



LAW COMMISSION OF INDIA

**ONE HUNDRED NINETEENTH REPORT**  
**ON**  
**ACCESS TO EXCLUSIVE FORUM FOR VICTIMS**  
**OF MOTOR ACCIDENTS UNDER THE MOTOR**  
**VEHICLES ACT, 1939**

FEBRUARY, 1987



**D. A. DESAI**  
*Chairman*

**D.O. No. F.2(6)/87-LC.**

विधि आयोग  
LAW COMMISSION  
भारत सरकार  
GOVERNMENT OF INDIA  
शास्त्री भवन,  
SHASTRI BHAWAN,  
नई दिल्ली  
NEW DELHI

February 19, 1987.

**Shri Ashok Kumar Sen,**  
Minister for Law and Justice,  
Government of India,  
Shastri Bhavan,  
New Delhi.

Dear Minister for Law and Justice,

Continuing its search for rendering access to justice unhampered by any roadblocks, the Law Commission forwards one more report. This is the Sixth Report of the present Commission (119th report in the series) dealing with the problem of victims of motor accidents unable to claim compensation on account of the inaccessibility to the exclusive forum created under Sec. 110A(2) of The Motor Vehicles Act, 1939.

As you are aware that the road transport is proliferating fast. It is going to receive a push and acceleration by the provisions made in the Seventh Plan Documents for roads and tourism. As you are also aware that under Sec. 110, an exclusive forum in the form of Motor Accidents Claims Tribunal has been created for adjudicating upon the claims for compensation and damages arising out of motor accidents. Sec. 110A(2) provides that every application for compensation shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Now numerous operators have obtained permits for contract carriage for inter-state operation. Even the ceiling on tourist permit is being removed. Upward revision of total number of permits enabling inter-state operation of goods vehicles corresponding to the rise in commerce and industry is a known phenomenon. Further incentive for tourism encourages people coming from lower middle classes and weaker sections of the community to hire buses for movement throughout the country visiting religious shrines in distant places. Similarly educational institutions are encouraged to organise study tours for students at all levels. Mostly they move in hired buses. They move far away from their habitat.

All these have also contributed to larger number of motor accidents occurring. Victims of such accidents are required to file their claims petition before the Claims Tribunal in whose local jurisdiction the accident occurred. More often the Claims Tribunal at a prohibitive distance from the ordinary place of residence of the claimants will alone have jurisdiction to entertain petitions as a result of combined operation of Sec. 110A(2) and Sec. 110F of The Motor Vehicles Act, 1939, as the latter one provides for ouster of jurisdiction of ordinary civil courts.

(i)

(ii)

Numerous cases came to the notice of the Supreme Court and the Law Commission where pilgrims who had started from down South by a bus met with an accident that occurred somewhere in the Himalayas where the pilgrims were visiting such shrines as Badrinarayan and Kedarnath. The legal representatives or dependants of the deceased pilgrims residing ordinarily somewhere in the Southern region will have to travel all the way to the distant Northern region to obtain compensation. Geographical barrier would prove a disincentive. Moving the Supreme Court for transfer of claims petitions after they are filed is a costly luxury.

The Law Commission having examined this in depth has drawn up a report recommending amendment to Sec. 110A(2) of The Motor Vehicles Act, 1939, to confer jurisdiction on more than one Claims Tribunal to remove geographical roadblock and provide easy accessibility to the forum for obtaining compensation which is both a measure of social justice and social security.

I hope that this report which is likely to go a long way to help the weaker sections of the society would be given priority and implemented forthwith.

With regards,

Yours faithfully,

Sd/-  
(D.A. DESAI)

Encl : *A Report*

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## CHAPTER I

### INTRODUCTORY

1.1. Consistent with the task assigned to the present Law Commission to recommend comprehensive judicial reforms touching almost all aspects of 'Justice delivery system', the primary focus was on decentralisation of justice system. Decentralisation, amongst others, must have the object of removing road blocks in access to justice. The guiding consideration of the Law Commission in this behalf has been to take justice to the door-steps of the people. That is also the mandate of article 39A of the Constitution which requires the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, . . . . and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This Report deals with a small but significant aspect of removing geographic barriers which are intertwined with economic barriers in the access to justice in the developing branch of compensation for the victims of motor accidents.

