LAW COMMISSION OF INDIA

FIFTY-FIRST REPORT
ON
COMPENSATION FOR INJURIES CAUSED BY AUTOMOBILES IN HIT-AND-RUN CASES

September, 1972

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE

COMPENSATION FOR INJURIES CAUSED BY AUTOMOBILES
HIT-AND-RUN CASES

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CHAIRMAN
Law Commission,
Shastri Bhavan,
New Delhi-1
September 15, 1972.

Shri H. R. Gokhale,
Minister of Law & Justice,
New Delhi.

MY DEAR MINISTER,

I am fowarding herewith Fifty-first Report of the Law Commission on compensation for injury caused by automobiles in hit-and-run cases.

The circumstances under which this question came to be considered by the Commission, have been stated in the first paragraph of the Report. After a preliminary study of the subject, a draft Report was prepared, and the Ministries concerned were requested to give their comments on the draft Report. State Governments, High Courts, and interested persons and bodies were also asked to give their comments. Further, a press communique was also issued, inviting the public to give their comments on the draft Report. The comments received were duly considered by the Commission, and the Report finalised.

With kind regards,

Yours Sincerely,

P. B. GAJENDRAGADKAR.

Introduction.

1. A short but important question relating to compensation for accidents caused by automobiles, in what are popularly known as "hit-and-run" cases, is the subject-matter of this Report. The subject has been taken up by the Law Commission, having regard to the fact that it is a legal question of general application and importance, and also because an amendment of the law appeared to be necessary in the interests of social *justice.*

Dissatisfaction felt as to position regarding injury caused by automobiles.

2. For some time past, there has been considerable dissatisfaction regarding the position as to compensation for personal injuries caused by automobiles. This dissatisfaction can be attributed partly to defects in the law, and partly to the inherent nature of the situation. Remedies sugested for removing this dissatisfaction have been of various kinds,—extension of common law liability, insurance for liability, and social security,— or variants or combination of one or more of these three.

Economic distress.

3. As the brief survey given below will show, economic distress resulting from the present gaps has, in some countries, been attempted to be remedied by the State directly or indirectly undertaking to secure payment of compensation. That is how the subject-matter of the present Report falls within social security.

Directive Principle as to public assistance.

4. Under the Constitution,[1] "The State shall within the limits of its economic capacity and development, make effective provision for securing the right to *public assistance* in cases of unemployment, old age, sickness and disablement, and in other cases of *undeserved want.*" It may not be inappropriate to extend the principle underlying this article to the subject-matter of the present inquiry.

Compensation plans.

5. Compensation plans for the victims of road accidents are not new. The first major proposal came as early as 1932,

1. Article 41 of the Constitution.

with the CColumbia Report in the U.S.A.,[1] but, in recent years, as ever-increatsing road accidents have made the problem more alive, there has been a marked intensification of proposals. One of the best known proposals is that of Professors Keeton and O'Connell[2], but there are many others. It is not necessary for our purpose to go into these details.

Categories of systems of compensation

6. A brief survey of the systems of compensation for accidents caused by automobiles shows that these fall under one or other of the following categories:—

(a)(i) Compensation by the person who, by his fault, causes the accident (such person may be briefly called the "person responsible for the accident").

(a)(ii) Such compensation by the person responsible for the accident, irrespective of fault.

(b) Compensation by the insurer of the person responsible for the accident.

(c) Compensation by the State or by an agency set up or recognised by the State, compensation being payable irrespective of fault.

(d) Compensation by the insurer of the victim.

Category (a)(i)—Liability for tort at common law.

7. Category *(a)(i)* above[3] is the familiar one of liability for tort at common law. When it becomes difficult to prove who was responsible for the accident, or to prove his fault, hardship arises. Hardship can similarly arise when the person responsible for the accident, though known and proved to be at fault, is not financially sound.

One of the solutions suggested to alleviate the hardship in such cases is to dispense with the requirement of fault, and this gives rise to category *(a)(ii)*.

Category (a)(ii)—Compensation without fault.

8. Category *(a)(ii)* has been suggested in several countries, but adopted only in very few. The main argument in support of the catefory is that the requirement of fault is out of date, and there is not injustice in awarding compensation against the person who caused the accident even if he is not at fault, because,

1. Columbia Study of Compensation for Automobile Accidents (1932).
2. Keeton and O'Connell, Basic Protection for the Traffic Victim: A Blueprint for Reforming Traffic Accidents (1965).
3. Paragraph 6,*supra*.
4. *See* also paragraph 11, *infra*.

in most cases, he can get reimbursement from the insurer. The main object of the law (it has been stated), is compensate the injured person, and not to penalise the person causing the accident. Hence, it is not necessary to retain the traditional requirement of fault.

