LAW COMMISSION OF INDIA

EIGHTY - FIFTH REPORT

ON

CLAIMS FOR COMPENSATION UNDER CHAPTER 8 OF THE MOTOR VEHICLES ACT, 1939

1980

Justice P. V. Dixit

D.O. No. F. 2(4)/79-LC

NEW DELHI

Dated, the 30*th May,* 1980

My dear Minister,

I am forwarding herewith the eighty-fifth Report of the Law Commission containing proposals for amendments of certain provisions contained in Chapter VIII of the Motor Vehicles Act, 1939, bearing on the question of insurance of motor vehicles and adjudication of claims for compensation in respect of the accidents by motor vehicles.

2. Under the law as it is, a Claims Tribunal can pass an award with regard to payment of just compensation only after finding that the accident of the nature specified in sub-section (1) of Section 110 was the result of the negligence on the part of the driver or owner of the vehicle (*Vide Sinu* Vs. *Bal Krishan* (1977) SCR, Vol. II, page 886). Since this case was decided, the Supreme Court has been suggesting with some persistence that the Motor Vehicles Act should be amended so as to incorporate in it the principle of "no fault liability" in road accidents. (*Concord Insurance Company* Vs. *Nirmla Devi* 1979 (3)S.C.R. 694; *Rattan Singh* Vs. *State of Punjab* S.C.W.R. d. 10/1/1980 Vol. 35, Part I, page 29).

3. The incorporation of the principle that compensation should be obtainable without the necessity of proving negligence on the part of the person who caused the accident, no doubt, involves an alteration of the existing laws. But the alteration is both just and necessary. The persons generally involved in motor accidents are pedestrians, children, women and illiterates. Some of them are too poor to have the help of a competent lawyer in establishing negligence in claim cases. These cases are contested strenuously by the insurance companies raising all sorts of technical objections for minimising their own liability. The result is that proceedings before the Claims Tribunal drag on for a long time before any award is passed. Sometimes the time consuming costly litigation makes the award of compensation, when and if it is made, virtually meaningless. Claims Tribunals are constituted for expeditious disposal of motor vehicles claims but in actual practice there is no expeditious disposal. The inordinate delay in the disposal of these claims is mainly on account of the difficulty and the time taken in trying the issue of negligence in the use of the vehicle. The principle of "no fault liability" is not a novel. One is familiar with the consept of absolute liability for payment of compensation under the Workmen's Compensation Act, 1923. The principle has already attracted attention in many countries like U.K., Australia, New Zealand and many States of the United States of America.

4. The Commission has, therefore, suggested that a new provision should be inserted in Chapter VIII of the Motor Vehicles Act, 1939 providing that in "claim cases", the claimant third party shall not be required to plead and establish that the injury or damage suffered by him was the result of wrongful act or neglect or default in the use of the vehicle, and further the claim for compensation shall not be defeated or reduced by reason merely of any wrongful act, neglect or default of the party suffering injury or damage. The Commission has taken advantage of this opportunity for suggesting other amendments for securing speedy disposal of claim cases, for early payment of the amount of compensation awarded, for restricting the right of appeal against an award only to those cases where the amount in dispute in appeal exceeds Rs. 5,000, for award of interest on the compensation amount and placing a monetary limit on the liability of the insurer. Some other amendments have also been suggested. They are of a minor nature. All these amendments have been fully explained in the Report.

80-M/B(D)457MofLJ&CA—1

5. The Commission is grateful to Shri P. M. Bakshi, Member Secretary for his valuable assistance in the preparation of this Report. The Commission would also like to thank Shri Vaze, Additional Secretary, for his collaboration.

With kind regards.

Yours sincerely,

Sd/-
(P. V. DIXIT)

Shri P. Shiv Shankar,
Minister of Law, Justice & Company Affairs,
Government of India.

CONTENTS

APPENDICES

CHAPTER 1

INTRODUCTORY

Scope of the Report.

1.1 This Report is concerned with an important matter dealt with in Chapter 8 of the Motor Vehicles Act, 1939—compensation to be awarded in respect of death of, or bodily injury to, persons arising out of the use of motor vehicles or damage to the property of a third party so arising.[1] The subject has been taken up by the Law Commission in view of its vital relavance to social justice and delay in the administration of justice.

Certain hardships and practical difficulties that have been experienced in the working of the Act render it desirable that the law should be revised. These hardships and difficulties, broadly speaking, relate to the principles on which liability of the various parties arises, the jurisdiction of tribunals constituted under the Act and the smooth working of those tribunals—those tribunals being the machinery created by the Act for determining the amount of compensation to be awarded for death or bodily injury arising as above.

Observations of Supreme Court.

1.2. In one recent case[2] of claim by a widow for compensation for the death of her husband who had been run over by a truck, the Supreme Court observed that the case had brought out all the defects in the present law under the Motor Vehicles Act.[3-4]

(1) The law as it stands today requires the claimant of compensation to prove that the driver of the vehicle was guilty of rash and negligent driving. This becomes impossible, as records of the police investigation are not made available to the Accident Claims Tribunal and officers who investigate the accident are seldom available to give evidence.

(2) The company which has insured the vehicle—and hence is liable to pay the compensation—raises untenable pleas and drags the claimants for years. (This case had dragged on for 18 years).

Long litigation is beyond the financial capacity of the claimants, who have to borrow money to see the litigation thorough. In the end, the compensation money goes to those who have been assisting the litigation, instead of the dependants of the victim.

In this case, the insurance company had filed a written statement before the Tribunal that the truck involved in the accident had been stolen prior to the accident and hence neither the owner nor the insurance company was liable. The owner later filed a written statement that the truck had not been involved in any accident. The Tribunal (and, on appeal, the High Court) accepted the story of the insurance company that since the widow could not establish the identity of the driver, she could claim no compensation. The Supreme Court reversed this decision of the High Court on the basis of the contradictions in the written statements of the insurance company and the owner, along with other evidence.

(3) The Supreme Court observed that the principle of "no fault liability for motor accidents" must be incorporated in the law against insurers and owners of vehicles. The dependants of victims can then claim an absolute minimum compensation without having to prove rash and negligent driving on the part of the driver. The following suggestions were made on this point:

(a) The minimum payment could vary with the number of dependants of the victim and with the period of their dependency. These payments could be made monthly through one of the nationalised banks nearest to the residence of the dependants.

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[1]Chapter 8, sections 93 to 97 and 110 to 111A, Motor Vehicles Act, 1939.

[2]*Bishan Devi* Vs. *Sirbaksh Singh*, A.I.R. 1979 S.C. 1862 (November); (1980) 2 S.C.C. 373 (Febrauary 1, 1980).

[3]See also para 3.29, *infra*.

[4]See further para 3.s, *infra*.

(b) A monthly payment (instead of a lump sum, as under the present law) would substantially reduce the burden on the insurer and consequently on the insured.

(c) If the dependents are dissatisfied with the minimum payment, they may be allowed to pursue their remedies before the Tribunal.

We shall, in due course, examine the matters referred to in this judgment.

Scope

1.3. We may make it clear that this Report does not deal with the whole of the Motor Vehicles Act. It is primarily concerned with compensation for accidents, and certain questions relating to the machinery for the adjudication of claims for such compensation.

Claims under the Motor Vehicles Act.

1.4. For understanding the importance of the statutory scheme[1] relating to claims for compensation for accidents caused by motor vehicles, it is necessary to go into history of the legislation on the subject.

At common law, even where there was an insurance in respect of an accident caused by a motor vehicle, the injured party could not sue the insurer (directly or indirectly) in the name of the assured, to compel the insurer to pay the insurance money to him. The reason was that under the common law, a stranger to a contract could not sue upon it. In England, the Third Parties (Rights against Insurers) Act, 1930, was enacted to confer on third parties rights against the insurer of third party risks in the event of an assured becoming insolvent and in certain other events. But this Act could not come to the aid of a person injured by an insolvent whose vehicle was *not insured*. The Road Traffic Act, 1930, was then enacted, prohibiting the use of a motor vehicle on a road, unless the owner or other person using it took a policy of insurance or gave security against liability to third parties. Yet another lacuna was detected in the legislative scheme. The insurer and the insured could, while satisfying the requirement of compulsory insurance, introduce stipulation in the policy, the breach of which would render it void and by this device the insurer could escape liability to third parties. Therefore, the Road Traffic Act, 1934, was passed to prevent the insurer from escaping the liability under the insurance policy by compelling him to satisfy the judgment obtained against the assured, and also by rendering ineffective certain clauses in the policy which might be aimed at avoiding the liability arising under it. This was the position upto 1939, in England.

Objects of Chapter 8.

1.5. In India, the provisions of Chapter 8 of the Motor Vehicles Act, 1939, particularly sections 94 to 96, were modelled on English statutes then in force. The objects of the Chapter were: (1) to enable a claimant to recover the whatever sum he is in law entitled to, despite the inability of the owner or the driver to pay; (2) to prevent the insurer from escaping liability on the ground of breach, on the part of the insured, of any term of the contract; and (3) to entitle the claimant to recover compensation directly from the insurer.

Hitherto, legislation on the subject of compensation for death or injury from accidents caused by motor vehicles has proceeded mainly on two lines.

(i) Insertion of provisions for enforcing liability towards third parties against the insurer, even though the contract of insurance was between the owner and the insurer, thus modifying the general rule of the law of contract that a third party cannot sue on a contract.

(This change was effected in 1939 and came into force in 1946).

(ii) Creation of a special forum for the trial of claims for compensation, thus modifying the jurisdiction of the courts within the general hierarchy of courts.

Compulsory insurance.

1.6. Insurance against liability incurred to a third party could have been effected even before the Act. But before the Act, the third party, i.e. the party injured by the accident had no right to obtain the benefit of motor insurance *from the insurer,* there being no privity of contract between the third party and the insurer. The Act for the first time conferred this benefit. The provisions for the insurance of motor vehicles against third party risks actually came into force in 1946.

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[1]Paragraphs 2.3 to 2.5, *infra*.

Forum for adjudication.

1.7. Until 1956, however, there was no adequate machinery for the adjudication of claims for compensation for such accidents. It was in 1956 that certain important amendments were made in the Act which completely changed the complexion of the proceedings that might be taken under the Act.

Object of amending Bill of 1955.

1.8. In introducing the Amendment Bill[1] of 1955, the then Minister of Transport thus explained the object of the Bill[2]:—

> "The State Governments are being empowered to set up tribunals to determine the award of damages in cases of accidents involving the death of, or bodily injury to, person arising out of the use of motor vehicles and also to adjudicate on the liability of the insurer in respect of payment of damages awarded. At present, a court decree has to be obtained before the obligation of the insurance company to meet the claims can be enforced. The amendment is designed to remove the existing difficulty experienced by persons of limited means in preferring claims on account of injury or death caused by motor vehicles."

Aemendment of 1956.

1.9. To carry out the above object, the amendment of 1956 introduced sections 110A to 110F. Prior to this amendment, the claimant had in every case to sue the insured person *in the civil courts*[3], and notice had to be given to the insurer if the claimant desired to avail himself of the benefits of section 96. By the amendment, the legislature substituted, for the ordinary remedy of a civil suit, a special remedy which is summary in nature.

The amended Act provides for the constitution of a Claims Tribunal and confers jurisdiction on it to adjudicate upon claims for compensation in respect of accidents involving death or bodily injuries to persons arising out of the use of motor vehicles.[4] Section 110A provides for the procedure for putting up a claim for compensation. Section 110B provides for an award of the Claims Tribunal to be made after giving the parties an opportunity of being heard, and after an inquiry into the claim.

Under section 110C, subject to any rules that may be made in that behalf, the Tribunal may follow such summary procedure as it thinks fit. Section 110D provides for an appeal from the award made by the Claims Tribunal. Under section 110E, compensation money awarded by the Tribunal can be recovered from the insurer, as arrears of land revenue. Section 110F excludes, where a Claims Tribunal has been constituted for any area, the jurisdiction of the Civil Court to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. The Civil Court is also debarred from issuing any injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of a claim for compensation.

These provisions show the importance attached by the legislature to the need for prompt disposal of such claims, while leaving unaffected the principles of substantive law as to liability.

Amendment of 1969.

1.10. By the Amendment Act 56 of 1969, a proviso was added to section 110 of the Motor Vehicle Act, besides making a substantive amendment in the main paragraph of that section. Originally, section 110 permitted petitions before the Claims Tribunal only for compensation for death or bodily injury arising out of the accident. Now, after the amendment of 1969, the third party can make a claim for damage to property also when caused by the accident. The substantive provision creating a minimum statutory liability,—section 95—has also been amended so as to provide that an amount not exceeding Rs. 2,000 in respect of the damage to property of the third party, can be recovered from the insurance company.