1.2. With the widening horizon of Law of Torts and the awareness about the right to recover compensation for the harm suffered by the wrongful act of some other person, victims of motor accidents came forward to file suits for compensation by way of damages suffered. Till 1956, they were required to invoke the jurisdiction of ordinary civil courts where generally litigation has a tendency to drag on for a long time and the underlying object of compensation by way of restitution stood defeated. Until 1956, there was no special forum for adjudication of claims for compensation by the victims of motor accidents. Surface transport, especially the road transport, was in the process of fast development. With the pace of industrialisation and the incapacity of the Railway Administration to transport goods, road transport expanded considerably. On the introduction of State Road Transport Corporations Act, 1950, all the States set up their Road Transport Corporations and gradually the private passenger bus operators were being eliminated. However, transport of goods by trucks remained within the exclusive domain of private sector and proliferated. Permits for tourist buses under section 63(7) of the Motor Vehicles Act, 1939, were in great demand. With the realisation that tourism is an industry with a high potential for earning profits even in terms of foreign exchange, the Tourism Development Corporations came into existence and provided numerous facilities for attracting tourists. Every year, the number of indigenous and foreign tourists went up. Permits for tourist buses entitled to Inter-State operations were in great demand. Levy of taxes by the States on passenger vehicles and goods vehicles had to meet the challenge of article 301 of the Constitution which guaranteed freedom of trade, commerce and intercourse. Interpreting the content and contours of the freedom of trade, commerce and intercourse, the Supreme Court held that if such taxes were compensatory in character, they would be immune from the challenge of article 301.<sup>1</sup> To make the tax compensatory, the State agreed to set apart a substantial part of the receipt of tax on improving facilities for road transport. It was asserted that a tax, the receipt of which is utilised for facilitating road transport, ensures trade, commerce and intercourse and, therefore, could not be said to violate the freedom guaranteed in article 301. Accordingly, facilities for road

1. *Khyebari Tea Co. Ltd. vs. State of Assam* (1964) 5 SCR 975 ; *Atiabari Tea Co. Ltd. vs. State of Assam* (1961) 1 SCR 809; *Automobile transport (Rajasthan) Co. Ltd. vs. State of Rajasthan* (1963) 1 SCR 491; and *State of Karnataka vs. Hansa Corporation* (1980) 4 SCC 697.

transport multiplied. Long distance travel by cars, buses and taxis increased substantially. The cumulative effect of all these facilities led to larger number of accidents and the risk inherent to pedestrians and users of the road accelerated considerably. Awareness slowly grew that the victims of motor accidents who suffered damage are entitled to recover compensation from the party whose action inflicted the injury. Upto 1956, claim for compensation was to be filed before the ordinary Civil Court having jurisdiction in the area. The Civil Courts treated the claims as of routine nature and the proceedings dragged on interminably.

1.3. That raised the vital issue as to what is the principle behind compensation payable by way of damages. The simplest answer is that he who inflicts harm must repair the same, and that the repair may come in terms of money compensation. The next important question that agitated the minds of those charged with a duty to determine adequate compensation was as to what ought to be the yardstick for measuring the damages. Compensation has to be assessed keeping in view the injury suffered by the victims or the loss caused to the dependants of the victim in case of death. Undoubtedly, there is some distinction between compensation and damages, but in final analysis, this distinction becomes blurred. The expression, 'compensation' has been defined as the pecuniary recompense which a person is entitled to receive in respect of damage or loss which he has suffered, other than as a result of an actionable wrong, litigated in the Civil Court, committed by the person bound to make the recompense. Shorn of embellishment, compensation is payable by the person who is responsible for the damage to person or property suffered by the victim. In the event of death, the approach has been to assess the earning capacity of the deceased, deduct from it what is spent for himself, ascertain whether the balance was spent on the dependants of the victim and restore the same by way of adequate compensation. This, in short, is called the principle of restitution, which implies that one must restore, so far as money can do, to the plaintiff or one entitled to and seeking compensation, to the position he would have been if the tort in question had not been done to him. In simple language, restore in economic terms what the deceased was providing in his life time to his dependants or to himself before he suffered harm. Avoiding the discussion with regard to the various heads under which compensation can be claimed in respect of the pecuniary loss to the dependants or to the injured himself on account of injury, it is to be ascertained by balancing on the one hand the loss to the claimants for future pecuniary benefit, and on the other, any pecuniary advantage which, from whatever source, comes to them by reason of death, i.e., the balance of loss and gain to a dependant by the death must be ascertained. After this balance is ascertained, it has to be quantified in the manner provided in some judgments by keeping in view the age of the deceased and his expected span of working life. In simpler language, after taking into account the various legal aspects, what the Court tries to do is to provide, as far as possible, the same benefit which the dependants enjoyed when the deceased was alive by awarding such compensation that his death would not deny the benefits.