Position under the English Bill of 1934.

9. In England,[1] a Bill,[2] which would have made motorists strictly liable to edestrians, without proof of fault, was, in fact, given a third reading by the House of the Lords in 1934, though it was not proceeded with in the House of Commons.[3]

Category (*b*)—Provisions of the Motor Vehicles Act.

10. Category (*b*)[4] *is* illustrated by the provisions of the Motor Vehicles Act[5] which enable the injured person to recover compensation from the insurer of the person responsible for the accident. There are certain conditions and restrictions imposed in this behalf, which are, of course, matters of detail.

Category (*c*)—Compensation by the State or by an agency set up or recognised by the State.

11. Category (*c*) does not exist in the field of compensation for automobile accidents in India. But proposals for reforms of the law, which have been made (or even enacted) elsewhere, from time to time, emphasise that instead of requiring the victim to prove fault, he should be entitled to compensation, on mere proof of injury. The compensation, (it is further urged) could be paid from a fund to be established for the purpose. Details of the matter cannot be conveniently discussed at the present stage. It is sufficient to state that the increasing use of automobiles has led many persons to believe that the common law requirement of fault is out of date.[6] It should be noted, however, that there is a strong section of opinion which still maintains that the only satisfactory basis of liability is fault, and that the requirement of fault should not be dispensed with.

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1. As to present position, *see* paragraph 22, *supra*.

2. Material as to the English Bill is taken from Douglas Paynes, "Compensating the Accident Victim", (1960) 13 Current Legal Problems, 85, 93, 94.

3. The Road Traffic (Compensation for Accidents) Bill. Introduced by Lord Danesfort on three successive occasions, it was finally given a Third Reading on June 26, 1934; for the numerous debates on the Bill, *see* 84 H. L. Deb. 5s, cols. 543-584; 86 H. L. Deb. cols. 1041-1076; 88 H. L. Deb. cols. 1035-1079; 92 H. L. Deb. cols. 925-950; 93 H. L. Deb. cols. 144-165.

4. Paragraph 6, *supra*.

5. Section 96, Motor Vehicles Act, 1939.

6. *See* also paragraph 8, *supra*.

Category (d)—Compensation by the insurer of the victim.

12. Finally, as regards category (*d*), it is of interest to note that there could be a school of view that all citizens should compulsorily insure themselves against automobile accidents. So far as owners figuring as authors of the accident are concerned, that is the law even now, under the Chapter on compulsory third party insurance, in the Motor Vehicles Act. But we are, at the moment, concerned with victims injured by an accident. Traffic rules imposing obligations on pedestrians *for their own safety*, and punishing them for breaking those obligations, are now familiar to every urban citizen, and it is not inconceivable that legislation may be passed requiring the residents of big cities to insure themselves compulsorily against injury by automobile accidents upto a certain amount.

Points raised in letter of Kerala Road Safety Association.

13. Two situations have been referred to, in a letter received by us.[1] First, where the offending vehicle is not traceable, and secondly, where the driver of the offending vehicle is not licensed.

(*i*) Driver not traceable.

14. In the first situation,[2] non-recoverability of compensation is not due to any defect in the chapter of the Motor Vehicles Act dealing with Third Party Insurance. The whole scheme of the Motor Vehicles Act shows that it falls under category (*b*) above.[3] If the legislature wishes to provide for the situation where the offending vehicle is not traceable, it has to take the next step and adopt category (*c*). This would be a progressive step; but numerous connected questions will have to be worked out. Should the State undertake the liability in this case? What will be the financial repercussions? Should other cases where category (*b*) does not apply be covered? And so on. By undertaking the duty of compensation in such cases, the State virtually becomes an insurer. The most interesting question that presents itself is, whether the State should not undertake the duty to compensate also in other cases of injury by tort, *e.g.*, accidents caused otherwise than by automobiles.

(ii) Driver not licensed.

15. The second situation mentioned in the letter[2] is of a simpler character. Where the driver is not licensed, it is the positive provision in the Motor Vehicle Act[4] which constitutes the impedi-

1. Letter of the Kerala Road Safety Association.
2. paragraph 13,*supra*.
3. Paragraphs 6 and 10, *supra*.
4. Section 96 (2)(*b*)(*ii*), Motor Vehicles Act.

ment to recovery. The supposed rationable behind the present situation appears to be that if the driver was not licensed, (i) the accident cannot be attributed to any fault as could have been done if the driver was licensed, and (ii) It is unfair to expect the insurer to pay, when such an obvious precaution as that of engaging a competent driver was not taken by the owner. Such a situation is not likely to occur frequently; but when it occurs, the possible remedy (at present) is to sue the owner of the vehicle himself.—category (a) above. If this remedy is considered insufficient, then the other alternative would be to remove the present restriction in the Motor Vehicles Act, and thereby make category (b) above applicable. If even that is considered inadequate, category (c) could be thought of.

