of judges and tribunals, to decide the quantum of compensation, which may be abused by the authority. The present research is an attempt to analyze how the judiciary has dealt with this discretionary power of determining the amount of compensation in case of fault of the accused, and how Supreme Court and various High Courts have interpreted the same to ensure non-abuse of such power by the lower judiciary.*

## INTRODUCTION

The term accident is defined as “*an unexpected happening causing loss or injury which is not due to any fault or misconduct on the part of the person injured but for which legal relief may be sought.*”<sup>1</sup> It is an indisputable fact that both the parties face some kind of losses in an accident. However, in many cases, it can be observed that the accident was caused due to negligence or fault of one of the parties, which led to injuries to another, without any fault of the latter. One of the biggest examples is the Bhopal Gas Tragedy, which had grievous effects on the victims, without any fault from their end. In such cases, the aggrieved faces such damage or loss which cannot be reimbursed. However, parties causing such accidents argue in their defense that the said act was not intentional and hence, they should not be held liable. This creates an obligation on the state to protect the rights of the aggrieved, and the same efforts of the state can be observed under various legislations such as (Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, Fatal Accidents Act, 1855, Indian Railways Act, 1989, Merchant Shipping Act, 1958 etc.<sup>2</sup> One of such legislations enacted with an aim to protect the aggrieved is Motor Vehicle Act, 1988.

With the increase in motor vehicles on the road, incidents of road accidents have seen a steady rise. Thus, it was felt necessary to establish a liability for the act of negligence, by payment of compensation to the victim. The purpose of such compensation is to uplift the condition of the sufferer and to bring him back to the position before such an accident. Under various judicial pronouncements, the State was considered to be under duty to take actions in order to protect the rights of the victims of road accidents, opening that these victims also have a right to life and liberty under Article 21 of the Constitution. In light of the same, various amendments were made by the legislature to perform this duty, such as introduction of ‘No-Fault’ liability, under which the claimant does not need to plead any negligence or default on the part of defendant, and he will be compensated on the fact that he sustained injuries due to such accident.

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/accident> (last visited Jan. 31, 2021)

<sup>2</sup> Dipa Dube, Victim Compensation Schemes in India: An Analysis, IJCJS, Vol. 13 Issue 2, 2018, p. 339

However, one of the most common issues faced at the time of providing compensation was the extent of liability of a wrongdoer, and the amount of compensation to be provided. Although the principle of liability of wrongdoer was evolved in various cases, in which many people were held liable for the acts of their employees under vicarious liability, but the question arose was how the compensation is to be provided to the victim, when the owner of the vehicle is not financially capable i.e., he does not possess sufficient means to pay the amount of compensation allowed by the judiciary. Also, in many cases, question arose that what should be the amount of compensation to be provided to the victim to ensure that he is being provided sufficient means, i.e., the compensation should not be undervalued as to the future prospect of the injured and should not be overvalued to act as a bounty for the claimant.

## **HISTORY AND EVOLUTION**

The right to claim damages against any injury was categorized as personal right. The same was recognized under common law in 1846, with the introduction of Fatal Accidents in England. In India, one of the initial legislations enacted for the protection of accident victims was Fatal Accident Act, 1855, which aimed to provide equal opportunity to the victim i.e., any person facing injuries in any accident and also in case of deceased.<sup>3</sup> The act provided for the right of the victim or legal heirs to claim damages from the wrongdoer for the act of negligence. However, with the passage of time and serious consequences of the accidents over victims, it was felt essential to enact an efficient law to deal with the cases of road accidents. As a result, the Motor Vehicles Act, 1939 was enacted to *specifically deal with accidents arising out of motor vehicles.*<sup>4</sup>

With the development of the road network and change in technology of motor vehicles, it was felt necessary to consider important changes such as *the road*

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<sup>3</sup> Sneharghya Saha, All about law relating to Motor Accident Claims and Compensation, <https://www.latestlaws.com/articles/all-about-law-relating-to-motor-accident-claims-and-the-compensation/> (last visited Jan. 31, 2021)