1.4. Once the principle of compensation is scientifically understood, it cannot be gainsaid that it must be awarded as early and as expeditiously as possible. If the bread-winner dies and the dependants are ill-equipped to earn their livelihood, if the amount of compensation is not made available forthwith or as expeditiously as possible, unwittingly, the lot of the dependants would be destitution and starvation. Ordinary civil courts take long time to determine and award compensation. To mitigate this hardship, a comprehensive amendment was made in the Motor Vehicles Act, by Act 100 of 1956, enabling the State Governments to set up Claims Tribunals for the purpose of adjudicating

upon claims for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damages to the property of a third party so arising or both. A new forum was thus devised exclusively for entertaining claims for compensation arising out of motor accidents with a fairly simple procedure as provided in section 110C of the Motor Vehicles Act.

1.5. One other ugly feature of the legal system was also sought to be cured by making 'Third Party Risk Insurance' compulsory. Earlier, cases came to light where an owner of a motor vehicle, with a view to avoiding his liability in the event of an accident, either registered a vehicle in the name of a driver or a man of no means with the result that an award of compensation may become infructuous. To avoid this contingency, section 94 of the Motor Vehicles Act provided that no person shall use, except as a passenger, or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of chapter VIII of the Act. It was assumed that on account of the combined operation of the provisions prescribing compulsory third party risk insurance and a special forum like the Motor Accidents Claims Tribunal, claimants will be able to expeditiously obtain compensation where it is due and where it is just and fair to be awarded. Once a policy of insurance as provided by section 94 is in force, it was assumed that the recovery would be as well easy in that the Insurance Company would satisfy the award as provided in section 96 of the Motor Vehicles Act. The assumption, of course, by subsequent events stands badly belied.

1.6. The Law Commission of India recommended insertion of section 109A(1) in the Motor Vehicles Act to extend protection to victims of 'hit and run' accidents, where the person liable to pay such compensation or his whereabouts cannot be ascertained after reasonable effort by providing that in such an event, the person entitled to such compensation shall be entitled to receive it from the State.<sup>1</sup> This recommendation like many others has not found favour with the Government but solatium fund has been set up under section 109A of the Motor Vehicles Act, from which compensation can be paid to the victims of 'hit and run' accidents.

1.7. By 1980, a wind was blowing that compensation to the victims of motor accidents should be by way of social security and the liability to pay the same must be 'No-fault' liability. The law, as it stands at present, save the provision in Chapter VIIA, inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay compensation and which fault caused the harm such as bodily injury or death. In the event of death of a victim of a motor accident and the consequent harm caused to his dependants, the question whether the person responsible for the action causing harm had committed a fault or it was an inevitable accident, is hardly relevant from the point of view of victim or his/her dependants. The expanding notions of social security and social justice envisaged that the liability to pay compensation must be a 'No-fault' liability. The Law Commission of India undertook an examination of this concept and submitted its report in May, 1980.<sup>2</sup> The Law Commission recommended that a new section 92A should be inserted in the Motor Vehicles Act, by which the doctrine of liability without fault should be introduced in the Act and strict liability imposed in regard to death or bodily injury caused by an accident of the nature specified in section

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1. LCI 51st Report.

2. LCI 85th Report.

110(1) with the ceiling on 'No-fault' liability of Rs. 1,00,000. It appears that this recommendation was accepted with a modification by providing 'No-fault' liability in the event of death in the amount of Rs. 15,000/- and in respect of permanent disablement of any person, upto Rs. 7,500/-. It appears that the recommendation as to strict liability does not appear to have been accepted. There were some other recommendations, but while dealing with the question of jurisdiction of Motor Accidents Claims Tribunal, an observation has been made which needs to be examined in the light of the present-day situation. In Chapter XVI bearing the heading, "Jurisdiction and Limitation" under the sub-title 'Limits of Jurisdiction', paragraph 16.2 reads as under :—

"As to territorial jurisdiction, section 110A(2) provides for the filing of an application in a tribunal within the local limits of whose jurisdiction the accident occurred. This sub-section has raised no problem so far."<sup>1</sup>

It would be pointed out that this provision works hardship and blocks access to justice. Section 110A(2) reads as under :—

"Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed."