16. The above resume will show that there are five principal situations which are, at present, not covered in respect of compensation for an accident caused by an automobile:— Five principal situations not covered at present.

(1) Where there is no fault, so that no one is liable.[1]

(2) Where there is fault, and therefore liability of the person responsible for the accident exists, but there is no insurer who is liable, because of non-compliance with the relevant provisions of the Motor Vehicles Act,—for example, a policy is not taken out, though required by the Act.[2]

(3) Where there is liability and also insurance, but the beneficial provisions of the Motor Vehicles Act do not apply (*e.g.*, because the driver has no licence), so that though the person responsible for the accident can be sued, the insurer is not liable.[3]

(4) Where the driver of the vehicle cannot be traced, so that a suit against the person responsible for the accident or the insurer is not possible.[4]

(5) Where the person responsible for the accident and the insurer are not solvent, though liable.[1]

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1. Paragraph 7, *supra*.
2. Paragraph 10, *supra*.
3. Paragraph 15, *supra*.
4. Paragraphs 1 and 14, *supra*.
1. Paragraph 7, *supra*.

The first, the fourth and the last may be called cases of total misfortune. The second and the third are cases of partial misfortune, because at least the person responsible for the accident can be sued in these cases.

Situation requiring urgent remedy.

17. The next question is, in what cases, if at all, the situation required remedy. The answer to this question depends on how progressive a view one takes of social security, and also on how large are the financial resources of the State. In theory, one could suggest that the State should undertake to compensate in all cases, and should act as the insurer of the citizens against any misery caused by total or partial misfortune. But considerations of financial nature, coupled with the fact that where there is some private person who is liable and who, being solvent, can meet the liability, the State should not be made to pay, suggest that the remedy should be entirely against the private person.

If the above reasoning is accepted, then only cases under categories (1), (4) and (5) above need[1] be seriously considered. Further, one does not know what could be the possible repercussions if category (1) is brought within the field of the State liability,—it is likely that a very large number of cases would be fictitiously made to fall within category (1). Lastly, category (5) is not of much importance after nationalisation of the business of general insurance.

Position in hit-and-run cases examined in detail.

18. The rest of this Report will, therefore, concern itself with the position in respect of category (4),—that is to say, hit-and-run cases.

Statistics of motor accidents

19. The figures of total number of accidents caused by motor vehicles in India during the years 1968-1970 are given below[2]:—

1968	...	28,837
1969	...	31,329
1970	...	33,017

Statistics as to the precise number of persons injured or killed by "hit-and-run" drivers are not available. But the number of such persons is bound to increase with growing urbanisation. Common experience would justify the assumption that the cases are not so infrequent that they should go totally unnoticed.

1. Paragraph 16, *supra*.
2. Statistics taken from the Government of India, Ministry of Shipping & Transport (Transport Wing), O.M. No. Dy. No. 857-T/72, dated the 21st February, 1972, addressed to the Law Commission.

20. It is stated[1] that the number of persons killed per 1,000 motor vehicles in India is as high as eight, as against 0.5 to 2 in European countries. In Madras, pedestrians formed the bulk of those killed in road accidents (104 out of 184 in the city).

Comparative study.

21. A brief comparative study would be useful. This study will be confined to countries where either hit-and-run cases are dealt with by a specific provision, or the general position is wide enough to embrace them.

Position in England.

22. We may first discuss the position in England. England has, for some time past, a scheme whereunder the Motor Insurance Bureau accepts liability to compensate for automobile accidents, in certain cases of unsatisfied judgment. The English scheme is non-statutory, but still of interest.

The scheme originated in an agreement. On June 17, 1946, the Motor Insurance Bureau[1] entered into an agreement with the Minister of Transport to give effect to the principle recommended in July, 1937, by a departmental committee under the chairmanship of the late Sir Fellix Cassel—

> "to secure compensation to third party victims of Road accidents in cases where, notwithstanding the provisions of the Road Traffic Acts relating to compulsory insurance, the victim is deprived of compensation by the absence of insurance, or effective insurance.".