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[1]Lok Sabha Bill No. 57 of 1955 which became the Motor Vehicles (Amendment) Act (100 of 1956)

[2]Statement of Objects and Reasons; Gazette of India, Extraordinary Part II, Section 2, No. 47 November 12, 1955, pages 555, 626.

[3]Para 1.7, *supra*.

[4]See, further, para 2.4, *infra*.

The amount for which the insurer would be liable was also raised by the same amending Act. It was also provided that where the death of, or bodily injury to, any person gave rise to a claim for compensation under the Motor Vehicles Act, 1939, and also under the Workmen's Compensation Act, 1923, the person entitled to compensation could claim compensation under either, but not under both of these enactments. Further amendments were made in 1978.

Motor car as the cause of congestion.

1.11. These amendments have substantially served their purpose, but the time has now come to have a fresh look at the law. Rapidity of the growth of motor vehicles has created certain problems, outstripping the means employed to cope with the problems. The motor car has created congestion, not only on the roads, but also in the courts. For this reason there has, in almost all countries, been deep dissatisfaction as to the handling by courts of claims for compensation in respect of death or bodily injury caused by motor vehicle accidents. The common law rule of liability based on fault and compensation payable only by the person committing the tort (or a person who is liable for his default), is believed to be working injustice.

Various alternatives adopted.

1.12 In order to modify the common law rules of liability and the machinery for determining compensation as to accidents caused by the use of motor vehicles, numerous measures have been suggested in various countries.[1] Many of them have been implemented by legislation. For example, there has been legislation in some countries under which, in the case of such accidents, fault need not be proved. Such legislation has come to be known as providing for "no fault" liability.[2]

In some countries, schemes have been enacted, whereunder the State would take over the liability for compensation, which is to be awarded irrespective of fault, though subject to a pecuniary limit[3]. In such schemes other consequential measures are contemplated for providing the necessary finances to the State.

Then, there have been moves for shifting the burden of proof. While the requirement of fault may be retained, the burden of proof—that is to say, the burden of disproving fault—may be shifted to the owner of the vehicle. Measures have also been enacted in certain countries giving the victim a direct remedy against the insurer (and not merely against the wrong-doers). This is, in essence, a modification of the common law rule, whereunder privity is required to create liability.

Devices adopted in various countries to effect reform.

1.13. The devices adopted to effect reform on the subject also vary from country to country. In some countries, such reform has been effeced by judicial decisions.[4] In some other countries, on the other hand, it has assumed the shape of legislation. England has effected it in part by legislation, and, in part, by certain administrative arrangements, particularly, those constituting the Motor Insurers Bureau.

The content of the reform effected in various countries also varies as will be evident from the detailed study[5] that we append.

Strict liability and common law.

1.14. Imposition of strict liability for death or injury caused by motor vehicles is admittedly a departure from the general approach of the common law. No doubt, the common law does furnish certain examples of special rules creating strict (absolute) liability in particular situations, e.g., fire (though later modified by statute).[6] Further, by statutes passed from time to time,—for example, statutes relating to workmen's compensation, nuclear installations and the like—important amendments have been made, eroding the common law rule of liability based on fault. But the common law itself has never gone so far, in the case of accidents

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[1]Chapter 3, *infra* and Appendix 4, *infra*.

[2]See further para 1.14 and 3.14 *infra*.

[3]E.G. New Zealand Accident Compensation Act, 1972 (see Appendix 4, *infra*).

[4]E.G. France (See Appendix 4).

[5]Appendix 4.

[6]Fires Prevention (Metropolis)Act,1774.

caused by motor vehicles. The reason is that Anglo-American law does not classify the driving of a motor vehicle as a "dangerous activity". Even the driving of a defective vehicle is not an abnormally dangerous activity that can be made subject to strict liability.[1]

Question of elimination of fault.

1.15. The present legal framework in India combines the aspect of compensation with some degree of personal liability, in order to deter the reckless and the careless. A solution based on a re-assessment of the significance of the law of tort within the existing legal concept would, of course, be easily acceptable to all concerned. But a more radical reform—elimination of fault—need not be ruled out.[2] Accordingly we propose to consider in detail in this Report[3] the question of elimination of fault as an element of liability.

Commpensation by the State not discussed.

1.16. We do not, however, propose to consider the question of compensation *by the State* to all victims of accidents caused by motor vehicles. Even the very limited recommendation for such compensation made by the Law Commission in one of its earlier Reports for "hit-and-run" cases has not been implemented so far.[4] In this position, we do not think that any more comprehensive scheme of compensation by the State stands a reasonable chance of acceptance in the immediately foreseeable future.

What is proposed in the present Report is a detailed examination of Chapter 8 of the Motor Vehicles Act, 1939, in so far as it is concerned with claims for compensation for death or injury caused by accidents arising out of the use of motor vehicles. Our principal objective will be to suggest rationalisation of the provisions as to liability, improvement in the machinery for adjudication of compensation and other reforms intended to tidy up the relevant provisions.

Reforms relating to Tribunals and procedure.

1.17. Realising that it is desirable that cases arising out of the use of the motor car should not choke the ordinary channels of litigation, the legislature in India has already provided special tribunals in the Motor Vehicles Act for the expeditious disposal of such litigation. However, in order that this object may be effectively achieved, it is necessary that the tribunals contemplated by the Act should be constituted in adequate numbers, and also that their procedure should be streamlined and made as speedy as possible, consistent with the demands of justice. Our recommendations to be made in this regard will bear this aspect also in mind.

Last Reports of Law Commission.

1.18. Before we proceed to discuss in detail various aspects of the subject, we may refer, in brief, to some of the past Reports of the Commission which are relevant to the subject of compensation for accidents caused by the use of motor vehicles. As already stated,[5] compensaton for injury caused by automobiles in "hit-and-run" cases was the subject matter of a Report forwarded by the Law Commission several years ago.[6] The need for expediting the trial and disposal of claims instituted before Tribunals constituted under the Motor Vehicles Act, 1939, was stressed by the Law Commission in its Report on arrears in courts, dealing, respectively, with trial courts[7], and High Courts and other appellate courts.[8]

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[1] *Phillips* Vs. *Britannia Hygienic Oil*, (1923) 2 K.B. 832. See further para 3·14, *infra*.

[2] Chapter 3, *infra*.

[3] Chapter 3, *infra*.

[4] Law Commission of India, 51st Report (Compensation for injury caused by automobiles in hit-and-run cases) (September, 1972).

[5] Para 1.16, *supra*.

[6] Law Commission of India, 51st Report (Compensation for injury caused by automobiles in hit and-run cases) (September, 1972).

[7] Law Commission of India, 77th Report (Delay and Arrears in Trial Courts), page 37, paragraph 10.3 and 10.4.

[8] Law Commission of India, 79th Report (Delay and Arrears in High Courts and other Appellate Courts), para 7·10, category III (b). See also para 7·9, *infra*.

CHAPTER 2

THE PRESENT LAW, AND GENERAL RECOMMENDATION AS TO CHAPTER 8.

Analysis of Chapter 8.

2.1. Chapter 8 of the Act, entitled "Insurance of Motor Vehicles against third party risks", deals not only with insurance against such risks, but also with liability in respect of death or bodily injury resulting from an accident caused by the use of motor vehicles. The Chapter contains provisions of a substantive character, as well as provisions of a procedural character. Amongst the important substantive provisions may be mentioned provisions relating to liability of the insurer and quantification of that liability. Amongst provisions of a procedural character may be mentioned those concerned with Claims Tribunals.

Substantive provisions.

2.2. The substantive provisions in this Chapter posses certain peculiar and interesting features. The legislature has not attempted to codify the principles on which liability may be fixed, this matter being left to the rules otherwise applicable, that is to say, the Law of Torts. In general, in the Law of Torts, in the absence of special rules creating absolute liability, the wrong-doer is liable only for intentional or negligent wrong-doing.[1] This position remains unaffected by Chapter 8. The impact of Chapter 8 lies in this, that the liability becomes enforceable at the victim's instance not only against the persons otherwise liable (owner of the defaulting motor vehicle or his servant or agent, as the case may be), but also against the insurer. (The liability is enforceable, in case of the victim's death, at the instance of certain other persons). The owner of the motor vehicle is, by law, compelled to insure himself against the risk of liability that may be incurred to a third party, and the insurer, within the limits laid down in the Chapter, is made liable to the third party even though there is no contract between them.

Grouping of provisions.

2.3. The provisions in Chapter 8 can be grouped as below :—

Section	*Topic*
Section 93-95A.	The requirement of insurance of motor vehicles against third party risks.
Sections 90-102.	The liability of the insurer vis-a-vis the person alleged to have suffered death or bodily injury arising out of the use of the insured motor vehicles.
Sections 103-107.	Provisions relating to the certificate of insurance, its effect, production and notification.
Section 108.	Co-operative insurance.
Section 109.	Duty (of certain authorities) to furnish particulars of vehicles involved in accidents.
Sections 110-110F.	Claims Tribunals.
Sections 111-111A.	Rules.

Scheme of sections 94-111.

2.4. The scheme of the present provisions, in so far as they are relevant to the subject matter of this Report, may be briefly stated. Section 93 contains certain definitions. Section 94 makes it imperative that there must be an insurance policy in relation to a motor vehicle to cover third party risk before the motor vehicle can be used or allowed to be used in a public place. Section 95 deals with the requirements of the insurance policy. It also lays down the limits of the insurer's liability. Section 96 imposes on the insurer an obligation to satisfy a judgment which might have been passed against the insured in respect of a third party risk. It also enumerates the grounds of defence available to the insurer.

[1]See further para 3·4, *infra*.

Section 97 deals with the rights of third parties against the insurer on the insolvency of the insured. Section 98 casts a duty on a person against whom the claim is made to give information as to the insurer. Section 99 relates to settlement between the insurer and insured persons. Section 100 assigns meaning to the expression "liabilities to third parties ..... ". Section 101 relates to insolvency of insurer. Section 102 deals with effect of death.

Sections 103 to 108 deal with certain matters of detail, concerning insurance. Section 109 imposes a duty on the registering officer or on the officer in charge of a police station to furnish particulars of a vehicle involved in an accident.

Then follow a number of provisions [1](sections 110 to 110E) concerned with Claims Tribunals, their composition, applications before them, their awards, appeals, powers and procedure. Jurisdiction of the Civil Court is barred if a Claims Tribunal is created (section 110F).

Sections 111 and 111A deal with rules.

Tripartite character.

2.5. It should be pointed out that as a result of the provisions made in this Chapter, a transaction of insurance assumes a tripartite character. Normally, insurance, like any other contract, creates a legal link only between the parties to the transaction. The rights of third parties are only against the person insured, there being no direct cause of action in favour of the third parties against the insurer. To this, an exception is created by Chapter 8, the principal provision material in this regard being section 96(1), which deals with the duty of the insurer to satisfy a judgment against persons insured in respect of third party risk. Of course, this broad proposition is to be read subject to the limits of liability as imposed in section 95(2), and is applicable only in respect of that liability which is within the fold of section 95(1). But the point to be noted is that sections 94—96 make an inroad on the common law rule that a third party cannot derive benefit under a contract.

Definitions.

2.6. Chapter 8 itself does not contain definitions of general application. The principal expression "motor vehicle" has been defined in section 2(18). Certain other expressions not material for the present purpose are also defined in section 2.

Chapter 8 Recommendation too revise heading.

2.7. The present heading of Chapter 8 of the Act—"Insurance of motor vehicles against third party risk"—is inadequate, and should be suitably revised. The sections contained in the Chapter do not deal only with insurance (as the present heading would indicate); they deal also with several other matters, some of which are of great legal as well as of social significance[2]. We therefore recommend that the heading should be revised so as to read "Insurance of Motor Vehicles *and Adjudication of Claims for Compensation in respect of accidents caused by motor vehicles*".

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[1]See also para 1·9, *supra*.

[2]See also para 2·1, *supra*.

CHAPTER 3

LIABILITY WITHOUT FAULT

[*Section 92A (New)*]

1. Fault as a condition of liability.

Peculiar features of accidents by motor vehicles.

3.1. We propose to consider in this Chapter the question whether liability for injury from accidents caused by motor vehicles should continue to be governed by the traditional doctrine of fault (which is the present law),[1] or whether there is need for abrogating or modifying that doctrine. This inquiry becomes desirable in view of certain practical difficulties that have been experienced under the present system.[2] While, with the increasing use of motor vehicles, accidents are also on the increase, yet experience shows that proof of the actionable element required to create tortious liability also becomes increasingly difficult in view of the peculiar circumstances of an accident on the road.