There is a proviso which is not material for the present purpose. The present report concerns itself with the impact of this section. It would be pointed out in the course of the report that it has proved to be both a geographic, economic and psychological barrier to access to justice, and these barriers need to be removed.

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1. LCI 85th Report, Chapter XVI, para 16.2 page 56.



## CHAPTER II

### EXCLUSIVE FORUM

**2.1.** Once the awareness proliferated that the wrong doer must be made to compensate the victim, a debate started about the nature and character of the forum to which victims of tort feisor must approach for quantification and recovery of compensation. Till 1956, no specific provision was made in the Motor Vehicles Act, 1939, for setting up a forum for recovery of compensation by the victims of motor accidents. Such a claim for compensation was treated as a claim for damages for which one had to resort to ordinary civil courts. One claiming compensation may file a suit in a civil court like any other civil suit and pray for damages.

**2.2.** Section 10 of the Code of Civil Procedure, 1908, provided for jurisdiction for suits for compensation for wrongs to persons or movables. It reads as under :—

**“Suits for compensation for wrongs to person or movables. 19. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said Courts”**

A person claiming compensation may have to file a suit in the court within whose jurisdiction the accident occurred because by the accident, the wrong was done to the victim. Alternatively, the plaintiff can file a suit in a court within whose jurisdiction the defendant resides or carries on business or personally works for gain. Section 20 of the Code of Civil Procedure provided for jurisdiction for suits other than those specified in section 19. In such suits, the plaintiff was required to file a suit within the jurisdiction of the court in which the defendant resides, or in the court within whose jurisdiction the cause of action has arisen. If the accident furnishes the cause of action, obviously, the suit will have to be filed within the jurisdiction of the court having jurisdiction in the area where the accident occurred or where the defendant resides or carries on business or personally works for gain. Section 20(b) provides that every suit shall be instituted in a court within the local limits of whose jurisdiction any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides or carries on business or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside or carry on business or personally work for gain, as aforesaid, acquiesce in such institution. These provisions govern the institution of suits in the matter of geographical jurisdiction prior to 1956.

**2.3.** In a petition for recovering compensation by the victim of a motor accident, the respondents to be impleaded would be the driver and owner of the offending vehicle and the Insurance Company with which the vehicle is insured for third party risk (to be referred to as the 'Insurer'). It may be that prior to the nationalisation of the General Insurance, the insurer, as the defendant, may have offices in a few places and in view of the Explanation to section 20 of the Code of Civil Procedure, 1908, the insurer as the defendant could be said to carry on business where it has a subordinate office also. The driver however could be said to be residing or working for gain at the place where he is employed and the owner of the vehicle could be said to carry on business where he is actually carrying on business. The petition for compensation in such a

situation will have to be filed more or less in the court within whose jurisdiction the accident occurred alleging that the accident has furnished the cause of action. This situation underwent a material change in 1956.

**2.4.** Section 110 was inserted in the Motor Vehicles Act, by Act 100 of 1956, with effect from 16th Feb., 1957. Section 110 conferred power on the State Government to constitute one or more Motor Accidents Tribunals for a specified area(s) for the purpose of adjudicating upon claims for compensation in respect of accidents involving death of, or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising, or both. The qualifications for appointment as a Member of a Claims Tribunal were prescribed in section 110(3) to the effect that the person to be appointed (a) is, or has been, a Judge of the High Court; or (b) is, or has been, a District judge; or (c) is qualified for appointment as a Judge of the High Court. Section 110A provided for application for compensation. Sub-section (2) thereof provided that every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed. The application has to be made within a period of six months from the date of the occurrence of the accident. Section 110F provides for ouster of jurisdiction of civil court. It provided that where any Claims Tribunal has been constituted for any area, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the civil court. These provisions, at a glance, show that an exclusive forum was created for entertaining and adjudicating upon claims for compensation and damages to property of third party arising out of use of motor vehicle in a public place and that the jurisdiction of the civil court for entertaining suits in respect of claims for which a petition for claim under section 110A could have been filed was simultaneously ousted.

**2.5.** After setting up an exclusive forum, it was considered advisable to specify the jurisdiction of each Claims Tribunal. Claims Tribunals would be set up throughout the length and breadth of the country. Unless jurisdiction is prescribed, one may resort to multiplicity of proceedings before different tribunals. Section 110A(2) clearly specifies that the Claims Tribunal, within the local limits of whose jurisdiction an accident occurred alone, would have the jurisdiction to entertain an application for compensation arising out of the accident. This is unquestionably the present position in law.