<sup>4</sup> Motor Vehicles Accident Compensation under the MV Act, [https://www.vakilno1.com/legalviews/motor-vehicles-accident-compensation-under-the-mv-act.html?fbclid=IwAR08QAOGK7TZDA08Grt1QO-IDMSK19qiHKYDU4SBQQs-b\\_7ZrEem29YyMvg](https://www.vakilno1.com/legalviews/motor-vehicles-accident-compensation-under-the-mv-act.html?fbclid=IwAR08QAOGK7TZDA08Grt1QO-IDMSK19qiHKYDU4SBQQs-b_7ZrEem29YyMvg) (last visited Jan. 31, 2021)

*transport technology, pattern of passenger and freight movements, and particularly the improved techniques in the motor vehicles management.*<sup>5</sup> Considering the need for enactment of such changes in the law, amendments were recommended, which led to enactment of The Motor Vehicles Act, 1988.

The Motor Vehicle Act, 1988 (hereinafter referred as MV Act) was enacted with an aim to achieve certain objectives, some of which are –

- To consider and take notice of the growing number of vehicles, which includes both commercial and personal vehicles.
- To provide stringent procedures for granting of driving license and provisions related to its validity.
- To provide for adequate compensation to claims arising out of cases involving “no fault liability” and in hit and run motor accidents.
- To provide fair compensation to road accident victims without going into long drawn procedures.
- To enhance the penalties for traffic related offences.
- To create more stringent punishments for certain offences.

The act has been amended several times in order to upgrade the law according to the circumstances.

## **LEGAL FRAMEWORK UNDER MV ACT, 1988**

Under MV Act, liability is classified under two categories –

- When accident occurred due to the negligence of the wrongdoer i.e., due to the fault of the accused, and
- Where the victim has faced the damage due to the accident, but the fault of the accused is not established.

A person has a right to claim damages under the act in following circumstances –

- When the accident caused any bodily injury to the victim.

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<sup>5</sup> Mohd Aqib Aslam, The Motor Vehicles Act, 1988. An Analysis, <http://www.legalserviceindia.com/legal/article-2663-the-motor-vehicles-act-1988-an-analysis.html> (last visited Jan. 31, 2021)

- When the victim lost his life in the accident. (application can be filed on his behalf)
- In case of damage to any property due to such an accident.<sup>6</sup>

The victim has a right to claim compensation by filing an application under sec. 166 of the Act. Generally, an application to claim damages is filed by either the victim, who has suffered from the injury, or the owner of any property damaged due to such an accident.

Other than victim, following can file an application to claim compensation under the act –

- Legal representatives of the deceased when an accident results in the death of the victim.
- Any agent authorized by the victim or the legal representatives of the deceased.

The burden of proof may ordinarily be cast on the defendant to prove that *“motor vehicle was being driven with reasonable care or there was equal negligence on the part of the other side.”*<sup>7</sup>

**No – Fault liability** – the concept of no – fault liability is defined as *liability to compensate another person for injury, irrespective of any carelessness or negligence on the part of the person required to pay*<sup>8</sup>. The need of no -fault liability was recommended by the Supreme Court in the case of *Manjusri Raha v. B.L. Gupta*<sup>9</sup>, and same was highlighted again in *Concord of India Insurance Co. v. Nirmala*<sup>10</sup>, in which it was observed that - *“The jurisprudence of compensation for motor accidents must develop in the direction of no-fault liability and the*

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<sup>6</sup> Sec. 165, Motor Vehicle Act, 1988

<sup>7</sup> Devika Sharma, What is liability of insurer in accident case of contributory as well as composite negligence; on whom lies burden of proof? Court extrapolates, <https://www.scconline.com/blog/post/2020/11/02/mv-accident-claims-all-hc-what-is-liability-of-insurer-in-accident-case-of-contributory-as-well-as-composite-negligence-on-whom-lies-burden-of-proof-court-extrapolates/> (last visited Jan 31, 2021)

<sup>8</sup> <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100236593> (last visited Jan 31, 2021)

<sup>9</sup> AIR 1977 SC 1158

<sup>10</sup> AIR 1979 SC 1666

*determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.* ”<sup>11</sup>

Based on these suggestions and recommendations by the law commission report, Chapter X was added in MV Act. Sec. 140 of the act provides for the principle of no-fault liability, under which a person (owner or driver) is liable to pay compensation to the victim of the accident, and such compensation is to be paid even when the claimant does not plead for negligence or fault of the owner. Such compensation is to be paid in following conditions –

- When an accident leads to death of the victim.
- When an accident causes permanent disablement.