Time taken in proof of negligence.

3.2. The question is important, as the persons generally involved in motor accidents are pedestrians, illiterate persons, children or women. Some of them are too poor to afford the help of a competent lawyer for establishing negligence in claim cases[3]. These cases are contested strenously by the insurance company, raising all sorts of technical objections for minimising its own liability. As a result, proceedngs before the Claims Tribunal drag on for a long time before any award is passed. Sometimes, the time-consuming and costly litigation makes the award of compensation, if and when it is made, virtually meaningless. The Claims Tribunals are constituted for the expeditious disposal of motor vehicles claims; but in actual practice there is no expeditious disposal. The inordinate delay in the disposal of these claims is mainly on account of the lifficulty and the time taken in trying the issues of negligence in the use of the vehicle.

Traffic accidents.

3.3 Traffic accidents have developed into one of the great economic and social problems of today. The personal sufferings and economic losses of survivors and disabled persons are great and so are the economic losses and the inconvenience caused to the society, through loss of production, increased social expenses, and strain on the capacity of hospitals and other institutions. These considerations have, in many countries, led to the evolution of special rules applicable to liability for motor vehicles accidents.

Scope of the Chapter.

3.4. Tortious liability for injury caused by an accident is, at present, subject to proof of fault, except in certain special situations.

Some of these special situations are governed by common law rules familiar to students of the law of torts.

Some of them are governed by special statutory provisions[4].

Statutory exceptions to principle of fault.

3.5. It may, for example, be noted that in a proceeding governed by the Carriage by Air Act, the plaintiff need not prove negligence. It is for the air carrier to disprove it, by showing either that he had taken all measures to avoid accident, or that it was impossible to take such measures[5].

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[1]*Canggram* Vs. *Kamalabai*, A.I.R. 1979 Karn. 106.

[2]For the present scheme of the Act, see *United India* Vs. *Union of India*, (1979) 1 M.L.J. 487.

[3]See para 1·2 *supra*.

[4](a) Section 82, Indian Railways Act, 1890.

(b) Section 3, Workmen's Compensation Act, 1923.

(c) The Carriage by Air Act, 1972, First Schedule, (See Appendices)

[5]Carriage by Air, 1972 (69 of 1972), section 5(i) read with the Schedule, Chapter 3, para 56.

It appears[1] that Montreal Protocols Nos. 3-4, 1975, which amend the Warsaw Conventions on the subject, make elaborate provisions as to certain other matters. But the principle of strict liability remains unchanged.

In fact, liability is exonerated only if death or injury has resulted solely from the state of health of the passenger or if the carrier proves contributory negligence. In the latter case, there is some relaxation in favour of the carrier.

Burden of proof in special cases.

3.6. I may also be noted that though the determination of liability is subject to the law of torts, yet the burden may shift to the driver in special cases, e.g., a taxi topping on its off side in corcumstances from which unduly high speed can be inferred[2].

Present position.

3.7. Apart, however, from special rules or statutory provisions, and leaving aside special situations, and according to the position generally understood at present, fault is required, before liability can be established [3] [4] either against the person driving a vehicle causing an accident or against any other person alleged to be vicariously liable. This principle has not been abrogated by the statutory provisions making the insurer liable to third parties, as enacted in the Motor Vehicles Act[7].

Remedies attempted to minimise litigation.

3.8 This position has, by many persons, been regarded as not satisfactory. Legislatures in many countries have addressed themselves to the task of finding out a suitable remedy that would minimise litigation and its attendant evails of delay and arrears in this field. It is realised that accidents by motor vehicles take place suddenly—sometimes in a split second. Very often, there are no witnesses to the occurrence. Even if there are witnesses, they are not able to recollect with accuracy the details of the accident in a manner that would enable the court to fix liability on common law principles. It therfore becomes difficult to establish the facts necessary for a determination of the question whether the person driving the vehicle was at fault.

Difficulties of proof.

3.9. Difficulties of proof, of course, do not necessarily justify a relaxation of the actionable elements of liability in every case. But it is the view of many persons that[5] because of these difficulties which are peculiar to modern highway traffic, justice suffers, in as much as the person who could have recovered compensation is unable to do so, not because fault did not exist, but because it could not be proved.

Added to these considerations is the aspect of delay and arrears in courts and tribunals. By the time the injured person (or if he is dead, his legal representatives) can recover compensation, considerable expenses has to be incurred by him. At the end, the amount recovered becomes inadequate and, by reason of intervening inflation, totally unrealistic.

II. Strict liability.

Legislative service to avoid disputes as to fault.

3.10. Many of the solutions adopted in this context were inspired by the urge to reduce the adverse impact of delay and arrears in this field. A legislature may remove the core of conflict from an established type of dispute by the simple expedient of defining the right in such absolute terms that it can no longer be seriously challenged. For example, a law giving the passenger an absolute "no fault" right to recover economic loss makes it needless to argue whether the driver or anyone else was negligent in causing the injury. It thus eliminates one of the important causes of delay in the particular field.

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[1] *Cf.* Carriage by Air and Road Act, 1979 (c. 28), First Schedule, Chapter III, Articles 17 and 23.

[2] *Gangaram* Vs. *Kamalabia*, A.I.R. 1979 Karn. 106.

[3] *Babu Singh* Vs. *Champa Devi*, A.I.R. 1974 All. 90, 92.

[4] *Jagjit Singh* Vs. *Ram Chand*, A.I.R. 1969 Delhi 183.

[5] *Kamla Devi* Vs. *Kishan Chand*, A.I.R. 1971 M.P. 113.

[6] *State of Punjab* Vs. *V. Kalia*, A.I.R. 1969 Punjab 172.

[7] Section 95.

[8] See further para 3·43, *infra*.

Strict liability.

3.11. On this basis, strict liability in the realm of torts has been created[1]—to give only a few examples—in regard to :—

(1) product failures;

(2) automobile accidents.

In family law, it has been created for :—

(3) marital break up.

Strict liability has also been created in criminal law for certain offences—a matter which the law Commission of India had occasion to consider at length a few years ago.[2]

Legislative device to avoid disputes as to quantum.

3.12. Imposition of strict liability focusses itself on the saving of judicial time by eliminating one of the issues that may otherwise arise. A similar approach could be adopted to liquidate contentions over how much the victim's loss is worth. This can be done:—

(a) by prescribing for each injured victim a flat sum (regardless of how much he suffered), or

(b) by installing a scheme by which the pecuniary value of benefit in regard to each specific type of injury sustained is assessed—as in the Workmen's Compensation Act.

Common law.

3.13. To revert to the question of liability, at common law, strict liability existed only in a few special cases, for instance, with respect to the maintenance of dangerous animals, for defamation and under the rule in *Rylands* v. *Fletcher.*[3]

In addition, a rebuttable presumption (known as the doctrine of *res ipsa loquitur*) deduced fault or negligence from the nature of the thing or act itself, such as defective construction or negligent use.

Liability for motor vehicles.

3.14. However, Anglo-American law at a critical period of legal development missed the chance of classifying the driving of a car as an abnormally dangerous activity subject to strict liability[4], [5].

III. No fault system.

Scope of reforms based on "No fault" liability.

3.15. There has been an endeavour towards reform which seeks to find more just solutions for ordinary claims based on negligence, particularly with respect to the great number of automobile accidents. These reforms seek to abolish the fault principle in tort law and to award compensation without proof of fault ("No-Fault").

Further reform movements, although yet in their infancy, seek to extend the "no fault" principle to almost all claims,—principally to products liability, but also to other kinds of liability, such as medical malpractice.

No-fault system.

3.16. In a "No-fault System", compensation is granted for certain injuries without proof of fault. "Compensation" in this context means compensation for actual losses, but not for intangible damage. The injured person will, under a "no fault" system, be in a better position, compared with traditional tort law, since he will be entitled to receive immediate compensation for his actual loss (expenses, loss of profits or wages) without lengthy litigation or proof of fault.

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[1]See (July 10, 1977) Economist.

[2]Law Commission of India,—

(a) 29th Report (Proposal to include certain social and economic offences in the I.P.C.), and

(b) 47th Report (Trial and punishment of social and economic offences).

[3]*Ryland* Vs. *Flecher*, (1868) L.R. 3 H.L. 330.

[4]*Phillips* Vs. *Britannia Hygeinic Laundry*, (1923) 1 K.B. 539; (1923) 2 K.B. 832.

[5]*Cf.* para 1·14. *supras.*

IV. Compensation systems—Varieties of.

Various systems of compensation for harm.

3.17. We do not propose to go into details of the different compensation systems in force for providing benefits to victims of accidents. But it is important to bear in mind that several systems for the compensation of harm exist. Their very existence shows that the law has not hesitated to adopt a special approach, wherever special reasons seemed to justify It. These special reasons would, of course, include considerations of social justice and the practical necessities of the situation.

3.18. As to the variety of systems, there may be[1]—(1) a pure system of negligence law (this is the traditional common law rule), or (2) a system of negligence law supplemented by liability insurance (i.e. the position under the present Motor Vehices Act in India)[2].

Then, there may be (3) a system of strict liability (but without insurance covering the liability), or (4) strict liability, also supplemented by liability insurance[3].

In these cases, the tort-feasor remains liable and his liability constitutes the initial basis of actionability,—though the liability can be shifted to the insurer, or *may even be required by law to be so shifted.*

(5) Besides these systems, there may be a "loss-insurance" system, such as the workmen's compensation law.

In the systems just now referred to, the victim provides for himself for the future (or is made to so provide).

(6) Finally, there may be a system of social security. The primary liability in such a scheme is on the State or on another agency officially created.

V. Developments as to insurance.

Liability based on fault.

3.19. In general, the western law of liability for unlawful harm is based on the principle of fault. The conceptions of *dolus*[4] (fraud or bad faith) and *culpa*[5] (fault or negligence) inherited from the Roman law, run through the centuries and remain the basis of the modern law,—though their practical effect is greatly broadened in recent times by the development[6] of the law of negligence, both in the common law and in the civil law[7].

Qualification to fault theory.

3.20. In the major western legal systems, however, the principle of fault has, in general, been qualified in some form by giving the principle of absolute liability, in respect of dangers created by the respondent, a substantially wider application than was known to Roman Law[8].

English and American law.

3.21. In English law, we have the rule in *Rylands Vs. Fletcher,*[9] in American law, the principle of liability for ultra-hazardous activities; in French law[9], the *theorie du resoue cree;* in German law, the principle of responsibility for risks.[11]-

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[1]Adapted from Keeton & Keeton, Cases & Materials on Tort (1977), page 776.

[2]For Engilish law, see para 5·4, *infra.*

[3]*Cf.* recommendation in para 3·62, *infra*, read with section 95.

[4]Nocholas, Introduction to Roman Law (1975), page 170.

[5]Nicholas, Introduction to Roman Law (1975), pages 170 and 22J.

[6]P.H. Winfield, "The History of Negligence in the Law of Torts" (1926) 42 Law Quarterly Review, pages 184-201.

[7]Jenks, Common Law of Mankind (1958), page 160.

[8]*Cf.* Buckland and MacNair, Roman Law and Common Law (1936), pages 313-314.

[9]*Rylands* Vs. *Fletcher*, (1868) L.R. 3 H.L. 330.

[10]Planiol, Traite elementaire du droit civil (3rd ed . by Ripert, 1949), Vol. 2, pages 315-317

[11]Jenks, Common Law of Mankind (1958), page 160 .

[12]U K Foreign Office, Manual of German Law (1950), Vol 1, pages 108, 110.

In some systems, however, it has been very sparingly accepted—for instance, in Roman-Dutch law as applied in South Africa, though apprantly not to the same extent in Roman-Dutch law as applied in Sri Lanka[1].

Emphasis on insurance.

3.22. All these relaxations of the rule limiting liability emphasise, more than ever, the problem of what is to be done with the damage which, as between the parties, is made to "lie where it falls". The obvious answer is that it should be covered by insurance,—voluntary, compulsory or governmental,—according to the policy of the State concerned[2].

VI. Indian law-need for reform.

Need for reform.

3.23. So much regards the general trends on the subject of liability for accidents caused by motor vehicles. We now turn more specifically to the need for reform of Indian law.

ronouncements of High Courts.

3.24. Difficulties and impediments in the expeditious disposal by Claims Tribunals of claims for compensation under the Act have been adverted to by some High Courts, since 1969. The Patna High Court[3] went to the length of ruling that in claim cases it was not essential to allege and prove negligence for making the Insurance Company liable for payment of compensation and that the liability of the Insurance Company was absolute, though limited to the extent provided in the policy. As against this view, many other High Courts held that the liability to compensation arises only on the finding of negligence. The later view was upheld by the Supreme Court[4]. But need for reform was noted in *Kesavan Nair* Vs. *State Insurance Officer.*[5] Krishna Iyer J. (as a Judge of the Kerala High Court), while holding that the insurer is liable to pay only if the insured is liable to pay, observed :—

> "Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurer, instead of its being restricted to cases where the vehicle operator has been shown to be negligent. This is more a matter for the legislature and not for the court. But this is a lacuna in the law which I think it would be just to rectify."