**2.6.** Is this situation conducive to provide easy access to the Claims Tribunals for recovering compensation? If setting up of an exclusive forum was intended to expedite adjudication of claim for compensation, is the object realised by conferring jurisdiction only on a Claims Tribunal within the local limits of whose jurisdiction the accident occurred? If a passenger bus on contract carriage started from Kanyakumari and met with an accident while passing through Haryana, and in this accident, say roughly about 20 persons died and 10 others suffered injuries, the petition for compensation by the dependants of each deceased and also the petition for compensation by each injured person—all ordinarily residing in Kanyakumari—will have to be filed before the Claims Tribunal within the local limits of whose jurisdiction the accident occurred in Haryana State. The forum being exclusive, nowhere else the claim can be made and the exclusive forum is at such a prohibitive distance that one may have to think hundred times before filing a petition to claim compensation by undertaking the hazardous task of travelling hundreds of miles and involving huge costs in search of illusory compensation. This is the problem posed for consideration in this report.

## CHAPTER III

### PROLIFERATION OF MOTOR TRANSPORT

**3.1.** In order to appreciate that the proposed change which is being recommended by this Report has become a compelling necessity, it is necessary to gauge the present position with regard to road transport. Even after great strides having been taken during the last six Plan periods, the country's economy is still largely agrarian in character and the settlement pattern is rural-oriented.<sup>1</sup> Roads accordingly constitute a critical element of the transportation infra-structure. Since the inception of planning (1952), the road network has expanded from 4 lakh k.m. to 17.7 lakh k.m. The National Highways encompass a road length of 37,110 k.m. and carry nearly a third of the total road traffic. The rural road network now connects 64% of the villages, though not with all-weather roads. Amongst various objectives of the Seventh Plan, there has to be continued emphasis on provision of roads to villages so as to achieve "Minimum Needs Programme" targets by 1990 as also reduction in road accident rates.<sup>2</sup> By the end of the Seventh Plan period, it is intended by the "Minimum Needs Programme" for rural road construction linking of all villages with a population of 1500 and above and 50% of the villages with a population between 1000 and 1500.

**3.2.** With the improvement in the road transport facility, simultaneously the motor vehicle population in the country has been continuously increasing. From just 34,000 in 1950-51, the number of buses has gone up to 2,60,000 in 1984-85. During the same period, the number of trucks increased from 82,000 to 7,63,000. The Seventh Plan envisages an annual growth of 8% of both the truck and bus fleet.<sup>3</sup>

**3.3.** In 1984, 12,19,752 tourists (including Nationals of Pakistan and Bangladesh) visited India. The foreign exchange earnings from tourism were estimated at Rs. 1,200 crores for 1983-84. During the Seventh Plan period, the aim is to achieve an annual growth rate of 7% in the tourist arrivals.

**3.4.** Better roads, more modern vehicles, love for travel, incentives to Tourism industry, constraints in capacity on the Railways, combined with inherent advantages of road transport, and expansion of the road network, all in their cumulative effect, contributed to ever rising numerous motor accidents. Victims of road accidents are, generally speaking, poor pedestrians and the dependants of such poor pedestrians have to seek out a forum for compensation. Obviously, as a compelling necessity, the forum must be within their easy reach.

**3.5.** With inter-state operation permits, as envisaged by section 63(7), expanding year after year, the middle and lower middle class people hire buses on contract carriage and move out to distant parts of the country. Schools organise educational tours, and religious fervours encourage journey to distant holy shrines. Numerous lower middle-class people travel from the extreme southern tip of the country to Badri Narayan and Kedarnath, the northern most points in the Himalayas. Similarly, people from the eastern part of the country travel to Dwarka and vice-versa. Goods transport trucks criss-cross the country from one end to the other end. While undoubtedly the roads are being improved, the roads were laid for a slow moving economy and the roads cater to not very

1. The Seventh Five Year Plan 1985-1990. Vol. II, para 8.54, page 485.

2. *Id.*, pages 485, 486.

3. *Id.* Para 8.87, page 494.

heavy trucks. As we move to the 21st century, bigger air-conditioned buses, heavy tonnage goods vehicles, have started appearing on the roads. The roads are not simultaneously widened, nor are any special channels set apart for goods vehicles. A noticeable tendency of the drivers of the goods vehicles is to move at an alarming speed so that if the distance is covered faster, the profits multiply. In their cumulative effect, all these factors have taken a toll of human life, an ever-rising graph of motor accidents.