The liability of the owner under no-fault liability is fixed under the law as –

- In case of death, owner is liable to pay Rs. 50,000/- (fifty thousand only)
- In case of permanent disablement, owner is liable to pay Rs. 25,000/- (twenty-five thousand only)

The provision does not restrict the right of the victim to claim compensation, as the victim has the right to claim compensation under any other relevant provision. However, no claim can be made under Sec. 163A<sup>12</sup>, which provides relief in addition to the amount fixed under sec. 140 of the Act.

However, certain defences are provided to the insurer, under which he is not liable to pay any compensation under sec. 140 of the Act. In ***National Insurance Co. v. Tumu Guruva Reddy***<sup>13</sup>, Court imposed the burden of proof on insurer to prove that

- Owner committed wilful breach of the conditions of the policy.
- Insurer is liable to indemnify the owner of the vehicle who suffered the decree of liability, and

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<sup>11</sup> *ibid*

<sup>12</sup> Garima Saxena, No Fault Liability under Motor Vehicles Act, 1988, [https://www.legalbites.in/no-fault-liability-motor-vehicles-act/#\\_ftn3](https://www.legalbites.in/no-fault-liability-motor-vehicles-act/#_ftn3) (last visited Jan 31, 2021)

<sup>13</sup> 2001 ACJ 542 (A.P)

- Insurer can take the defence specified under sec. 149 of the act in respect of both i.e., fault and no-fault liability.<sup>14</sup>

In addition to Chapter X, sec. 163A and 163B deals with no fault liability.

## **JUDICIAL APPROACH TOWARDS CLAIM SETTLEMENT**

The implementation of any statute depends upon the approach of the judiciary. The same can be observed in victim compensation under MV Act, under which the judiciary has interpreted various provisions of the act in accordance with the objective of the legislature and to protect the rights of the claimant. Some of the landmark judgements in this regard are –

**Principle of 'just' compensation** – Judiciary, in various cases has specified that the purpose of providing compensation to the victim of the accident under MV Act is to adequately reinstitute the aggrieved to bring him back to the position prior to such accident. In order to bring him to the same standing, a person must be compensated for his physical injuries and in addition to that, for the non-pecuniary losses such as pain and suffering, which he suffered due to such injuries. Thus, the judiciary has opined that the compensation allotted to the claimant should be "just". *The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. if it is not so it cannot be just.*<sup>15</sup> The term just compensation is defined by the judiciary as "*Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation.*"

The principle was dealt in depth by Supreme Court in ***Yadava Kumar Vs. Divisional Manager National Insurance Co. Ltd***,<sup>16</sup> in which the appellant, who was a painter by profession met with an accident and sustained severe injuries. According to medical experts, the appellant had permanent physical disability which was at 20% of the whole body. Due to such disability, appellant was unable to continue his

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<sup>14</sup> *ibid*

<sup>15</sup> ***Helen C. Rebello v. Maharashtra SRTC*** 1999(1) SCC 90

<sup>16</sup> (2010) 10 SCC 341.

work as a painter and was unable to do any other manual work. However, no compensation was provided by the tribunal or High Court under the category of 'loss of future earnings.' High court rejected the appeal to increase the compensation on the ground that "*the appellant has not produced an iota of document to substantiate his stand.*" Court, in the present case, highlighted the fact that courts and tribunals must take a compassionate view while deciding the amount of compensation. Supreme Court, while explaining the principle of just compensation, held that –

*"It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result becomes just and equitable."*<sup>17</sup>

Court also reiterated that courts must have a liberal approach while determining the quantum of compensation and "*not niggardly in as much as in a free country law must value life and limb on a generous scale.*"<sup>18</sup>

In view of the above observations, the Supreme Court reconsidered the quantum of compensation and awarded a higher amount to the appellant.