Flow in patna ruling.

3.25. This plea for reform of the law itself shows that the present position is different. The flaw in the Patna decision[6] referred to above (which dispenses with proof of fault) lies in the assumption that car insurance policy covering third party risk is a contract of indemnity *even as between the insurer and the third party*. This is not so. The policy is a contract of indemnity only as between the owner of the vehicle and the insurer. The liability of the assured to pay compensation in respect of death or bodily injury to a third party—and thus the right of the third party against the insurer—can arise only out of some tortious act of the assured. There is, therefore, no strict liability on the part of the Insurance Company to pay compensation, as the law now stands.

Supreme Court decision.

3.26. It is not necessary to go further into the question whether, under the existing provisions of the Motor Vehicles Act, proof of negligence is necessary for award of compensation, as the matter is now concluded by a decision of the Supreme Court[7].

View of Supreme Court.

3.27 According to the Supreme Court[8] :—

> "The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can "only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate

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[1] *Cf* R.W. Lee, Introduction to Roman-Dutch Law (3rd ed. 1931), pages333-334.

[2] Lawson, Negligence in the Civil Law (1950), page 64.

[3] *New India Assurance Co. Ltd.* Vs. *Sumitra Devi*, (1971) A.C.J. 58 (Patna).

[4] *Minu B, Mehta*, pata 3·27, *infra*.

[5] *Kesavan Nair* Vs. *Stae Insurance Officer*— (1971) A.C.J. 219 (Kerala).

[6] *New India Assurance Co. Ltd.* Vs. *Sumitra Devi*, (1971) A.C.J. 58 (Patna) (para 3·24, *supra*).

[7] *Minu B. Mehta* Vs. *Balkrishna Ramchandra Nayan*, (1977) 2 S.C.R. 886; A.I.R. 1977 S.C. 1248.

[8] *Minu B. Mehta* Vs. *Balkrishna Ramchandra Nayan*, A.I.R. 1977 S.C. 1248, 1257, 1259, (1977) 2 S.C.R. 886.

anyone else. The Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of torts. If, under the law, a person becomes legally liable, then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on *a public place without proof of negligence, if accepted,* would lead to strange results."

Suggestions made by later decsions of the Supreme Court.

3.28. Since the decision of the Supreme Court in *Minu B. Mahta's case* [1-2] the Supreme Court has been repeatedly emphasising the need for amending the Motor Vehicles Act so as to incorporate in it the principle of "no fault liability" in regard to road accidents. In a subsequent case, [3]Krishna Iyer J. has observed :—

"An explosive escalation of automobile accidents, accounting for more deaths than the most deadly diseases, has become a lethal phenomenon on Indian Roads everywhere. The rural impact of this tragic development on our legislatures, courts and law enforcing agencies is insufficient, with the result that the poor who are, by and large, the casualty in most of these cases, suffer losses of life or limb and are deprived of expeditious legal remedies in the shape of reasonably quantified compensation promptly paid—and this, even after compulsory motor insurance and nationalisation of insurance business ..... Medieval roads with treacherous dangers and total disrepair, explosive increase of heavy vehicles often terribly overloaded and without cautionary signals, reckless drivers crazy with speed and tipsy with spirituous "potions, non-enforcement of traffic regulations designed for safety but offering opportunities for systematised corruption and little else and, as a cumulative effect, mounting highway accidents, demand a new dimension to the law of torts through no fault liability and processual celerity and simplicity in compensation claims cases. Social justice, the command of the Constitution, is being violated by the State itself by neglecting road repairs, ignoring deadly overloads and contesting liability after natonalising the bulk of bus transport and the whole of general insurance business. The jurisprudence of compensation for motor accidents must develop in the direction of no-fault liability and the determination of the quantum must be liberal, not niggardly, since the law values life and limb in a free country in generous scales."

The learned Judge has re-iterated this view in many cases decided later.

Judgment of Supreme Court Difficulties enumerated in a other judgment.

3.29. It will be appropriate to quote from a judgment of the Supreme Court, 'where some of the difficulties experienced in the present system have been adverted to, at some length[5] :—

"14. The instant case brings into focus the difficulties experienced by dependants in obtaining relief before the Motor Accidents Claims Tribunal. The victim in this case Bhagwan Das was run over by a motor vehicle on the night between 8th and 9th July, 1961 leaving behind him his wife Bishan Devi and four minor children. For eighteen long years they have been before courts asking for some compensation for the death of their bread-winner due to rash and negligent driving of a motor vehicle.

"One is tempted to remark that they would have been better off but for their hope of getting some relief in courts. They not only had to spend their time in courts but to borrow to fight for their rights. It is common knowledge that such helpless and desperate condition is exploited by unscrupulous persons who manage to get away with the bulk of the compensation money if and when the claimants succeed in getting it.

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[1] *Minu B. Mehta* Vs. *Balkrishna Ramchandra Nayan*, (1977) 2 S.C.R. 886; A.I.R. 1977 S.C. 1248. 1257.

[2] Para 3·27, *supra*.

[3] *Concord Insurance Co.* Vs. *Nirmala Devi*. (1979) 3 S.C.R. 694; A.I.R. 1979 S.C. 1666, 1667. paragraphs 1 and 3 (October).

[4] *Bishan Devi* Vs. *Sirbaksh Singh*, A.I.R. 1979 S.C. 1862, 1866, 1867 (November) (Kailasam J.).

[5] See also para 1·2, *supra*.

"15. The law as it stands requires that the claimant should prove that the driver of the vehicle was guilty of rash and negligent driving. The burden thus placed is very heavy and difficult to discharge by the claimant. The records of police investigation are not made available to the Tribunal. The officers who investigated the accident are seldom available to give evidence before the Claims Tribunal and assist in coming to a proper conclusion. The insurance company in quite a few cases, as in the present one, takes an unreasonable stand and raises all sorts of untenable pleas just to thwart relief to the dependants. In many of the claims it turns out to be beyond the capacity of the claimant to maintain his claim in a court of law.

"16. Due to the inordinate delay in disposal of claim petitions before the Motor (Accidents) Claims Tribunal the badly needed relief to the claimants is not available for several years. Further time is taken in appeals. All along, the dependants will have to carry on without any relief. It has been time and again pointed out by courts that insistence of proof of rash and negligent driving causes considerable hardship on the claimants.

"17. We may point out that repeated suggestions have been made by this Court and several High Courts expressing the desirabilty of bringing a social insurance which would provide for direct payment to the dependants of the victim. This Court in *Minu B. Mehta* Vs. *Balkrishna Ramchandra Nayan*[1] has referred to the decision of the Kerala High Court in *Kesavan Nair Vs. State Insurance Officer*[2], where the High Court expressed thus :—

> "Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurers."

"The Madras High Court in *M/s. Ruby Insurance Co. Ltd.* Vs. *V. Govindaraj*, A.A.O. Nos. 607 of 1973 and 296 of 1974 decided on 13-12-1976 has suggested the necessity of having *social insurance to provide cover for the claimants "irrespective of proof of negligence to a limited extent, say, Rs.* 250 *to Rs.* 300 *a month."*

Recent judgment of the Supreme Court.

3.30. The following observations made in a recent judgment of the Supreme Court[3] may also be noted in this context :—

> "This petition for special leave under Art. 136 is by a truck driver whose lethal hands at the wheel of a heavy automobile has taken the life of a scooterist—a deadly spectable becoming so common these days in our towns and cities. This is a case which is more a portent than an event and is symbolic of the callous yet tragic traffic chaos and treacherous unsafety of public transportation ..... the besetting sin of our highways; which are more like fatal facilities than means of mobility. More people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country. What with frequent complaints of the State's misfeasance in the maintenance of roads in good condition, the absence of public interest litigation to call state transport to order, and the lack of citizens' tort consciousness, and what *with the negelect in legislating "into law no-fault liability* and the induction on the roads of heavy duty vehicles beyond the capabilities of the highways system, Indian Transport is acquiring a menacing reputation which makes travel a tryst with Death."

3.31. It is needless to add that we have borne these observations in mind when making our recommendations on various matters in this Report.

VII. Need for reform as to fault principle.

Justification.

3.32. Coming, first, to the matters that fall to be considered, the most important question relates to the principle of liability. In our opinion, the incorporation of the principle of liability without fault in the Motor Vehicles Act by an amendment is essential in the interests of justice. He who creates a risk must bear the consequences.

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[1] *Minu B. Mehta* Vs. *Balkrishna Ramchanda Navan*, (1977) A.C.J. 119; A.I.R. 1977 S.C. 1248, 1259.

[2] *Kesavan Nair* Vs. *State Insurance Officer*, (1977) A.C.J. 219.

[3] *Ratan Singh* Vs. *State of Punjab*, (10-1-1980) S.C.W.R. Vol. 35, Part 1, pages 29, 31.

Two major considerations justifying no fault liability.

3.33. It is perhaps unnecessary to set out elaborately the arguments in favour of the introduction of no fault liability. In the course of the discussion of the position elsewhere, we have already mentioned most of the arguments relevant to the subject. We have also made a refrence to judicial pronouncements in India which strongly support reform of the law on the subject. However, for convenience, it may be stated that two major considerations justify the introduction of no fault liabilty in this particular sphere—namely, social justice and practical necessity.

In a sense, social justice would be the inspiring principle of all such legislation. But here that aspect becomes of particular importance. The motor car is productive of death or bodily injury more frequently and more intensely than most other activities. The harm that is caused by its operation is, in its magnitude and frequency, peculiar and of an extraordinary character. One could even put the rationable of the matter by stating that "fault" comes into being from the very use of the motor vehicle, and existence of fault need not be proved again separately on each individual occasion when an accident is caused by the use of the motor vehicle.

In England, the Select Committee, to which the U.K. Bill proposing no fault liability was referred, considered that a motor-car on the road could properly be regarded as falling within the rule [1-2] in *Rylands* Vs. *Fletcher* and that the obligation to compensate innocent pedestrains ought to be regarded as a duty of the motoring community as a whole, rather than of the individual motorists who cause the damage[3].

These are facets of social justice. In addition, there is the practical aspect. The practical necessity for reform of the law by introducing no fault principle lies in the almost insurmountable difficulties of proof that are encountered by every victim of an accident caused by a motor vehicle, when he is called upon to prove fault as a pre-condition of such liability.

Reduction of delay.

3.34. The incorporation of "No-fault liability" principle will considerably reduce the delay that occurs in the disposal of claims cases by the Claims Tribunal, making it easy for the person sustaining injury in an accident of the nature specified in section 110(1) (or the heirs of a person killed in such an accident) to obtain compensation without being required to fight a long-drawn battle for obtaining it. The difficulties of litigants have been judicially adverted to[4] and we have already referred to some of the pronouncements on the subject. As late as May, 1980, a reported judgment of the Supreme Court refers to them[5], and also makes certain (not very charitable) comments on the manner in which a public transport corporation conducted its defence in that particular case.

This aspect of difficulty of proof has been well stated in a recent English article[6]—

> "There is the notorious difficulty of ascertaining the facts, especially after a long lapse of time There is the unreliability of witnesses (if indeed they are available) to events which are often of spilt-second duration. And there is the difficulty—and consequent uncertainty—in distinguishing negligent from non-negligent conduct in a context where, we are told, even a good driver (whatever that may mean) makes on the average a mistake every two miles or, according to another study, nine mistakes every five minutes.
>
> "All these factors make the bringing of a tort action for a motor vehicle injury a precarious undertaking, especially for the plaintiff who cannot claim Legal Aid."

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[1]88 H.L. Deb. 5th Series, Col. 1046.

[2]It is interesting to note that the Bill was supported by Viscount Sankey and Lord Buckmaster: 84 H.L. Deb. cols. 551, 562.

[3]Cf. Douglas Payne, "Compensating the Accident Victim" (1960) 13 C.L.P. 95, 93, 94.

[4]See paragraphs 3·28 to 3·30, *supra*.

[5]*Rajasthan State Road Transport Corp.* Vs. *Narain Shanker*, A.I.R. 1980 S.C. 695, 696, para 3 (May).

[6]Norman S. Marsh, "The Pearson Report" (Oct, 1979) 95 L.Q.R. 513, 524,

Position elsewhere as to no fault.