3.6. Buses with contract carriage permits having inter-state operation rights move throughout the length and breadth of the country. Those who hire a contract carriage bus are people who are either of the same village or a small city, or are members of the same community or are students of the same school. After a bus taken on contract carriage, travels hundreds of miles and meets with an accident, the victims of the accidents, in view of section 110A(2) have to file their claims petition at a place far away from their habitat. Recently, a bus from Gujarat on the way to the shrines in the Himalayas met with an accident and about 23 persons died and 15 others suffered injuries. The accident occurred within the jurisdiction of the Motor Accidents Claims Tribunal at Garhwal in Uttar Pradesh. The dependants of victims of the accident and the injured persons—all had to travel more than 1500 miles to reach the Accidents Claims Tribunal having jurisdiction to entertain their petition for compensation. Is not the distance prohibitive for any middle-class or lower middle-class person to travel such a distance and initiate action? Would not the distance be itself a disincentive? Would it not be a geographical barrier to access to justice? Is not the geographical barrier directly inter-linked with the economic barrier because one who is wealthy and well-to-do, distance would be ignored? And small claims may not be preferred only because the time, the cost and the labour involved in realising the same would be disproportionately higher than the benefit acquired. Section 110A(2) thus becomes, instead of providing an exclusive forum but at such a prohibitive distance as not to be of any use and utility, a barrier to access to justice. Can this barrier to access to justice be removed or surmounted? That is the area of inquiry.

3.7. The geographic barrier to access to justice is also to some extent an economic barrier. Forum at a long distance would be a disincentive. It can become physically or economically impossible for disputants to use the courts for most disputes.<sup>1</sup> Cost of travel, taking witnesses, finding lodging and boarding would add to costs of litigation and render geographic barrier an economic barrier. Litigation by persons of modest means who have lost a bread winner, or whose capacity to earn is impaired by injury would be effectively foreclosed by the distant forum. Therefore the 'haves' always come out better in litigation strategies.<sup>2</sup>

3.8. It is therefore imperative to discuss the importance of accessibility of courts as one feature in improving the quality of the 'justice industry'.<sup>3</sup>

3.9. The problem of access can be addressed in a number of ways. The design of any given dispute resolution forum—including a court—involves a series of policy decisions.<sup>3</sup> The fundamental strategies available to respond to perceived deficiencies of the present time lies in bringing it within the easy reach of claimants.

1. *Access to Justice*, Vol. III, page 10.

2. Galanter, *Why the "Haves" Come Out Ahead : Speculation on the Limits of Legal Change* (1974), 9 *Law and Society Rev.* page 95.

3. Cahn and Cah *What, Price Justice, ? The Civilian Perspective Revisited* (1966), 41, *Notre Dame Lawyer* page 929.

4. *Access to Justice*, Vol. III, page 14.

**CHAPTER IV**  
**PARALLELS FOR GUIDANCE**

**4.1.** The serious legal impediments caused by distance experienced here had also figured in a comparable but different situations. A discarded or divorced wife in search of maintenance, or one seeking divorce or restitution of conjugal rights, etc., faced the same problems in view of creating of exclusive fora.

**4.2.** Way back at the turn of the last century, it was felt that discarded and divorced wives must have easily accessible expeditious remedy to recover maintenance from their errant husbands. Section 488 of the Code of Criminal Procedure, 1898, conferred power on the Magistrate to award maintenance to a wife, who is unable to maintain herself, from her husband. The right also expanded to include illegitimate children and later even parents. Sub-section (8) of section 488 provided for jurisdiction of courts to award maintenance. Under it, proceedings may be taken against any person in any district where he resides or is, or where he last resided with his wife or, as the case may be, with the mother of the illegitimate child. Now, after the wife is discarded, she would hardly be in a position to reside in the same village or town where she last resided with her husband, and it would be humanly impossible for the wife to travel to the place where the husband is residing and to initiate action in a court of competent jurisdiction. The courts recognised that the provision contained in section 488 of the Code of Criminal Procedure, 1898, aimed at preventing vagrancy and starvation. The courts also recognised that under Indian conditions, women being unable to remain economically independent, and once the husband discards or divorces the wife, the only option left to the wife is destitution or vagrancy. Any civilized society must guard against this. Therefore, even though claiming maintenance is ordinarily considered as civil right, a cheap, expeditious remedy was provided. However, this remedy could not be availed of because of the forum being inconvenient and uncongenial. The Law Commission examined this aspect and recorded its observation as under :—