23. The English scheme is described in a white paper as a memorandum or agreement made on June 17, 1946, between the Minister and Motor Insurance Bureau, supplemental to the principal agreement made on December 31, 1945, between the Minister of War Transport and the insurers. Its principal provision, clause 1, is thus:—

> "If judgment in respect of any liability which is required to be covered by a policy of insurance or a security..... under Part 2 of the Road Traffic Act, 1930 is obtained against any person or persons in any court in Great Britain

1. 'The Hindu', 25th April, 1972, reporting the proceedings of the National Seminar on Traffic Enforcement and Environment, Madras.

1. See *Fire etc. Insurance Co.* v. *Greene* (1964) 2 All E.R. 761, 764 (Stephenson, J.).

whether or not such person or persons be in fact covered by a contract of insurance.....and any such judgment is not satisfied in full within seven days from the date on which the *person or persons in whose favour the judgement was given* became.....entitled to enforce it, then Motor Insurance Bureau will, subject to the provisions of clause 5 and clause 6 of these presents, pay or satisfy or cause to be paid or satisfied to or to the satisfaction of the person or persons in whose favour the judgment was given any sum payable or remaining payable thereunder in respect of the aforesaid libility including taxed costs. . . whatever may be the cause of the failure of the judgement debtor to satisfy the judgement."

24. The English scheme does not cover injury caused by an *unidentified*, or "*hit-and-run*" *driver*, because an *unsatisfied* judgment is a pre-condition of the Motor Insurance Bureau's liability under the scheme.

25. The question of untraced drivers was considered in detail in England, and we quote from a fairly recent study[1]—

'It sometimes happens that a road victim is injured by a motorist who cannot be traced. There is no question of any individual insurer being liable, so all that the victim can hope for is that the Motor Insurers' Bureau will compensate *him*.

Whether he should be given a right to compensation was considered as long ago as 1937 by the Cassel Committee, which stated in their report that "we have not found it possible to deal with the case of a third party injured by a motorist who cannot be traced. In such a case it is impossible to establish a claim against anyone and, in our opinion, the grant of a right against the Central Fund would be calculated to lead to such abuses as to render such a course totally unsuitable.'

In 1946, the Central Fund referred to in the Report became the Fund voluntarily contributed to by those indi-

1. Hardy Ivamy, "Law of Motor Insurance", (1966), 19, Current Legal Problems, 128, 139 to 141.

vidual insurance companies which are members of the Motor Insurers' Bureau. This Fund is used solely to further The objects of the Bureau, and to satisfy in satisfied judgments in favour of third parties, without profit to its members.

The explanatory notes to the Motor Insurers' Bureau Agreement state that " the liability of the Bureau does not extend to the compensation of any person who may suffer personal damage resulting from the use on a road of a vehicle, the owner or driver of which cannot be traced. The Bureau will not however, necessarily refuse to act in these cases. Where in its view, there is reasonable certainty that a Motor-vehicle was involved and that except for the fact that the vehicle, owner or driver cannot be traced, a claim would lie, the Bureau will give sympathetic consideration to the making of an *ex gratia* payment to the victim, or his dependents".

This absolute discretion was strongly criticised by Sachs J., in *Adams v. Andrews,* where the negligence of an untraced motor-cyclist caused the driver of a car, in which the plaintiff was travelling as a passenger, to serve and overturn.

His Lordship said that the situation was as illogical as it was unjust. In cases where the liability of a driver was under the Road Traffic Acts "required to be covered by a policy of insurance", either the driver of the hit-and-run car was insured as by law required—in which case one of the member companies of the Bureau would normally have to pay any damages awarded by the Court—or else he was not insured—in which case the Bureau would likewise have to pay, if he had been found and judgment entered against him. That the injured person could not recover as of right merely because he could not secure a judgment as the driver had successfully evaded identification was lamentable. It only provided for insurance companies as a whole a potential avenue of escape from liabilities which in principle they had accepted. He who had to go cap-in-hand for an *ex gratia* payment was always at a disadvantage.

The learned judge then went on to say that whatever might be the Bureau's practice, it was important that it

ought not to be in a position wholly to decline liability simply because some other motorist or some other person, who was under no duty to insure against the particular risk, was also partly to blame. Moreover, if there were cases which were to be left to the discretion of the Bureau, it was worthy of consideration whether it was right for claims important to the individual claimant to be turned down by unnamed administrators against whose decision no appeal would lie.

Position in New Zealand and New South Wales.