3.35. These, then, are the major considerations for reforming the law on the lines suggested. The principle of "no fault liability" has already attracted attention in many other countries,[1] where the soundness of the major reasons advanced in the preceding paragraphs has, in substance, been accepted.

The developments are not so recent as may appear at the first sight. In England, a Bill, which would have made motorists strictly liable to pedestrians, without proof of fault, was, in fact, given a third reading by the House of Lords in 1934, though it was not proceeded with in the House of Commons.

Speeches in the House of Lords.

3.36. It would be of interest to quote some of the speeches made in the Debates in he House of Lords on the Bill of 1934.[2] Lord Danesfort said—

> "The object of the Bill is to enable non-motoring users of the road, such as pedestrains "and pedal cyclists, when they are injured on the roads by a motor vehicle, to obtain compensation, and in the same way for compensation to be obtained when a pedestrian is killed. My Bill proposes that this compensation should be obtainable without the necessity of proving negligence on the part of the person who caused the accident, provided—and this is a most important proviso—that the death or injury was not caused by the negligence of the person so killed or injured. If it is shown that the accident was caused by the negligence of the person killed or injured then, under the Bill, no claim for compensation arises.
>
> "This is admittedly an alteration of the existing law, but I hope to show your Lordships that the alteration is both just and necessary. May I say a few words about the dangers of the roads today? The position is really an intolerable one. The injuries on the roads have reached a figure which imposes intolerable suffering on tens of thousands of pedestrains and their relatives, and the figures have stirred the conscience of the nation."
>
> * * * * *
>
> "Such being the appalling toll of the roads on pedestrains, may I shortly call your Lordships' attention to the difficulties under the existing law in the way of pedestrains—and in the term "pedestrains" I include pedal cyclists—obtaining compensation? The first fundamental difficulty arises from this fact. The motorist is always insured; he is bound to be by Act of Parliament; the pedestrian is rarely if ever insured; and the result is that the pedestrian, at his own cost, has to fight powerful insurance companies, who in cases of death or serious disability, will raise all possible defences. I do not blame them for that. In minor cases I believe it is true that the insurance companies often behave generously enough, and pay compensation, though perhaps it may be inadequate, without bringing the injured person into Court, but in the more serious cases they feel bound in their own interest to fight them and to raise every possible legal defence that is open to them.
>
> "Let us see what those legal defences are. The padestrian goes into Court to claim compensation. The first obstacle which he has to surmount is the duty which is thrown upon him of proving negligence on the part of the driver. That is no "easy task. If the pedestrian is killed then, of course, the main witness in support of the claim is not available. If, on the other hand, the pedestrian is seriously injured, his recollection, no doubt, is confused and is not very perfect, and he has to try to get outside witnesses in support of the claim on the ground of negligence against the motorist. It is exceedingly difficult and expensive to get those outside witnesses, and it is not at all easy for a pedestrian who is fighting his own case to go to that expense. The result is that in many cases the pedestrian is compelled to take what compensation the insurance company chooses to give him rather than indulge in a terribly costly litigation which his resources are unable to meet. I believe it is not too much to say that the dice are loaded against the pedestrian when he seeks compensation.

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[1] For details, see Appendix 4.

[2] Vol. 84. H.L. Debata, coles. 543, 544, 584.

"But let me assume that the pedestrian has got over the first difficulty in the Law Courts and has successfully proved negligence on the part of the motorist. What happens then? It is open to the insurance company to say : 'True it is that the driver was negligent, but you were also negligent'. In others they raise what is called in law, as your Lordships know, the defence of contributory negligence. The claimant has "rebut that defence. If he succeeds in doing so, well and good. If he fails, his claim is very liable to be defeated in toto. I doubt if there are many branches of the law on which there has been more litigation, and more very costly litigation, than this question of contributory neglince.

* * * * *

"The justification for this Bill does not rest solely on the sufferings and the helplessness of the victims. There is a broader basis of justification for the Bill. It is this. Parliament has altered the law of this country in order to enable the motorists to travel at speeds and under conditions which, without that legislation, would have been utterly impossible. The result of this change in the law has brought about appalling dangers to pedestrians. The highways, instead of being reasonably safe places for pedestrians, have become almost the most dangerous places in the country. As compared with railways, of course, they are infinitely more dangerous. I need hardly remined your Lordships that a pedestrian has a Common Law right to use the roads: a Common Law right in common with all His Majesty's subjects, to use the roads in a reasonable manner. Now, "however, if he uses the roads in a reasonable manner he gets killed. Is not the truth of the matter that a resolution has been effected in road traffic by legislation in favour of motorists? I ask your Lordships whether it is not reasonable that the law should be altered in favour of the pedestrian to the extent—I think the moderate extent—which I propose.

"The principle of the alteration which I propose—namely, that the injured person should get compensation without having to prove negligence on the part of the driver—is no revolutionary proposal. It involves a principle which has already important legal and legislative analogies."

"As regards legislative analogies I need only refer to the Workmen's Compensation Act where the employer is bound by law to pay compensation to his workmen who are injured, although there is no negligence on the part of the employer, and the only exception is where the workmen has been guilty of serious and wilful misconduct."

* * * * *

"I will now refer very shortly to the provisions of the Bill itself." Clause 1 provides that :

> "Where bodily injury is caused by or arises out of the use of a motor vehicle on a road, damages shall be recoverable in respect of such injury from the person using the motor vehicle or from any person causing or permitting him to use it unless the injury was caused by the negligence of the person so injured."

"That is the exception which I think it is proper to make, and possibly a further exception might be made in Committee by introducing, as in foreign countries, the accident which arises under *force majeure*. Then the clause proceeds :

> "Provided that this section shall not apply to bodily injury suffered by a person who at the time of the occurrence of the event out of which the bodily injury arose was using or being carried in or upon a motor vehicle."

"The effect of that is that the Bill does not apply to an accident caused by one motorist to another.

"The reason for leaving out such a case is that it simplifies the Bill and, further, that where one motorist causes injury to another the case is essentially different from that in which a motorist causes injury to a pedestrain. Where one motorist causes injury to another both are insured, and an action for compensation is fought out by the insurance companies, and no difficulties exist of the extent of character which arise in the case of a pedestrian.

Clause 2 of the Bill provides :

"The liability imposed by this Act shall be a liability within the meaning of Part II of the Road Traffic Act, 1930."

"The effect of that clause is that the motorist will have to insure against the liability imposed upon him by this Bill. No doubt, some increase of premium may have to be paid, but it ought not to be excessive. I have been told that it is not fair that the careful motorist should have to pay a premium because other motorists are reckless, but that is the existing law. There is no exemption from insurance in the case of the careful motorist. Every motorist, careful or "not, has to insure, and properly so, and so it would be under this Bill".

Clause 3 is merely a definition clause, saying that—

'motor vehicle' and 'road' in this Act have the same meaining as in the principal Act and the expression 'bodily injury' includes fatal injury."

"Then, there is a saving clause as to other remedies :

"Except as expressly provided by this Act nothing in this Act contained shall be deemed to affect the rights of action or other remedies which any person would have had if this Act had not been passed."

"That would preserve, for instance, rights under Lord Campbell's Act. where in certain cases the dependants of a person killed have a right of action against the person through whose misconduct the death arose."

Viscount Sankey's speech.

3.37. The Lord Chancellor (Viscound Sankey) in the course of the Debates expressed these views[1]:

"My Lords, with your permission, I desire to say a few words upon the legal issues which are involved in this Bill. It is difficult to offer any strong opposition to the Second Reading of the Bill. On the contrary, some of its proposals are attractive. I would go further and say that some of them are not unreasonable, and must command a considerable measure of sympathy. As the law at present stands a pedestrian who has been injured by a motor vehicle on a road has to prove, in order to obtain damages, that the person driving the car was guilty of negligence which caused the accident and the injury.

"The purpose of the Bill, as expressed in the first clause, is to shift the onus of proof and in some respects to alter the incidence of liability, by limiting the defence to showing that the accident was caused by the negligence of the pedestrian. It is a usual principle of English law that the plaintiff in such a case must prove that the defendant has been negligent, and probably those of us who have had experience of trying these cases would say that the plaintiff succeeds in the majority of cases. There is, however, more than one principle in the law, and in the application of principles there is always a law of diminishing returns. The further some principles "are extended the less useful or expedient they are apt to be found. There is another principle in our law which says that a person who keeps a savage animal, such as a tiger or a lion, does so at his peril, and if he brings such an animal on the highway and if the animal escapes or gets out of control the owner is liable for the consequences, apart from any negligence on his part.

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[1]Vol. 84, H.L. Debates, col. 554.

"This is no new principle, but a principle which has been in our law for generations, and it does not seem to be a very alarming or revolutionary change to apply it to a potentially dangerous machine like a motor vehicle. At any rate, it does not seem unjust to say that where a motor car has injured a pedestrian the onus should at least be on the driver to establish some lawful defence, if he is to escape paying damages. What defences should be open to him may be another question, with which I will deal in a minute, but it canot well be disputed that a motor car which is being driven at a high speed is a potentially dangerous machine. I need hardly remind your Lordships that a railway train has fixed rails, a fenced track and signals, while a motor car on the high road has none of these, and motors are often driven at the speed of an express train.

"Those of us who have tried such cases know well the rule of thumb, which is more or less accurate, that half the number of miles per hour is the number of yards per second, so that fifty miles per hour is twenty-five yards per second. That is to say, while I count one, two, a motor travelling at fifty miles per hour will have gone fifty yards, and that does not give a pedestrian very much time to cross the road when a motor which is fifty yards off is coming along. The difficult question is not that of putting the onus on the motorist, but on deciding what defences shall be open to him, and it is there the Bill may be going rather too far. The only defence permissible under it is for the defendant to satisfy the Court that the accident was caused solely by the negligence of the pedestrian.

* * * * *

"This Bill, if it passes, will make a considerable difference in insurance policies. That is a subject on which I am not able to give your Lordships much assistance, but the information supplied to me is this. Informal inquiries have been made as to the possible effect which the passing of this Bill would have upon the rates of premium charged for policies complying with "Part II of the Road Traffic Act, but it seems doubtful whether the companies will be able to give any very definite figure. That a substantial increase in these rates would be necessary can hardly be doubted. In the first place an entirely new class of accident would rank for compensation—namely, where there has been no negligence on the part of the motorist, or no proved negligence. Secondly, the number of cases in which excessive or even unfounded claims would be pressed by unscrupulous litigants would undoubtedly be increased and the evil is one which already is a matter of serious concern to insurance companies."

Lord Buckmaster's speech.

3.38. Lord Buckmaster expressed himself thus in the Debates[1]—

"It seems to me that this Bill deals with a very real existing mischief. It happens that owing to action I took a short time ago in this House I have been the recipient of an enormous number of letters from those who have suffered accidents at the hands of motor cars. Some are terrible to relate, but the ones which moved me most have been tales of poor men who say they can get no remedy because they find themselves immediately up against a wealthy insurance company and they have no money to go to lawyers to fight them. Anyone who knows anything of the history or negligence actions in the Courts knows that is true and the man, unless he obtains leave to sue *in forma pauperis,* cannot get anybody except what are known as speculative lawyers, who are by no means the most desirable class in the community to encourage. Apart from that, this man has a formidable wealthy opponent and cannot get what a man who is in a position to fight can get. Even if he could he has, as has been said, to be put to great expense in getting witnesses. Further, he may be in the most difficult position that, owing to the blow that may have nearly cost him his life, he is not able to give clear and definite evidence as to what has occurred. I heard the noble Earl, I have no doubt inadvertantly, refer to the unfortunate motorist, but he suffers no such shock when he is running down a pedestrian.

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[1]Vol. 84, H.L. Debates, col. 563.

"We are dealing with the case of a motor car running a man down. I say that in that case the man run down is practically incapacitated from giving a clear account and that the motorist is not. If there is some rare occasion where that "is not so it is a matter too small for the law to consider. I believe the right course is to provide that there should be an insurance against every accident caused to a pedestrian by a person driving a motor vehicle and that insurance should cover everything. The present insurance seems to me to be the most mischievous you could create because it insures a man against the consequences of his wrong-doing. So far from discouraging him from doing wrong it encourages him. Why should these reckless people pause ? If they injure anyone they do not suffer in person or in pocket and it is about time the law was changed.