“Under sub-section (8), the place where the wife resides after desertion by the husband is not material as regards the venue of the proceedings, though the place where the husband resides—even temporarily—is relevant. Often deserted wives are compelled to live with their relative far away from the place where the husband and wife last resided together. They would be put to great harassment and expenditure, unless the venue of the proceeding is enlarged so as to include the place where they may be residing on the date of the application.”<sup>1</sup>

The Law Commission accordingly recommended re-drafting of the provision. Section 126 of the Code of Criminal Procedure, 1973, appears to have taken note of this recommendation. It reads as under :—

“126. Procedure (1) Proceedings under section 125 may be taken against any person in any district—

- (i) where he is, or
- (ii) where he or his wife resides; or
- (iii) where he last resided with his wife or, as the case may be, with the mother of the legitimate child,

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1. LCI 41st Report Vol. I, page 306.

This provision enables the discarded or divorced wife to initiate proceedings where she resides. That will make access to the forum easy and within accessible limits. Situation in terms of justice being identical, this provision can provide guidance in the present situation.

4.3. Similar defects were also noticed during the working of the unamended section 19 of the Hindu Marriage Act, 1955. It reads as under :—

“Court to which petition should be made. 19. Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnised or the husband and the wife reside or last resided together.”

The Law Commission found numerous infirmities in the actual working of the section. It pointed out :—

“The place of solemnisation of marriage or the last matrimonial home—two of the tests given in the section—may not turn out to be satisfactory, because both may have ceased to be of any importance to the parties, in these days of mobility of population. The place where the parties are both residing—which is the third test—is inapplicable on the facts.”<sup>1</sup>

The recommendation of the Commission received consideration and section 19 was amended by the Marriage Laws (Amendment) Act, 1976. The amended section reads as under :—

“Court to which petition shall be presented. 19. Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

- (i) the marriage was solemnized, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.”

4.4. It is not necessary to multiply such illustrations. The underlying object behind these amendments was to make access to special forum easy. If the exclusive or special forum cannot be reached on account of prohibitive distance, obviously it results in denial of justice. The object underlying the amendment was not to do away with exclusive or special forum but confer a jurisdiction on more than one such forum so that anyone can be within the easy accessibility or reach of the party who feels injustice or aggrieved by injustice and wants or wishes to move the Court for relief and justice.

4.5. In the matter of claims for compensation before the Accidents Claims Tribunal in respect of motor accidents, the situation is unbearable and intolerable. While in the case of a husband and wife even when they part company, though they may not be residing in the same village or town, they may not be far away from each other. Marriages take place within community, clan or caste settled in specified regions. Even inter-caste marriages in big metropolitan cities take place within the area of metropolitan cities. Therefore, one can reach the special forum in the same geographical division. Even then, cases came to light where women, the weaker of the two sexes, felt handicapped in invoking the jurisdiction of the special fora for relief, among others, on the ground of prohibitive distance. This road block to justice was sought to be removed by the aforesaid amendment. Similar relief is overdue in respect of claimants who are victims of motor accidents.

1. LCI 59th Report, page 73.

4.6. There is one aspect which must be mentioned here. If the accident occurs in a State and if the State has set up a number of Claims Tribunals district-wise and if accident occurs within the jurisdiction of one Claims Tribunal and the claimants are, though in the same State, may be residing in the jurisdiction of a different Claims Tribunal, it would be open to the High Court, on an appropriate application being made, to transfer these cases from one Claims Tribunal to other Claims Tribunal under the general power of transfer and withdrawal of civil cases conferred on the High Court under section 24 of the Code of Civil Procedure, 1908. Similar power is conferred on the Supreme Court of India for inter-state transfer of civil cases. It was said by some observers that these provisions are sufficient to rectify the situation dealt with in this Report and, therefore, there is no need to amend the provision. This approach betrays lack of knowledge of expenses incurred in moving petitions for transfer either in the High Court or in the Supreme Court. To illustrate, say in a motor accident, 20 people died and 10 suffered injuries. Legal representatives entitled to recover compensation of each of these dead persons will have to make a separate application to move the High Court or the Supreme Court, as the case may be. Similarly, each injured person will have to make a separate application for transfer. And a similar procedure will apply if the petition for transfer is to be moved in the Supreme Court of India for inter-state transfer. The cost will be prohibitive. Numerous petitions for such transfer by a compelling necessity come up before the Supreme Court of India. No costs are usually awarded even if the transfer is ordered. Already impoverished people by death of bread winner are further exposed to avoidable expenses.