**Compensation in case of bodily injury** – The term bodily injury can be defined as "*any damage to a person's physical condition including pain or illness.*"<sup>19</sup> Injury causes deprivation to the victim's body, which affects the normal lifestyle of that individual, and results in loss. Ex. A person met with an accident and lost his leg. This will have a permanent effect on his life, as he will not be able to live a life like before. Such injuries are considered to be violation of personal liberty under Article 21 of the Constitution of India. Thus, it becomes necessary to provide

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<sup>17</sup> *ibid*

<sup>18</sup> *Hardeo Kaur and others v. Rajasthan State Transport Corporation and another* (1992) 2 SCC 567

<sup>19</sup> <https://www.merriam-webster.com/legal/bodily%20injury> (last visited Jan 31, 2021)

compensation in the form of damages. The quantum of damages varies depending upon the gravity and effect of the injuries on the victim. For example, A person who lost his hand has a right to get more compensation as compared to those who got minor injuries or fractures. As no amount is prescribed by the law due to different circumstances, it creates an obligation on the judiciary to keep a balance. The court should award appropriate compensation to the victim and should not be too liberal to make it an opportunity for the claimant. For example, A person who lost his eyesight is awarded 50,000, while a person whose hand was fractured received 1,50,000. A fair compensation is not provided in both the cases. Due to different ideologies and perceptions of the judges, it is necessary to create certain guiding principles to ensure uniformity.

Damages can be classified into two broad heads –

- **Pecuniary damages** – These are the damages which are allotted to the claimant for the actual monetary loss. Some of the examples are damages for the medical treatment, transportation, diet etc. The future loss of the claimant of his earnings is also classified under this category. As these losses can be proven through documentary evidence, it restricts the tribunal to exercise its arbitrary powers while deciding the amount of damages.
- **Non – pecuniary damages** – These are the injuries which cannot be measured in terms of money. Examples of these damages are compensation awarded for the mental shock, pain or suffering faced due to the injuries, or for the loss of amenities such as inability to perform any specific activity. As no straight jacket formula exists for deciding the amount of compensation, it gives a scope to the judiciary to use its discretionary powers.

The judgment of Supreme Court in *Raj Kumar Vs. Ajay Kumar*<sup>20</sup> is considered to be one of the landmark judgments in dealing with the concept of damages for injury. In this case, the appellant got injured in a motor accident and sustained fractures in left leg along with other injuries and was under treatment for approximately 8 months. The total amount of compensation awarded by the tribunal was 94,700/- and

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<sup>20</sup> (2011) 1 SCC 343.

interest of 9% per annum from the date of petition till date of realization. An appeal was filed in High Court by the claimant for seeking increase in the amount of compensation. However, the same was rejected. Supreme Court, in the present case, analysed the difference between permanent disabilities and disabilities affecting the earning capacity, and laid down various principles which can be summarized as follows –

- *“All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
- *The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal, on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).*
- *The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*
- *The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.*<sup>21</sup>

Court also laid down the process to be followed by the tribunals in order to ascertain the effect of permanent disability on the actual earning capacity –

- Under step I, the court has to analyse as to what activities are not affected by the disability i.e., the activities which the claimant is able to perform despite having

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<sup>21</sup> *ibid*

the disability and what activities he could not do as a result of permanent disability.

- Under step II, the court must analyse the age of the claimant and to ascertain the claimant's avocation, profession, and nature of the work before the accident.
- Under step III, the court must analyse the facts in order to find out the effect of disability i.e., whether the claimant is totally disabled from earning any kind of livelihood due to such disability. In addition to this, court has to find out –
  - i. Whether the claimant is still able to carry on the activities and functions with the same effectiveness as he had before such disability.
  - ii. Whether he was unable to continue or restricted from discharging his previous functions but is still able, perform any other kind of work or any other functions of lesser scale, in order to earn his livelihood.