"On a former occasion the noble Earl, Lord Howe, made some most valuable suggestions as to what might be done, but I do not think they are relevant on this Bill which merely affects the question of civil liability. Those who drive motor cars have received a very great concession at the hands of the public. They have obtained dominion of the road, and foot passengers, who were formerly equally entitled to their use, are now nothing but people permitted to use the roads on tolerance, and they have positively been permitted by Statute to drive these cars at any place they please on the country "roads subject to ineffectual restrictions about reckless and dangerous driving. When they have that right it is only fair that they should have some further obligation cast on them. Of what the result of the exercise of the right has been the figures are only too evident. It is no use saying those figures refer to sentiment. They refer to innocent people killed and wounded on the King's highway in numbers that stagger us to believe. I say the Bill ought to pass, and that steps ought to be taken swiftly and drastically to secure that once more there shall be security for the people to use the roads of this country which are their rightful heritage."

Lord Danesfort's speech.

3.39. Lord Danesfort, later in the Debates, quoted[1] clause 1 :—

Damages recoverable in case of bodily injury.

1. (1) Where bodily injury to a person is caused by or arises out of a use of a motor vehicle on a road or in a place to which the public have a right of access damages shall be recoverable from the owner of the motor vehicle in respect thereof without proof of negligence or intention "or other cause of action as though the injury had been caused by his wilful act, neglect or default, except where the injury was solely due to the negligence of the injured person :

Provided that—

(a) where the injury was contributed to but not solely due to the negligence of the injured person there shall be taken into account in computing the damages the degree in which the negligence of such person contributed to the accident; and

(b) where bodily injury is caused or arises as aforesaid in circumstances in which—

(i) damages are recoverable from the owner in respect of the said injury by virtue only of the foregoing provisions of this section; and

(ii) a legal liability is created in some person other than the owner to pay damages in respect of the said injury; and

(c) this sub-section shall not apply to bodily injury suffered by a person who at the time of the occurrence of the accident was driving or being carried in or upon a motor vehicle.

(2) Where bodily injury is caused as aforesaid, the fact that any financial payment is made or offered or any other assistance given or offered to

[1]Vol. 88. H.L Debates, col 1035.

the person injured by the owner of the motor vehicle or any other person shall not of itself be regarded as implying any admission of negligence in the driving or management of the motor vehicle."

Objection anticipated.

3.40. Lord Danesfort, during one of the readings, anticipated one objection thus[1]—

"It may be said—it has been said, and probably will be said again—that it is hard on the motorist to have to pay, as he undoubtedly would have to pay, a somewhat increased premium to insure him against liability under this Bill. I doubt if the premium would be very considerable, but I would ask your Lordships to consider this. The motorist has, under the existing law, which has been altered in his favour, the right to go over the roads at any speed he likes, and that causes this devastation and suffering. I ask which would be the harder case—to ask the motorist under these conditions to pay a somewhat increased premium to cover his liability in respect of these immense concessions which have been made to him by the law, or to deny, as the law at present denies, to something like 3,000 pedestrians every year who are killed and something like 60,000 or 70,000 pedestrians who are injured, the right to obtain adequate compensation for themselves or their dependants, for death or injury."

Third reading.

3.41. During the third Reading, Lord Danesfort explained the principle by quoting the Select Committee[2] :—

"The Select Committee go on to say in paragraph 10—perhaps your Lordships will pardon my reading this paragraph, because it really summarises far better than I can do the principle of the Bill :

"By reason of the precedents referred to above the Committee have regarded themselves as free to consider, entirely on its merits, the question as to whether, in the cases with which the Bill deals, good reason was shown for making a further departure from the general principles of the law of negligence. The Committee have come to the conclusion that some such departure is justified. They think, on the one hand, that a motor car upon the road, especially in view of the vast and constantly increasing volume of motor traffic, may be regarded to some extent as coming within the principle of liability defined in *Rylands versus Fletcher*. From the point of view of the pedestrians on the other hand, it seems to the Committee that the roads of this country have—at all events in certain places and at certain seasons—been rendered, by the use of motor vehicles, places to which it is dangerous for pedestrians to resort; that, nevertheless, it is necessary for pedestrians to resort to the roads ; and that where a pedestrian, without negligence on his part, is injured by a motorist whether negligent or not, he should be entitled to recover damages."

The last paragraph to which I need refer is paragraph 11 :

" It may be said against this that it is hardship on the motorist to be made to pay damages for an accident which was not attributable to his fault. The Committee take the view that this is, perhaps, a misleading way of regarding the question and would put it rather that the payment or compensation to innocent pedestrians who suffer injury is a duty, not so much of the individual motorist who does the damage, *as of the motoring community as a whole*, and that the increased liability of the motorist ought to be covered, as provided for in the Bill, by insurance against the increased third-party risk."

Observations in 51st Report of the Law Commission of India.

3.42. It would be pertinent in this connection to refer to the Report of the Law Commission of India on "compensation for injuries caused by automobiles in hit-and-run cases", where the position was stated as under[3] :—

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[1]Vol. 86, H.L. Debates, cols. 1046-1047.

[2]Vol. 93, H.L. Debates, col. 148 (Third Reading).

[3]Law Commission of India, 51st Report (Compensation for injuries caused by automobiles in hit-and-run cases), page 2, para 6 (September, 1972).

"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').

(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."

"10. Category (b) is illustrated by the provisions of the Motor Vehicles Act 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."

The Commission, however, noted the difficulty of establishing negligence pointed out in the case of *Kesavan Nair* Vs. *State Insurance Officer.*[1]

Arguments in support of no fault liability.

3.43. The case for the imposition of a rule of strict liability finds strong support in the rules applicable to certain analogous situations. Pointing out that strict liability was imposed at common law prior to *Fletcher* v. *Rylands,* one study[2] shows the application of a rule of strict liability in a number of instances, e.g., for harm done by trespassing animals; on a bona fide purchaser of stolen goods to their true owner; on a bailee for the misdelivery of bailed property regardless of his good faith or negligence ; and on innkeepers and hotels at common law.

There are a few other examples of strict liability : The Supreme Court of Minnesota, for example,[3] imposed liability without fault for damage to a dock inflicted by a ship moored there during a storm.

The rule of strict liability rests not only upon the ultimate idea of rectifying a wrong and putting the burden where it should belong as a matter of abstract justice, that is, upon the one of the two innocent parties whose acts instigated or made the harm possible, but it also rests on problems of proof[4].

One of these common features is that the person harmed would encounter a difficult problem of proof if some other standard of liability were applied[5].

Problems of proof which might otherwise have been faced by shippers, bailors, or guests at hotels and inns certainly played a significant role in shaping the strict liabilities of carriers, bailees and innkeepers. Problems of proof in suits against manufacturers for harm done by defective products became more severe as the composition and design of products and the techniques of manufacture became less and less matters of common experience; this was certainly a factor bringing about adoption of a strict liability standard.

Arguments against no fault liability.

3.44. The major points advanced by those who would like the system of liability based on "fault" to continue may be stated in outline as follows :—

(i) First, it is stated that the system of negligence is not designed to compensate for all losses and should not be regarded as deficient merely because it fails to provide compensation for certain accidental losses. In other words, a distinction should be made between more deserving and less deserving victims. A standard of negligence (it is stated) most nearly approaches the popular concept of justice.

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[1] *Kesavan Nair* V. *State Insurance Officer,* (1971) A.C.J. 219 (Ker.).

[2] Peck, "Negligence & Liability without fault in Tort Law" (1971) 46 Wash. L. Rev. 225, referred to in Keeton & Keeton, Torts (1977), page 592.

[3] *Vincent* V. *Lake Erie Transport Col.,* (1910) 109 Minn. 456, 124 N.W. 221; Keeton & Keeton , Torts (1977), page 592.

[4] Keeton & Keeton, Torts (1977), page, 592.

[5] See also para 3·9, *supra.*

The essential soundness of this approach, as a general rule, cannot be doubted. But in the field under consideration, there are certain special factors which seem to justify modification of the general approach.

(ii) Secondly, it is stated that moral accountability, which is a fundamental tenet of the common law system should not be undermined to meet the exigency of the situation. In reply to this, it could be stated that the approach to be adopted is not merely of moral accountability, but one of social justice, including the reason that he who creates a risk ought to attract liability to compensate though upto a certain pecuniary limit—for the attendant harm[1].

(iii) Thirdly, it is often stated that the principle of negligence deters careless conduct and its removal would cause an increase in careless driving and accidents. This, however, does not appear to be borne out by experience in other fields—such as workmen's compensation or railways—where liability is either understood to be absolute or specifically laid down to be so.

(iv) Fourthly, it is stated that if social justice is the basic approach, then there ought to be rather a system of social welfare applicable preferably to all deserving persons and not merely to victims of automobile accidents. Somewhat based on the same approach is the contention often advanced that the problem of delay in courts and tribunals ought to be tackled comprehensively and not merely by concentrating on motor vehicles claims.

This is an attractive argument, and, upto a point, it is even sound. But it is to be pointed out that the disproportionately high cost and undue delay which is met with in the field under consideration justifies a selective approach.

Introduction of liability without fault recommended.

3.45. Having regard to the considerations set out in this Chapter, it appears to be appropriate to provide for liability without fault in relation to death or bodily injury caused by accidents from motor vehicles. Such a liability would rest on the *risk* created by the use of a motor vehicle, and not on fault.

Position in other countries.

3.46. Before we make concrete recommendations as to the various points arising on the subject, we may note that considerable developments in this field have taken place. It would be tedious to give details thereof in this Report. However, we are appending to this Report[2] a brief summary of the position in selected other countries.

Variety of schemes.

3.47. These schemes present considerable variety. In particular, some of these schemes envisage the creation of a state administered fund from which damages are paid, thus bringing into existence a species of social insurance.

In India, it may not, at present be possible to go to that length. But it is still practicable to consider a reform of the law in certain specific directions. The broad objectives of reform should be to impose (i) liability without fault on the motorist, (ii) coupled with liability insurance.

Insurance against liability to third parties is already compulsory under the Motor Vehicles Act. The main impact of the reforms recommended in this Report would be to expand the ambit of liability and, consequentially, of course, to increase the ambit of payments that would have to be made by the insurer.[3]

VIII. Limitations on liability without fault.

Limitations recommended in cases of no fault liability.

3.48. While, for the reasons given above, we contemplate "no fault" liability, it is, in our opinion, also necessary to provide for limiting the quantum of the liability if fault is dispensed with (i.e. if the liability rests purely on the

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[1] See further para 3·62 (a), *infra*.

[2] Appendix 4.

[3] For the English law, see para 5·5, *infra*.

basis of risk). This is desirable in order to prevent a steep rise in premium, and also to leave some scope for watching the working of the proposed reform. It may be noted that such a limitation forms part of the points suggested for reform by the Supreme Court[1] in one of its Judgments[2] on the subject.

Limitations in other countries.

3.49. In some other countries also, while the victim of the injury who is entitled to compensation under the various liability rules may enforce his claim directly against the insurance company, he can do so subject only to certain monetary limits.

Position in Nordic countries.

3.50. For example, in many Nordic countries,[3] the liability of the company to pay under a motor vehicle accident policy is limited to maximum amount, either as regards personal injury or as regards property or as regards both. The limits have been gradually increased in step with the inflation and with the general rise in the standard of living. By way of illustration, we may set out the limits in some of the Nordic countries which are understood to be as follows:

	For each person injured		For all damage to property in the same accident	
	National currency	U.S. Dollars (Approx.)	National currency	U.S. Dollars (Approx.)
Finland	(No limit)	((No limit)	250,000	59,500
Norway	200,000	28,000	100,000	14,000
Sweden	1000,000	193,500	1000,000	193,500
(Before 1st January, 1970)	In Sweden, there is no limit as to compensation for personal injury after 1970.			
Denmark	150,000	20,000	120,000	16,000

Position in U.S.A.

3.51. Several States in U. S. A. that have enacted "no fault" statutes have also imposed a pecuniary limit on the benefits to be claimed under the scheme. There are separate limits in regard to (i) damages under the head of medical benefit, and (ii) damages on account of loss of earnings. The figures vary from State to State, depending on the economic conditions in the State and other factors. It appears that Connecticut, Floroda, Georgia, Hawaii, Kansas, Kentucky, Massachussets, Navada, North Dakota and Utah are amongst the 'low benefit' states. Most of them provide Personal Injury Protection (No fault), medical and wage loss coverage, totalling less than 15,000 dollars.

The limitations (maximum) that we have in mind will be apparent from our detailed recommendations,[4] to be indicated later.

Maximum amount Table to be annexed.

3.52. As to the maximum amount that should be allowed to be recovered on the basis of "on fault" liability, we have considered the question if the Fourth Schedule to the Workmen's Compensation Act, 1923 could, with some modifications and amplifications, be adoped as a model. But we do not consider it appropriate to adopt it for the present purpose. The scheme as provided in that Schedule requires elaborate determinations with expert assistance, and, in any case, is based on the postulate that the victim is a wage-earner. These features would not always be present in regard to the claims with which we are concerned in this Report.