4.7. Therefore, the Law Commission is of the opinion that it is necessary to amend section 110A(2) to provide for conferring jurisdiction on a Claims Tribunal within whose jurisdiction the claimants reside.

4.8. One other view that was expressed to us was that if in the process of taking justice to the door-step of the people, jurisdiction is conferred on the Claims Tribunal within whose jurisdiction the claimants reside, would it not work hardship on the driver and the owner of the vehicle at fault? As pointed out earlier, in a petition for a claim for compensation arising out of a motor accident, the respondents ordinarily are the driver and the owner of the offending vehicle and the Insurer. After the nationalisation of General Insurance, the Insurer has offices all over the country. It is a large public sector undertaking which cannot feel any inconvenience if the jurisdiction is conferred on a Claim Tribunal other than the one where the petition will have to be filed, as the law stands today. Therefore, it must be excluded from further consideration. There remain the driver and the owner of the offending vehicle. As against the convenience of these two persons, a large number of claimants coming from the weaker sections of the society who may forego the claim for compensation because of prohibitive cost of transfer and distant litigation and obviously the balance would tilt in favour of such weaker sections of the society. Further, the driver and the owner of the offending vehicle, both are entitled under the Policy of Insurance to ask the Insurer to undertake the defence. One or two witnesses may have to be called to prove rashness and negligence and other factors. In fact, the surviving passengers may themselves be good witnesses. As against that, claimants—dependants and injured persons—all will have to travel a long distance to give evidence to prove their claims. Factors relevant to proof are age of the deceased, his earning capacity, his possible estimated span of life, etc. Numerous witnesses will have to be taken as against driver and conductor. It is also an experience not to be overlooked that the driver generally does not participate in the proceedings. The expenses and the inconvenience of claimants would be prohibitive. Putting the rival considerations in balance, the balance tilts in favour of the victims of the accident.

**CHAPTER V**  
**CONCLUSION**

**5.1.** Compensation for victims of motor accidents is itself, to some extent, a measure of social justice as also a facet of social security. Compulsory insurance for third party risk supports this inference. If that be so, availability of social justice and social security must be within the easy reach of people entitled to it. Victims of accidents, excluding some very rich persons, belong to this class. As against poor pedestrians or travellers in cheap vehicles as motor rickshaws and not so very road-worthy buses on contract carriage hired by weaker sections of society, the insurer and the insured are better placed. Further, the cost of transport of witnesses, claimants, the inconvenience of prosecuting litigation in a wholly unknown area may induce an instinctive reaction to the initiation of proceedings. To counteract this position, it is necessary to amend section 110A(2) so as to provide therein that every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or personally works for gain or within the local limits of whose jurisdiction the defendant resides or carries on business or works for gain, at the option of the claimant.

**5.2.** Necessary consequential amendments may have to be made in the rules, forms, etc.

1. (D.A. DESAI)  
*Chairman*
2. (S.C. GHOSE)  
*Member*
3. (MRS. V.S. RAMA DEVI)  
*Member Secretary*

**NEW DELHI**

*Dated the 19th February, 1987.*



ERRATA

- Page (iii) Chapter 2 Read " Forum " in place of "form"
- Page 2 Put page No.2 above top
- Page 6 Put page No. 6 above top
- „ Para 2.4 line 10 Read "Judge" in place of "judge"
- „ Para 2.6 line 1 Read "Conducive" in place of "Conductive"
- Page 8 Para 3.9 line 3 Foot note no. read '4' in place of '3'
- „ Foot note 2 line 1 Read "Galanter" in place of "Galatenr"
- „ Foot note 3 line 1 Read "Cahn and Cahn" in place of "Cahn and Cah"
- „ Foot note 3 line 1 Remove comma after 41.
- Page 10 Para 4.3 line 2 read "read" in place of "reads"
- „ „ „ line 20 read "marriage" in place of "marrige"
- „ „ „ line 29 read "if he were alive" in place of "wif heere alive"
- Page 11 Para 4.8 line 9 read "Claims" in place of "Claim".