26. It appears that in New Zealand the counterpart of the Motor Insurers' Bureau will pay upto £ 7,500 to any one victim of an unidentified driver and upto £ 75,000 for any one such accident. In New South Wales, the unidentified driver is represented for the purposes of trial by an official called the Nominal Defendant, and the insurers pay out a claim on the basis of a judgment obtained against the Nominal Defendant (though here a plaintiff must show affirmatively what efforts have been made to trace the real driver and that these efforts have been unsuccessful).[1] Several other developments have taken place in New Zealand, but they are not specially relevant to hit-and-run cases.

Position in France.

27. In France, social security, together with other collective schemes of security, is the second source of indemnification for traffic accident victims. When indemnification comes from these sources, it is granted without regard to any possible fault of the victim, so long as the victim has not voluntarily injured himself.

Presently, social security in France covers, in one form or another, 85 per cent of the entire French population. It is not easy, however, to specify the extent of this coverage. If the victim of a traffic accident was on his way to or from his place of employment or was acting in the course of his employment, he is entitled to compensation for all his medical bills. Otherwise, he is entitled to only four-fifths of his bills.[2]

Position in Soviet Russia.

28. Position in Soviet Russia may now be examined. This

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1. Hamish R. Gray, "Liability for Highway Accidents", (1964) 17 Current Legal Problems, 127, 139, 140.
2. Andre Tunc., "Traffic Accident Compensation in France" (1965), 79, Harv L. Review 1409, 1413, 1414.

will have to be dealt with under two heads,—Tort liability and Social Insurance.

29. In the Civil Code of the R.S.F.S.R., 1964, Article 444, reads—[1] Tort liability in Soviet Russia.

"444. *General ground of liability for causing of harm.*—Harm caused to the person or property of a citizen, as well as harm caused to an organisation, is subject to compensation in fully by the person who has caused such harm.

A person who has caused harm is relieved of the duty to make compensation if he proves that the harm was not caused through his fault.

Harm caused by lawful acts is subject to compensation only in cases provided for by law."

30. Article 454 of the R.S.F.S.R., Civil Code, 1964, (replacing Article 404 of the old Code and basing itself on Article 90 of the Fundamental Principles of 1961), reads :

"454. *Liability for harm caused by a source of increased danger.*—Organisations and citizens whose activity involves increased danger for those in the vicinity (transport organisations, industrial enterprises, building projects, possessors of motor cars, etc.) must make good the harm caused by the source of increased danger unless they prove that the harm arose in consequence of irresistible force or as a result of the intention of the victim."[2]

31. An important ruling of the Supreme Court of the U.S.S.R. in 1963[3] spelled out clearly what had been the dominant line :

"Possessors of a source of increased danger are to be understood as organisations or citizens carrying out the exploitation of the source of increased danger by virtue of their having the right of ownership or by virtue of operational management, as well as on other bases (*e.g., in*

1. Article 444, R.S.F.S.R., Civil Code, quoted by Alice Jay, "Principles of Liability in Soviet Law or Torts", (1969) 18. International and Comparative Law Quarterly, 424, 427.
2. Article 454 cited in Alice Jay, "Principles of Liability in Soviet Laws of Torts", (1969) 18 I.C.L.Q. 424, 427.
3. Ruling of October 23, 1963, No. 16 cited in Alice Jay, "Principles of Liability in Soviet Laws of Torts", (1969) 18 I.C.L.Q. 424, 444.

virtue of a contract of lease, hire or trust, and also, on the basis of administrative decision of the competent organs, handing over the source of increased danger to the temporary use of the organisation)."

32. Specific rules have been worked out in the U.S.S.R. as to liability for accidents caused by motor cars, and it appears[1] that they fall under the general treatment of motor-cars as "sources of increased danger".[2]

Social insurance in Soviet Russia.

33. So much as regards tort liability in the U.S.S.R.[3] Social Insurance in the U.S.S.R. may now be briefly discussed.

34. The scheme[4] of social insurance in the U.S.S.R. cover almost all employees (including most of the women in the Union—48 per cent. of the labour force is female) and payments are made by the employer.

(*i*) *Temporary disability.*—Industrial and professional employees (but not collective farm workers) are entitled to temporary disability payments. If the injury is *caused through the employment,* full wages are paid; if not, the amount depends on (*a*) whether the victim is a trade unionist; and (*b*) how long as he has been in employment. At the top rate he can get 90 per cent of (basic) wages.

(*ii*) *Permanent disability.*—The degree of disability is determined by a board of medical and labour experts. If the disability was caused by industrial or professional injury and is total, the pension will amount to just over half the average wage; for partial disability, less is payable. In the *case of disability from other causes,* the proportions are lower and depend on length of service.