Provision in Railways Act.

3.53. We consider a simple limit to be preferable. While the analogous provision in the Railways Act[5] (as to monetary limit) lays down Rs. 50,000, our intention is to provide Rs. 1,00,000 per claimant for claims under the Motor Vehicles Act.[6]

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[1] *Bishan Devi* V. *Sirbaksh Singh*, A.I.R. 1979 S.C. 1862, 1866, 1867, para 21.

[2] Para 3·29, *supra*.

[3] Gomard, "Compensation for Automobile Accidents" (1970) 18 A.J. C.L. 80, 98-99.

[4] See para 3·62 and para 3·63, *infra*.

[5] Section 82A (2), Indian Railways, Act, 1980 (Appendix I).

[6] For details, see para 3·63 *infra*.

The theory here is that the money should be distributed among those who suffer, in the way most advantageous to them and that is better that each injured person should get a reasonable compensation than that some victims should get full indemnity and others nothing. Limited amounts of compensation for injuries due to motor traffic would be supportable on this basis.[1]

Limits Narrow views.

3.54. The precise limit that the legislature should fix in this behalf must always remain a matter of controversy; opinions are bound to differ. The loss of income of these suffering personal injuries or (in case of death) the consequential loss caused to those who can claim compensation on death, ranges within very wide limits. The law can only strike a middle. Of course, even then, whatever limit is laid down at a particular time might, in view of inflation, need periodical revision.

IX. Contributory and comparative negligence

Contributory negligence.

3.55. So far, we have dealt with the scheme of the proposed amendment and its impact in the generality of cases. It is now necessary to advert to the position that we contemplate as regards one possible defence of a special character contributory negligence and comparative negligence. The question whether, in India, contributory negligence is a total defence in the field of general liability in tort need not be discussed in detail.

View of most High Courts.

3.56. Most High Courts seem[2] to take the view that though India has no legislation corresponding to the English Act on the subject,[3] yet our Courts are free to apply a rule of comparative negligence. On this approach, contributory negligence does not bar recovery, though it may reduce the amount to be recovered by a person who has contributed to an accident.

Position in England.

3.57. In England, the defence of contributory negligence was abolished in 1945 for the entire field of the law of torts. Contributory negligence can no longer defeat a claim *in toto*, but can reduce the amount of damages recoverable by the plaintiff, in England. This reform of the law (subject to specific statutory exceptions) is applicable to the entire field of tortious liability.

It is enough to quote the material statutory provision in England, which is as follows[4]:—

> "Where any person suffers damage as the result partly of his own fault and partly of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

Modification of contributory negligence rule in some countries on continent.

3.58. In some other countries also—e.g. in Sweden-traffic accident inusrance still relies on the "comparative negligence" rule of the general law of tort. The court has a discretionary power to reduce the award if the victim has negligently contributed to the accident, due regard being had to the degree of fault on either side. The rule is applied even to the detriment of the dependants of a person who is killed in a traffic accident to which the decedent's negligence has contributed.[5] The general rules of tort law are modified only in one respect: *slight negligence* on the part of the victim is disregarded ("when there is only little to blame the victim"). In the rest of the cases, in such countries, where the person suffering damage has contributed to his loss by his own negligence, the damages due to him under the law of torts are, as a rule, apportioned.[6] He will receive only a fraction of what he would otherwise receive.

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[1] Compare Strahl, "Tort Liability and Insurance" (1959), Vol. 3, Scandinavian Studies in Law, 199. 222.

[2] *Rural Transport Service* V. *Betzuni Bibi*, A.I.R. 1980 Cal. 165, 169 (reviews cases).

[3] See para 3·57, *infra*.

[4] Section 1 (1), Law Reform (Contributory Negligence) Act, 1945 (8 & 9 Geo. 6 c. 28).

[5] Selmer, "Interaction between insurance and tort theories" (1970) 18 A.J.C.L. 145, 162.

[6] Hellner, "Tort liability and liability insurance" (1962) 6 Scandinavian Studies in Law, 131, 159

Difficulties of proof even in a system of comparative negligence.

3.59. In our view, however, in the particular types of accidents with which we are concerned, the mere substitution of a rule of comparative negligence may not mitigate the difficulties experienced at present. It would be preferable to suggest a simpler rule which can be easily worked.

Even in a system based on comparative negligence, the assigning of a specific percentage factor to the amount of negligence attributable to a particular party could be a matter of perplexity in motor vehicle cases.

Recommendation Contributory negligence to be disregarded.

3.60. We would, therefore, exclude the operation of the defence of contributory negligence or comparative negligence.[1] Our recommendation, of course, is confined to the subject of harm caused by accidents resulting from the use of motor vehicles.

Cases of suicide excluded.

3.61. While on the subject of fault of the victim, it may be mentioned that one argument that is generally advanced by Insurance Companies,—and even by some Judges,—against "no fault liability" is that if a person actually throws himself in front of a vehicle with the intention of committing suicide, and is consequently killed or injured, then there can be no justification whatsoever, for the payment of any compensation to the person or his heirs. The short answer to this is that compensation is payable only if there is an *accident* of the nature specified in section 110(1) of the Motor Vehicles Act. An occurrence can be said to be "accidental" only when it is not due to design; for, if an act be intentional, it would clearly be no accident.

X. Summary and rationale of points made as to liability without fault

Main features of proposed scheme and their rationale.

3.62. Before we make concrete recommendations for legislative amendment on the points discussed in this Chapter, we would like to summarise the rationale underlying the important features of "no fault" liability as envisaged in our scheme and also the rationale underlying the imposition of pecuniary limitations on liability in "no fault" cases—since these limitations form an integral part of our scheme.

(a) Subject to a pecuniary limit, the level of protection against measurable economic loss is to be treated as risk of motoring.[2] The assumption is that a motorist who creates a risk of injury or death must pay for that injury or death without regard to fault. This would, however, be confined to claims before Tribunals created under the Act.

"No fault" liability as envisaged by us would be confined to claims before the Tribunal. Claims before ordinary courts should be decided on fault basis only. This, however, would be the position only where a Claims Tribunal has not been constituted at all for the area concerned.

(b) Through the medium of insurance and by making the insurer liable, the cost of providing the compensation would, in substance, be distributed among all motorists, without regard to fault in particular accidents. This will be applicable only to claims before the Tribunal.

(c) In such cases, contributory negligence should neither be a defence, nor be a ground for apportionment according to "fault".

(d) The above scheme of liability on "no fault" basis will apply only to the Claims Tribunal.

(e) The "fault" principle (and related rules of tort law) will continue as the basis of allocating the burden in other cases, i.e. in claims filed before ordinary courts where no Tribunal has been created. Such cases, however, will be rare. Ordinary courts can award compensation irrespective of limits, if fault is proved.

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[1] See para 3.63, *infra*.

[2] *Cf.* para 3.44(*ii*), *supra*.

(f) But even in cases where the fault principle continues, compulsory insurance which the motorist (under the present law) must carry to protect against tort liability will (as at present) continue to afford some protection, provided fault is proved.

XI. Recommendations as to liability without fault and related matters

New Chapter to be inserted.

3.63. In the light of the preceding discussion, we recommend that the following new Chapter and section should be inserted in the Motor Vehicles Act, 1939 :—

CHAPTER 7A

Liability without fault

"92A. (1) *In a claim for compensation in respect of death or bodily injury caused by an accident of the nature specified in sub-section* (1) *of section* 110, *preferred before a Claims Tribunal, the claimant shall not be required to plead and establish that the injury or damage suffered was due to the wrongful act, neglect or default of the person who caused the accident.*"

[Section 110(1), main paragraph reads:—

"(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the 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."]

"(2) *A claim for compensation in respect of such death or bodily injury preferred before a Claims Tribunal shall not be defeated by reason merely of the wrongful act, neglect or default of the person suffering injury or damages nor shall the quantum of compensation recoverable in respect of such death or bodily injury be reduced merely on the basis of the share of such person in the responsibility for such death or bodily injury.*

(3) *The quantum of compensation payable on such a claim shall not exceed the following limit, that is to say,—*

"(a) *in the case of bodily injury, rupees one lakh for each person who claims compensation;*

(b) *in the case of death, rupees one lakh for each person for whose benefit the claim is made.*"

Other alternatives considered for higher recovery on the basis of fault.

3.64. We may mention in this context that in the course of our consideration of the question of "no fault" liability, we had occasion to consider a number of alternatives for dealing with the situation where the claimant is in a position to prove fault. A claimant may like to seek an amount in excess of the maximum limit of compensation which we have provided on "no fault" basis. One alternative that we considered was to provide (while retaining the exclusive jurisdiction of the Claims Tribunal) that the claimant at his option may, on the basis of fault, claim a higher amount of compensation before the Claims Tribunal. Another alternative that we considered was to allow the claimant an option in regard to *the forum*, that is to say, while proceedings before the Tribunal would be exclusively on no fault basis and would be subject to the prescribed maximum, proceedings before the ordinary civil court would be on the basis of fault and would not be subject to any maximum.

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[1]Para 3·63, *supra*.

Of course, it was implicit in this alternative that the exclusive character of the jurisdiction of the Claims Tribunal would be modified, inasmuch as, even if a Tribunal is already created for an area, a claimant claiming a higher award on fault basis would have to be allowed to go before an ordinary civil court.

Cases before the Tribunal to be decided on no fault basis.

3.65. On a careful consideration, we have come to the conclusion that it is not necessary to adopt either of the two alternatives mentioned above and that the best course would be to make a clean sweep of the distinction between liability based on fault and liability based on no fault basis. All cases ***before the Tribunal*** should be tried only on one basis, namely, "no fault" subject to a specified maximum. There would be no option given to the claimant, nor would he have any temptation to claim, by alleging fault, a higher compensation (either on his own or on the advice of others).

To give an option to a claimant to go to a civil court for claiming damages higher than what he would get under the "no fault system" would be to jeopardize altogether the very existence and functioning of the Claims Tribunals. The danger of the claimants being advised by lawyers to institute proceedings in a court for that purpose is real.

Claims before ordinary courts to be governed by fault.

3.66. There still remains one question to be considered, namely, where the claimant must go before an ordinary civil court,—a situation that can arise if no Claims Tribunal is created for a particular area,—should the principle of fault continue? Such situations should, of course, be rare, *Prima facie,* the intention of the legislature is that Tribunals should be created in adequate number all over the country. We think that in these rare cases, the present law may well continue to operate. Accordingly, we are not making any specific provision for introducing the principle of "no fault" in claims that are tried by ordinary civil courts in the absence of Claims Tribunals.

CHAPTER 4

BENEFICIARIES OF COMPULSORY INSURANCE

SECTION 95(1)

Scope of the Chapter.

4.1. The question of substantive principles of liability having been disposed of, the next question to be considered concerns the persons who can claim the benefit of the provisions of the Act relating to claims enforceable against the insurer. Under section 95(1), proviso, the benefit of the remedy[1] conferred by the Act against the insurer is limited to certain categories of persons[2].

There are, however, certain minute limitations created by the relevant provisions. An examination thereof reveals that both the contents of the relevant provisions and the manner in which the limitations have been expressed have led to certain practical problems. The fundamental question to be considered is, whether it is in conformity with current notions of social justice to allow the section to be hedged in with many minute limitations, restricting the categories of persons who can avail themselves of the direct remedy conferred on third parties against the insurer.

Section 94 imposes an obligation to insure against third party risk. Section 95(1) provides that the policy must be issued by an authorised insurer or by a co-operative society allowed to transact such business, and must insure the person or classes of persons specified in the policy (subject to the prescribed monetary limits), against the specified liability.

Section 95 (1), proviso.

4.2. Section 95(1), proviso, reads as under:—

"provided that a policy shall not be required:—

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

(a) engaged in driving the vehicle, or

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

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

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

(iii) to cover any contractual liability".

Persons excluded by virtue of section 95(1), proviso.

4.3. It would be helpful to consider who are the persons excluded from the scope of the benefits. The following seem to be some of the principal examples of persons so excluded:—

By virtue of clause (i) of the proviso, the policy shall not be required to cover liability arising to an employee in the course of employment, except in certain specified cases.

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[1]Para 4·2, *infra*.

[2]Contrast the English Law, para 5·5, *infra*.

80-M/B(D)457MofLJ&CA—3

By virtue of clause (ii) of the proviso, the following are excluded from the requirement to cover liability in relation to them:

(i) **Passenger of a private car carried gratuitously**[1]

A gratuitous passenger sustaining injuries in an accident is not covered because (unless he is travelling in pursuance of a contract of employment), section 95(1), proviso (ii), would exclude him[2].