After analysing all the facts of the case, the court increased the compensation by 20,000/-.

**Principles of determining compensation in death of a victim** – Due to lack of any codified guidelines, variation in the amount of compensation was one of the common practices. Tribunals used to consider different factors while providing compensation. The case of *Sarla Verma vs. Delhi Transport Corporation*<sup>22</sup> is seen as a positive step towards creating uniformity, as the court in this case laid down the factors which the tribunal needs to consider while deciding the amount of compensation. Following steps were specified to be followed while ascertaining the compensation –

- Under step I, the court should determine the annual income of the deceased after providing deductions of anticipated deceased's personal and living expenditure.
- Under step II, the court should select a multiplier as per the age of the deceased and period remaining of active career.
- Actual calculation is done under step III, by multiplying the amount derived after step I with the multiplier selected under step II.

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<sup>22</sup> (2009) 6 SCC 121.

In addition to this, the court specified a few expenses which should not be added such as pain, suffering and hardships caused to legal heirs.

After analysing a few judgments, the court felt it necessary to set a uniform principle for considering the increase in income of the deceased. It was held by the court that –

*“In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. Where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’. The addition should be only 30% if the age of the deceased was 40 to 50 years.”<sup>23</sup>*

However, in various cases, the judiciary held that these principles are not mandatory and can be departed as per the facts of the case. The court explained one of such circumstances in ***Naina Thakur vs. Punjab Women’s Welfare Colleges Board*** in following observation –

*“This table is also not to be blindly followed and the Tribunal may well be within its jurisdiction to make departure from this table in particular cases. For example, if the deceased was aged between 41 to 45 years as per this judgment multiplier of 14 is to be used. However, the deceased, if he had married late, may have left behind a very young widow and two small children. The Tribunal in such a case may be justified in increasing the multiplier to 15. On the other hand there may be a case where the deceased who was aged between 41 to 45 years has not left behind a widow and the claimants are sons who are majors and are not dependents. The multiplier may be suitably reduced in such cases. This has to depend on the facts of each case.”<sup>24</sup>*

Similarly, in ***K.R Madhusudhan vs. Administrative Officer***<sup>25</sup>, court observed that the rule of thumb established under the Sarla Verma case can be averted in some

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<sup>23</sup> *ibid*

<sup>24</sup> <https://www.casemine.com/judgement/in/56b49504607dba348f010ba0> (last visited Jan 31, 2021)

<sup>25</sup> (2011) 4 SCC 689.

exceptional circumstances, such as in cases where the deceased's income is to be increased certainly.<sup>26</sup>

**Compensation for the death of a child** – It was observed that the amount of compensation allowed in case of death of a child was comparatively less, due to the fact that the child may be involved in studying and thus, the child does not have any dependence on him. However, it was felt necessary to consider that the loss of a child will certainly affect the future of the parents and hence, appropriate compensation should be provided to them. One of the landmark judgments on this issue is **R.K. Malik versus Kiran Paul**.<sup>27</sup> Under this, the court analysed its various previous judgments which were given on death of the child and after analysis, court held that *in addition to awarding compensation for pecuniary losses, the compensation was also to be granted with regard to future prospects of the child.*<sup>28</sup> Court specified that while deciding such an amount, it can consider several factors such as a child's performance in school, including additional factors such as reputation of the school.

**Compensation for the death of a woman** – Judiciary in India have recognized the importance of women as a part of society. The issue of compensation arises when the deceased is a homemaker and not having any regular income. However, courts have opined that a wife's contribution to her family and home is invaluable and cannot be defined in monetary terms. The issue was highlighted by the judiciary in the case of **Arun Kumar Agarwal v. National Insurance Company**,<sup>29</sup> in which a woman died in a road accident. The appellant filed a claim of 19 lacs before the tribunal. Although the amount of compensation calculated was around 6,00,000, the total amount allowed by the tribunal was 2,50,000, based on the ground that the deceased was not an earning member and as a result, a lesser multiplier could be adopted.<sup>30</sup> The appeal was made to the High Court, which considered the same as

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<sup>26</sup> Ibid

<sup>27</sup> (2009) 14 SCC 1.