(*iii*) *Loss of breadwinner.*—Pensions are payable to dependant and vary according to whether or not the death was caused by occupational injury.

1. Alice Jay, "Principles of Liability in Soviet Law of Torts", (1969) 18 I.C.L.Q. 424, 446.

2. Paragraph 30, *supra.*

3. *See* also paragraph 35, *infra.*

4. Alec Samuels, "Damages in Personal Injury Cases", (1968) 17 I.C.L.Q. 443, 461, 462.

As the social security payments rarely equal previous earnings, there is still *room for* the law of tort.

35. From the purely formal point of view, the Soviet law of tort is quite sophisticated. It rests on two principles : (*i*) A person who injures another is liable unless he proves that he was not at fault. (*ii*) The owner of a source of "increased hazard" is liable for harm caused by it unless he proves that the damage was caused by insuperable force or the victim's act. The car and the factory machine fall under rule (*ii*).

The law of insurance is, however, used to limit these rules. If the defendant is paying social insurance contributions for the plaintiff (as will be the case for every employer), he is liable *only if fault* is established.

Hence, the "increased hazard" rule has little application in the factory. It applies, of course, to cars; but the *owner is forbidden to insure his liability*. The result, is, that the factory, but not the motorist, can buy cover against pure accident.

Summing up as to comparative survey.

36. Literature on the subject of injuries caused by automobiles is vast;[1] the above comparative survey is confined to the short point[2] that is dealt with in this Report.

Need for amendment.

37. Having considered the various aspects discussed above, we are of the view that cases in which the accident is caused by a vehicle where the person responsible cannot be traced—popularly known as hit-and-run cases—should be provided for, and that the State should take over the liability in such cases. There being no question of recovery from the tort-feasor or his insurer, the harm suffered goes uncompensated for. Social justice requires that the State should take over the liability.

Analysis of comments on the draft Report.

38. The draft Report which the Commission had prepared on the subject had been circulated for comments to State Governments, High Courts, Bar Associations and other interested persons and bodies for comments. The comments received can be classified into several groups.

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1. *See* paragraph 5, *supra*.
2. *See* paragraph 21, *supra*.

(1) Comments in favour of the proposed amendment.

39. A very large number of comments favour the proposal for amendment of the law, mooted in the draft Report.[1]

(2) Comments in favour, but with modification of substance.

40. Some of the comments[2] favour the proposal circulated in the draft Report, with a modification of substance. One District Bar Association[3] suggests that a new sub-section (*2B*) after sub-section (*2A*) should be added to section 96 of the Motor Vehicles Act, in the following terms:—

> "(*2B*). (*1*) Where an accident involving the death of or bodily injury to a person caused by or arising out of the use of a motor vehicle occurs, and (*i*) a claim for compensation in respect of such accident cannot be ascertained after reasonable effort or (*ii*) a judgment in respect of the liability for such compensation in respect of such accident is obtained against any person but the same cannot, with the exercise of reasonable diligence, be satisfied by the person or his insurer within six months of the award, then the person entitled to such compensation shall be entitled to receive it from the respective Zonal Insurance Corporation under the territorial jurisdiction of which the accident occurred.
>
> (2) Any such judgment under sub-section (1) shall not include any amount of compensation which has been realised or is realisable from a person other than the driver or owner of the motor vehicle.".

(3) Comments in favour but with minor modification.

41. Some comments[4] on the draft Report favour the proposal with minor or verbal modifications.

(4) Comments taking the view that the proposal should be more comprehensive.

42. Some of the comments emphasise that the proposal should be made more comprehensive.

Thus, one High Court Judge[5] has stated:—

> "Whether any State will agree for a discriminatory treatment to this kind of compensation cases alone has to

1. (*a*) S. No. 30 (Ministry of Shipping & Transport);
   (*b*) S. No. 18 (One Advocate);
   (*c*) S. No. 20 (One State Government);
   (*d*) S. No. 26 (Two High Court Judges);
   (*e*) S. No. 28 (Most Judges of one High Court).
2. S. No. 32 (A District Bar Association).
3. S. No. 32
4. (*a*) S. No. 19 (One Bar Association);
   (*b*) S. No. 34 (One Union Territory Administration).
5. S. No. 26 (One High Court Judge).

be ascertained. In other kinds of torts also, very often, compensation cannot be realised for various reasons. A welfare state trying to build up a socialistic pattern of society should undertake the duty to compensate in all cases of injury by tort, *i.e.*, accidents caused otherwise than by automobiles also. A comprehensive legislation requiring each citizen to insure against this risk, making the State as the insurer, may have to be brought at an early date. This may be a hope only now and a distant reality. As a beginning towards that, the proposed legislation is welcome."

Another High Court Judge[1] has stated:—

"The attempt to codify law on 'tort' has its difficulties also, a Bill codifying the liability of State, is, if I remember correct, pending before Parliament. This is yet another attempt to codify another branch of the law. I wish, a comprehensive legislation is ventured in this respect.".

43. A High Court Judge[2] has given an elaborate comment, which seems to show that he is opposed to the proposed amendment on the ground of priorities (as also on other grounds). He has observed— Comments opposed on ground of priorities.

"The spirit of social justice eloquently enshirined in Article 41 of the Constitution and which professedly has animated the Law Commission in framing the report and preparing the draft provisions for incorporation in the Motor Vehicles Act, is indeed laudable; but, in my opinion, it has a touch, taint and savour of Utopia. I am not sure if the State facing mighty economic problems arising out of spiralling prices can shoulder the proposed financial burden, which, in course of time, might assume alarming proportions; nor am I convinced that the category of social justice meant to be secured has that claim to priority which is assumed for it. The States are already up against more mighty challenges, *e.g.*, provision for housing in rural areas, employment for millions who in a way are already a burden on the earth, removal of illiteracy and introduction of

1. S. No. 26.

2. S. No. 27.

compulsory education, medical aid and other health services, road construction, etc.

Slow and lingering death arising out of want of basic human requirements should, I believe, give a bigger jolting to sensitive enlightened conscience than a stray gory occurrence on a non-frequented rural road or an urban lane, if only because the first mentioned malady has victims galore compared to the letter.".

He has further stated—

"Apart from theoretical objections afore-mentioned, I think from purely practical standpoint the experiment contemplated may prove more costly than envisaged at present, especially in the Indian Context. All of a sudden, I believe, the hit and run cases will multiply manifold immediately the proposed measure takes a legal shape. Unscrupulous drivers and owners of automobiles involved in the occurrences would manage to enter into some arrangement with the victim or his heirs in case of his death, settling the deal clandestinely at a price much lower than the law demands and pass the buck to the State Government on the representation that the culprit could not be identified. We know it too well that the manner in which the cases are fought in courts on behalf of the Government has never received universal approbation, and the new glut of cases, arising out of proposed amendment of Motor Vehicles Act, might prove the proverbial straw on the camel's back.

For the reasons stated, I cannot endorse the proposed changes in law, though they are of a salutary nature, until at least the resources of the States show up and the normal citizen exhibits more sense of virtuosity than is evident at present.".

(6) Comments opposed for financial reasons.

44. Some of the comments[1] express opposition to the proposal on financial grounds. Thus, one High Court Judge[2] has stated that there are many other needs of society which require to be atended to. Further, the basic question is, whether or not the financial resources of the State permit such a legislation.

1. S. No. 28 (One High Court Judge).
2. S. No. 28.

"I have no doubt that there would be a large number of false and fictitious cases where people would claim compensation for injuries or deaths, even though not caused by automobiles but in some other manner, by setting up false witnesses to prove that the injuries or deaths had been caused by automobiles. We cannot lose sight of the fact that wherever the State gives any financial assistance to the citizens, in the majority of cases they are received by people who do not deserve them. It is also the tendency in this country of the officials of the State to care the least to find out whether assistance goes to the right person or the wrong person. What is Government money is considered to be nobody's money, and is squandered away."

He has also stressed the need for preventive action to check accidents by vigilant action in directing traffic on the road and for licensing motor vehicles. Further, he adds,—

"In my view, it will be a pre-mature legislation and putting unnecessary burden on the State, when the country requires financial resources of the State to be utilised for much more important things than providing for compensation to the victims of accidents in cases of hit and run.".

(7) Comments suggesting even a wider amendment.

45. *Some comments*[1] favour a wider amendment, and would like to go further than what has been proposed. Thus, one High Court Judge has stated[1]—

"In my opinion, there should be also a law for payment of some *ex gratia* amount to the victim, in case of situation (1), when the injury is serious. The Motor Vehicles Act also may be suitably amended so as to make the insurer liable to pay compensation to the third party victim in situation No. (3).".

Conclusion on points raised in the comments.

46. We shall now express briefly our conclusion on the points raised in the comments.

We are happy to note that the proposal for amendment of the law which we had circulated has been favoured by a large majority of the comments on the draft Report.