<sup>28</sup> *ibid*

<sup>29</sup> AIR 2010 SC 3426.

<sup>30</sup> Comment on Arun Kumar Agrawal v. National Insurance Co. Ltd., [http://www.supremecourtcases.com/index2.php?option=com\\_content&itemid=1&do\\_pdf=1&id=21858](http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=21858) (last visited Jan 31, 2021)

fair compensation on the ground that *neither of the claimants were dependents upon the deceased*, and based on this observation, rejected the appeal. However, the Supreme Court, under the present appeal, highlighted the importance of women. The court gave wide interpretation to the term ‘services’ and included the loss of personal care and attention which was given by the woman to her husband and children. The court opined it to be *highly unfair, unjust, and inappropriate* to compare a housewife with a housekeeper or servant, who works for a fixed period. The court also specified that *“It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife.”*<sup>31</sup> In light of these observations, the Supreme Court increased the compensation provided to the claimant.

## **CALCULATION OF COMPENSATION**

The calculation of compensation varies as per the facts of the case. However, the Supreme Court has laid down various standards and principles to calculate the amount of compensation, with an aim to ensure uniformity. The calculation of compensation is a complex process, and considering the same, court has explained the calculation in various cases. Examples of the same are –

- **When compensation is given for disability**<sup>32</sup> – X, aged 30, is a driver and earns Rs. 3000/- per month. Due to an accident, he sustained various injuries, and his hand is severed. His disability is estimated at 60%. As a result of such a disability, he gets terminated from his job and further, the chances of other employment opportunities becomes gloomy. Considering all the facts and circumstances, the tribunal assesses his loss of future earning capacity as 75%. On the basis of above mentioned facts and assessment figures, the compensation allotted to the victim will be –

Total Annual income of the victim (before accident) [A]: Rs.36,000/-

Estimated future earning loss borne by victim [B]: Rs.27,000/-

(75% of annual income, assessed by tribunal)

Applicable multiplier as per the table [C]: 17

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<sup>31</sup> *ibid*

<sup>32</sup> *ibid*

Total loss of future earning [B\*C]: Rs.27000\*17 – Rs.4,59,000/-

- **When compensation is provided in case of death of the aggrieved**<sup>33</sup> – X, died in a road accident and at the time of his death, his age was 38 years. His annual salary was 48,048 (Rs. 4004 per month). Deceased had a total eight members (including himself) in his family. As the age of the deceased was less than forty at the time of death, the tribunal provides a 50% increase in his income as a future prospect.

On the basis of above mentioned facts and assessment figures, the compensation allotted to the legal representative of deceased is –

Total Annual income of the deceased (after 50% increase)  
[A]:Rs.72,072/-

Deduction for personal expenses of the deceased [B]: Rs.14,414/-  
(1/5<sup>th</sup> of his total income)

Assessed amount [A-B]: 72,072 – 14,414 – Rs.57,658

Applicable multiplier as per the table [C]: 15

Amount of compensation [B\*C]: Rs.57,658 \* 15 – Rs. 8,64,780

Other additions to compensation [D]: Rs.20,000/-

*Loss of estate: Rs.5,000/-*

*Loss of Consortium : Rs.10,000/-*

*Expenses for funeral of deceased: Rs.5,000/-*

*“Total amount of compensation: Rs. 8,64,780 + Rs. 20,000 - Rs. 8,84,780”*<sup>34</sup>

## **LIBERAL REAFFIRMATION OF EXISTING PRINCIPLES**

While the judiciary has enacted various principles under various judgments in order to protect the interest of the claimant, many loopholes were identified with the passage of time while applying these principles. Also, in many cases, it was felt necessary to reiterate the established principles and to interpret the same as per the facts of the case.