1. S. No. 28 (One High Court Judge).

As regards those comments which raised the question of financial resources of the State, we do appreciate that the proposal which we are making will involve some expenditure from the State Funds. But, if, the goal of social and justice is to be reached, a beginning has to be made. The problem with which we are dealing is a real one, and is bound to require attention as urbanisation progresses in the country. That one accident to the bread-winner of the family could cause prolonged economic strain to the family cannot be denied. And, if, as we propose,[1] the State is, by an amendment of the law, made liable in the limited number of cases where compensation is not recoverable from any other sources, the amendment would be worthwhile; and the situation could, with some justification, be regarded as one in which the demands of social justice should override financial considerations.

Risk of abuse considered.

47. We are fully conscious of the risk of abuse of the proposed provision. That a few unjustified claims for compensation will be made, cannot be ruled out. But it should be noted, that the claimant will have to prove—

(*i*) that death or bodily inury has been caused by an accident involving a motor vehicle;

(*ii*) that he has suffered loss in consequence;

(*iii*) that the person responsible for the accident is not traceable; and

(*iv*) that he cannot recover adequate compensation from any other source.

These being the conditions precedent to recovery, the risk of totally false claims getting paid is not very large.

Amendment as to limited scope of the remedy considered.

48. We should also mention here, that the limited scope of the amendment which we propose may give rise to the objection being advanced that the amendment is not worth the trouble. Now, we are not unaware that the problems—legal and others—that have to be solved for achieving the objective of removal of poverty and undeserved want, are many and various. We are not

1. Paragraph 52, *infra*.

blind to their magnitude, either. Nevertheless, such relief as the reform of the law could afford, has to be initiated, step by step. The citadel of poverty cannot be destroyed in one day. Let this be the first knock on its gates.

Liability of the State Government.

49. The liability which will be imposed under the provision which we contemplate, will be of the State Government. Before the necessary legislation is introduced, the State Governments will, of course, have to be consulted.

Legislative competence.

50. Legislative competence of Parliament on the subject is derived from concurrent list,[1] entries 8 and 35, respectively, quoted below—

"8. Actionable wrongs."

"35. Mechanically propelled Vehicles including the principles on which taxes on such vehicles are to be levied.".

Amount recoverable from the another person to be set off.

51. It is, of course, fair to provide that where, in respect of any accident, the plaintiff has received, or is entitled to receive, any sum as compensation or indemnity from any person other than the driver or owner of the motor vehicle which occasioned the death or bodily injury, the amount to be awarded to the plaintiff against the State under the proposed provision should be reduced by that sum.

Recommendation.

52 We accordingly recommend the following legislative provision, which could be inserted as a section in the Motor Vehicles Act[2]:—

"109(A). (*1*) Where an accident, involving the death of or bodily injury to a person caused by or arising out of the use of a motor vehicle occurs, and it is proved that a claim for compensation in respect of such accident cannot be made because the person liable to pay such compensation or his whereabouts cannot be ascertained after reasonable effort[3], the person entitled to such compensation shall be entitled to receive it from the State.

(*2*) Where, in respect of any accident, any claim is made under sub-section (*1*) and it is found that the clai-

1. Concurrent List, entries 8 and 35.
2. Tentatively it could be placed as section 109A.
3. Paragraph 16(4), *supra*.

mant has received, or is entitled to receive, any sum as compensation or indemnity from any person other than the driver or owner of the motor vehicle which occasioned the death or bodily injury, the amount to be awarded to the claimant against the State under sub-section (*1*) shall be reduced by that sum.".

Difficulty of establishing negligence not within scope of the Report.

53. We may make it clear that we are not concerned here with the difficulties of establishing negligence—a difficulty which has been judicially adverted to.[1]

Before we part with this Report, it is our pleasant duty to place on record our warm appreciation of the assistance we have received from Mr. Bakshi, Secretary of the Commission, in dealing with the problem covered by the Report. As usual, Mr. Bakshi first prepared a draft which was treated as the Working Paper. The draft was considered by the Commission point by point and its conclusions recorded and, in the light of the decisions, Mr. Bakshi prepared a final draft for consideration and approval. At all stages of the study of this problem, Mr. Bakshi took an active part in our deliberations and has rendered very valuable assistance to the Commission.

P. B. GAJENDRAGADKAR.—*Chairman.*

V. R. Krishna Iyer.
P. K. Tripathi.
S. S. Dhavan.
} *Members.*

P. M. Bakshi.—*Secretary.*

NEW DELHI;
The 15th September, 1972.

1. *Keshavan Nair* v. *State Insurance Officer*, (1971) K.L.T. 380, 382.

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