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<sup>33</sup> Vikas Goel, The Motor Vehicles Act, 1988, <https://singhania.in/motor-vehicles-act-arbitration-litigation/> (last visited Feb 2, 2021)

<sup>34</sup> *ibid*

Following some of the instances in which the judiciary performed its functions in liberal and advantageous manner.

- **Guidelines for providing compensation** – A five-judge bench in the case of *National Insurance Company Limited v. Pranay Sethi*<sup>35</sup> laid down the guidelines to determine the amount of compensation. Court, while laying down these guidelines, departed from the principle of the *Sarla Verma* case by specifying that for the purpose of calculating compensation, the category of '*calculation of future prospects*' should be extended to both self-employed persons and those who earn a fixed salary.<sup>36</sup> The court opined that '*To have the perception that he (self-employed person) is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time.*'<sup>37</sup>
- **Principle of “just compensation”** – Supreme Court gave a liberal interpretation to ‘just compensation’ in *Ramla vs National Insurance Co. Ltd.*<sup>38</sup> Claimants in the present case file an appeal for enhancement of the compensation awarded. The claimants were the dependents of the deceased i.e., the wife, two children and father of the deceased. The claimants filed an application for compensation of Rs. 25,00,000/- in the Motor Accident Claim Tribunal. After observing the facts of the case, the tribunal awarded a compensation of 11,83,000/- Claimant filed an appeal for the enhancement of the award, and the High court awarded an additional compensation of Rs.9,70,000/-. The claimants, aggrieved by such decision, filed an appeal in front of Hon’ble Supreme Court. After observing the facts of the case, court opined that the appellants are entitled to receive a total

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<sup>35</sup> Special Leave Petition (Civil) No. 25590 of 2014 pronounced on 31 October 2017

<sup>36</sup> Madhav Misra and Anuj Bahukhandi, “National Insurance Company Limited v Pranay Sethi: Supreme Court guidelines on compensation in Motor Accident Claims”, [https://www.mondaq.com/india/insurance-laws-and-products/646260/national-insurance-company-limited-v-pranay-sethi-supreme-court-guidelines-on-compensation-in-motor-accident-claims#\\_ftn1](https://www.mondaq.com/india/insurance-laws-and-products/646260/national-insurance-company-limited-v-pranay-sethi-supreme-court-guidelines-on-compensation-in-motor-accident-claims#_ftn1) (last visited Feb. 2, 2021)

<sup>37</sup> *ibid*

<sup>38</sup> Civil Appeal No. 11495 of 2018, Special Leave to Appeal (C) No.22334 of 2017

compensation of Rs.28,00,000/- which was higher than the amount claimed.<sup>39</sup>

Relying on various judicial pronouncements, Court observed that "*There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award 'just compensation'*"<sup>40</sup>

- **Restoration and upliftment of victims** – The Supreme Court specified the purpose of compensation under Motor Vehicles Act in *Anant Dukre v. Pratap Lamzane & Another*.<sup>41</sup> In this case, the Supreme Court enhanced the compensation awarded to more than three times of the amount awarded by Motor Accident Claim Tribunal. The claimant in the present case met with an accident and suffered serious injuries, causing permanent disability measured at 75%. He was awarded Rs. 7,00,000/- as compensation by the tribunal. On an appeal, High Court revalued the amount and increased it to Rs. 14,65,000/- However, while calculating the amount, High Court did not consider the amount of salary stated by the claimant and observed that- "*it would be just and appropriate if the monthly income of the appellant is considered at Rs 5,000 on the ground that the salary of Rs 8,500 for a driver was on the higher side.*"<sup>42</sup> However, the Apex Court disagreed with the reason provided by the High Court and specified that it must be taken as proved by the claimant i.e., 8500/- per month. The court observed that "*The Claimant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed, but for the injuries. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.*"<sup>43</sup>

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<sup>39</sup> Ruchika Darira, "Case Law Analysis: Ramla v. National Insurance Company Limited", <https://www.mondaq.com/india/trials-appeals-compensation/801338/case-law-analysis-ramla-v-national-insurance-company-limited> (last visited Feb. 2, 2021)

<sup>40</sup> Ibid

<sup>41</sup> CIVIL APPEAL NO. 8420 OF 2018, SLP (Civil) No. 1159 of 2018

<sup>42</sup> Ashok Kini, 'Purpose of Compensation Under MV Act Is To Fully And Adequately Restore The Aggrieved To The Position Prior To The Accident: SC', <https://www.livelaw.in/purpose-of-compensation-under-mv-act-is-to-fully-and-adequately-restore-the-aggrieved-to-the-position-prior-to-the-accident-sc-read-judgment/> (last visited Feb. 2, 2021)

<sup>43</sup> Ibid

- **Importance of woman** – High Court of Bombay recently in the case of *Rambhau Gawai v. Shivilal Belsare (dead) & ors.*<sup>44</sup>, highlighted the role of women and her role in the family. The present appeal was filed by the heirs of the deceased, who lost her life in a road accident. The husband and two sons of the deceased filed a petition for compensation in Motor Accident Claim Tribunal, which rejected the claim on following grounds –
  - Claimants suppressed the actual age of the deceased.
  - Husband of the deceased is an earning member and hence, cannot claim compensation.
  - Sons of the deceased are major, and not entitled for compensation.

However, High Court under the present appeal, held that “*At the same time rejection of the claim of the claimants on the ground that the husband and the major sons are not entitled to claim compensation on the death of wife or mother, appears to be in ignorance of the well-established principles of law, on the part of the learned Tribunal.*”<sup>45</sup> Highlighting the importance of women as a housewife, the court held that “*It is an impossible task to count the services she renders which are consisting of hundreds of components that go into the functioning of a household itself, in monetary terms.*”<sup>46</sup>

In the light of these observations, the High Court provided a compensation of Rs. 8,00,000/- to the claimants.

## CONCLUSION

Continuous amendments in MV Act , introduction of principles of ‘No-Fault’ liability and additions to it by adding sec. 163A are some of the examples of how the legislature is taking continuous efforts to protect the interest of the victims of

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<sup>44</sup> FIRST APPEAL NO. 510 OF 2007

<sup>45</sup> Ibid

<sup>46</sup> Nitish Kashyap, "Role Of A Woman As A Housewife Most Important & Challenging", <https://www.livelaw.in/news-updates/role-of-a-woman-as-a-housewife-most-important-challenging-bombay-hc-grants-rs8-lakh-in-compensation-to-family-of-woman-who-died-in-car-crash-163493?infinitescroll=1> (last visited Feb. 2, 2021)

such accidents. However, the role of the judiciary cannot be ignored in supplementing these rights. Various experts even argue that in many cases, the legislature is guided by the judicial pronouncements and amend the laws in guidance of these judgments. This can be observed from the fact that the judiciary specified the need of no-fault liability prior to its codification by the parliament. Similarly, increasing the amount of compensation under No-fault liability under the 2019 amendment act is said to be influenced by judicial pronouncements.

Talking about the quantum of compensation, codifying any specific limit to it might lead to injustice to the victim. In many cases it is observed that the survivors or dependents of the victim relies completely on the amount of compensation and thus, it becomes their main source of livelihood.<sup>47</sup> Thus, it is necessary to decide the amount of compensation as per the facts of the case.

Although the discretionary power has led to different opinions and perceptions, regular attempts of the Supreme Court and High courts can be seen to lay down the principles and guidelines on which decisions should be taken, in order to ensure uniformity in the decisions of lower judiciary.

However, observing the fact that the judiciary might exclude certain aspects in the *Sarla Verma* case, it is suggested that the legislature should provide some guidelines which should not be ignored by the lower judiciary while deciding the quantum of compensation.

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<sup>47</sup> Dr. Jai Shankar Singh and Kartikeya Kumar Singh, “The Motor Vehicle Act 1988: A Critical Evaluation”, IJIRAS, Vol. 5 Issue 2, 2018, p. 308.

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