However, according to certain decisions,[3-4], where the *policy is so drawn* as to cover gratuitous passengers, then the insurer would be liable even for bodily injury or death caused to a gratuitous passenger.[5]

(ii) **Ticketless traveller**

The question whether a ticketless traveller is entitled to the benefit of the provisions of the Act was raised in one case before the Supreme Court,[6] but having regard to the facts and circumstances of the case, it was not necessary to investigate it.

(iii) **Hirer of a truck**

The hirer of a truck is not covered, because section 95(1), proviso (ii), excludes him.[7] While reaching this conclusion, the Calcutta High Court did describe the position as 'unfortunate'.

(iv) **Owner of goods, travelling with the goods**

Two high Courts have taken the view that an *owner travelling along with his goods* in the goods vehicle cannot recover the insurer compensation for death or personal injury.[8-9] This view has been taken on a construction of section 95(1), proviso (ii).

In contrast, according to a Karnataka case,[10] the owner travelling with his goods really pays for his own carriage also, and is covered.

Anomally caused by present position as owner of goods.

4.4. We think that the present provision needs improvement. As to the owner of goods,[11] it may be noted that the employee of the *owner of the goods* is not excluded, and would be entitled to sue the insurance company.[12] If so, it is illogical that the owner of the goods himself cannot sue.[13]

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[1] *Cf. K. Gopalakrishnan* Vs. *Sankaraman*, A.I.R.1968 Mad. 436.

[2](a) *Pushpabai* Vs. *Ranjit C & P Co.*, A.I.R. 1977 S. C. 1735, 1746, para 20.

(b) *Hira Devi* Vs. *Bhaba Kant*, A.I.R. 1977 Gauhati 31, 38, paragraphs 19, 20 (F. B.).

(c) *Jam Shree Satii Digvijay Singh Ji* Vs. *Daud Tyabii*, A.I.R. 1978 Guj. 153, 154, paragraphs 26, 27.

(d) *Subhash Chander* Vs. *State of Haryana*, A.I.R. Punjab & Haryana 54, 56, para 9 (reviews cases).

[3] *New Indian Insurance Co. Ltd.*, Vs. *Mohinder Lal*, (1978) Accident Claims Journal 10.

[4] *Assam Corporation* Vs. *Bivu Rani*, A.I.R. 1975 Gauhati 3, referred to also in *Hira Devi* Vs. *Bhaba Kant*, A.I.R. 1977 Gauhati 31, 38, paragraphs 19, 20 (F.B.).

[5] *Premier Assurance Co.*, Vs. *Parameshwarbai*, A.I.R. 1976 Patna 187.

[6] *Madhya Pradesh State Road Transport Corp.* Vs. *Zenibhai*, A.I.R. 1977 S. C. 2206.

[7] *Indian Mutual General Insurance Co.*, Vs. *Manzoor Ashan*, A.I.R. 1977 Cal. 34, 37, para 17.

[8] *South Indian Insurance Company* Vs. *Subramaniam*, A.I.R., 1972 Mad. 49, 52, paragraphs 5 and 6.

[9] *Oriental Fire and General Insurance Co.*, Vs. *Gurdev Kaur*, A.I.R. 1967 Punjab, 486 490 (F. B.).

[10] *Channappa* Vs. *Laxman*, A.I.R. 1979 Karnataka 93, 103 (May). See also *T. M. Renukappa* Vs. *Fahmida*, A.I.R. 1980 Karn. 25 (Feb.).

[11] Para 4·3 (*v*), *supra*.

[12] *Vanguard Insurance Co.*, Vs. *Chinnammal*, A.I.R. 1970 Mad. 236.

[13] Para 4·2, *supra*.

Whatever be the true construction of the present languages of the section, it seems to be anomalous that a person who legitimately travels with the goods to look after his own goods cannot avail himself of the beneficial provision of the Act. The fact that he has not made payment for carrying him as a passenger—even if that be the factual situation in a particular case—should not, in our opinion, be regarded as material in legislation primarily enacted to implement a principle of social justice. From the aspect of social justice, the position should be the same whether the claimant is the owner of the goods or is an employee of the owner of the goods.

Need for change.

4.5. It is now time to consider whether the present position needs change. In general, the policy of the law as embodied in Chapter 8 of the Motor Vehicles Act is to provide for compensation not on the basis of *quid pro quo* or contract, but as a measure of social justice.[1] The very fact that liability to a third party is required to be insured and the third party (within the limits laid down in the Act) is afforded a remedy against the insurer, shows that the true principle is social justice.

Social justice and judicial observations suggesting reform.

4.6. It may be pointed out that in one of the Punjab cases,[2] the following observations have been made while rejecting the claim for compensation made by the owner of the goods, who was travelling with the goods:—

> "No doubt, this is a hard case, but it is a case of a statutory omission[3-4] for in this part of country small businessmen in protection of their goods, and to do their business personally, very often themselves travel on a goods carrier and that is probably the reason why R. 4.60(1) says that 'no person shall be carried in a goods carrier other than a bona fide employee of the owner or the hirer of the vehicle, and except in accordance with this rule.
>
> "This sub-rule recognises that the hirer of the vehicle may travel as a passenger on a good carrier, but the proviso to sub-rule (2) of this rule limits the number of such persons to a maximum of six. The learned counsel for the respondents has pointed out that in this "case number of persons travelling on the goods carrier in question was more than that number, but that does not bring in the liability of the insurer, and it may be a factor which may operate against the owner or the driver of the vehicle for disobedience of this sub-rule. The omission in the statute, however, cannot be supplied by a strained or incorrect interpretation of the statutory provision by a court. It can only be supplied by a legislative amendment."

Present position not justified.

4.7. It appears to us that the same reasoning applies to the other restrictions contained in the section 95(1), proviso (ii). Even as regards gratuitous passengers,[5] the present provision excluding them from the benefit of direct remedy does not appear to be justified. In this context, we may note that in England such an exclusion was previously contained in section 203, Road Traffic Act, 1960, but was promptly removed in response to a suggestion for law reform made by the Court of Appeal.[6]

Recommendation as to section 95(1) proviso.

4.8. Our recommendation, then, is to delete clause (ii) of the proviso to section 95(1). Clause (i), which excludes employees, may be retained. Employees would be governed by the Workmen's Compensation Act, and the present restriction should, therefore, cause no hardship. Clause (iii) may also continue.

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[1]See para 4·7, *infra*.

[2]*Oriental Fire & General Insurance Co., Ltd.*, Vs. *Gurdev Kaur*, A.I.R. 1967 Punjab 486, 490 para 8 (F. B.).

[3]Emphasis added.

[4]See also para 4·3, *supra*.

[5]Para 4·3(*ii*), *supra*.

[6]*Connell* Vs. *Motor Insurer's Bureau*, (1969) 3 W.L.R. 231, 237.

CHAPTER 5

LIMITS ON LIABILITY OF THE INSURER

SECTION 95(2)

Scope.

5.1 A major question to which attention may now be directed relates to the various monetary limits on the liability of the insurer, as laid down in section 95(2), quoted below:—

'(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :—

(a) Where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment :—

"(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers :—

(1) a limit of fifty thousand rupees, in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab and five thousand rupees for each individual passengers in any other case;

"(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party."

Need to delete the limits.

5.2. These limits were inserted at a time when the concept of social justice had not developed fully. They apply only as against the insurer. It is a matter for serious consideration whether today there should be any such monetary limits on the liability of the insurer only. These monetary limits, fixed somewhat arbitrarily on the basis of the nature of the vehicle and its size, and applicable only against the insurer, appear somewhat anachronistic. There appears to be no justification for imposing a pecuniary limit on the liability of the insurer, when there is no such limit on the liability of the person insured.

Removal of limit under section 95(2) suggested by Supreme Court.

5.3. It may be mentioned that some three years back, the Supreme Court of India also made a suggestion for removal of the present limit of liability.[1] After referring to the element of discrimination found in section 95, the Supreme Court observed:—

[1] *Manjushri* Vs. *B. L. Gupta*, A.I.R. 1977 S. C. 1858, 1863, para 10.

"Such an invidious distinction is absolutely shocking to any judicial or social conscience and yet section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in section 95(2) (d) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the Insurance Companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a Court in the special circumstances of each case. We further hope our suggestions will be duly implemented and the observations of the highest court of the country do not become a mere pious wish.

Removal of Limit suggested by High Courts. English Act.

5.4 Removal of the limit on the liability had earlier been suggested in the judgments of certain High Courts, for example, Bombay.[1]

5.5. In this context, it may be noted that the English Act has a very wide provision,[1] which reads:—

"145. *Requirements in respect of policies of Insurance.*

(1) In order to comply with the requirements of this Part of this Act, a policy of insurance must satisfy the following conditions.

(2) The policy must be issued by an authorised insurer, that is to say, a person or body of persons carrying on motor vehicle insurance business in Great Britain.

(3) Subject to sub-section (4) below, the policy:—

(a) must insure such person, persons or classes of persons *as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by, or arising out of the use of .the vehicle on a road; and*

(b) must also insure him or them in respect of any liability which may be incurred by him or them under the provisions of "this part of this Act relating to payment for emergency treatment.

(4) The policy shall not, by virtue of sub-section (3)(a) above, be required to cover.

(a) liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or

(b) *any contractual liability.*"

Section 95 (2) Recommendation to delete limit.

5.6. (a) For reasons already stated,[2] we think that there is ample justification for removing the limit at present laid down in section 95(2), and, accordingly, we recommend its deletion.

(b) This is, of course, a matter different from the one to which we have adverted while recommending[3] the introduction of "no fault" liability.

In the context of no fault liability, we have recommended the imposition of a monetary limit. The limit so recommended will not be confined to the insurer. It will apply to the owner, driver or other person liable also. The justification for such a limit has been discussed at length[4] in the relevant Chapter and we need not repeat the reasoning.

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[1] *Marine and General Insurance Co.* Vs. *Balkrishna Ramchandra Navan*, A.I.R. 1977 Bom. 53, 59 60, para 33, also referring to the Kerala judgment in *Kesavan Nair* Vs. *State*, (1971) Accident Claims Journal 219;1971) Kerala Law Times 380.

[2] Paragraphs 5·2 and 5·3, *supra*.

[3] Paragraphs 3·52 and 3·53, *supra*.

[4] Paragraphs 3·52 and 3·53, *supra*.

Section 95(2)—Alternative recommendation to insert uniform limit of Rs. two lakhs.

5.7. However, if our recommendation[1] to delete the limit in section 95(2) is not accepted, and the principle of having some pecuniary limit in section 95 (2) is retained, we would recommend the substitution in that sub-section of a uniform limit of Rs. two lakhs per claimant, instead of the present smaller limits. The present limits, besides being inadequate, are not uniform.

Having regard to considerations of social justice, we think that if the limits cannot be abolished, then they should be revised as above. This recommendation will apply to "fault" liability cases, where the claims are filed before the ordinary courts. For "no fault cases", i.e. for claims filed before the Tribunal on the basis of no fault, the limits would be fixed according to our recommendation, made separately[2] in that regard.

Revised section 95(2).

5.8. If this alternative scheme (increase of the limit without abolition) is adopted, section 95(2) should be revised as under:—

> "(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:—
>
> (a) *in the case of bodily injury, rupees two lakhs for each person who claims compensation;*
>
> (b) *in the case of death, rupees two lakhs for each person for whose benefit the claim is made:*
>
> *Provided that nothing in this sub-section shall affect any provision of this Act laying down limits as to the quantum of compensation payable in claims before the Claims Tribunal."*

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[1]Para 5·6(*a*), *supra*.

[2]Para 3·52, *supra*.

CHAPTER 6

DUTY TO FURNISH PARTICULARS OF INSURANCE AND ACCIDENT: SECTION 109 AND SECTIONS 109A AND 109B (NEW)

Supply of particulars by registering authority for police to Tribunal for injured person.

6.1. Much delay in the disposal of claim cases is caused also on account of the fact that the person injured—and even the Claims Tribunal—face considerable difficulty in tracing the particulars of the insurance company with which the vehicle involved in the accident has been insured. It should be remembered that the proceedings before the Tribunal cannot affect the insurance company unless the insurance company is made a party to the proceedings, and this can be done only when the particulars of the policy are made available. A suitable provision making it obligatory on the Registering or the Police Authorities to supply these particulars to the Tribunal or to the person injured should therefore be made.

Section 109—Supply of copies information.

6.2. For filing a claim under the Act, certain particulars are required, and section 109, to some extent, addresses itself to that aspect. It is, however, found in practice that the required particulars are not easily available to a claimant. To remedy this hardship, certain obligations should be imposed on the police to transmit the information required for filing the claim.

Duty to give information.

6.3. The Committee appointed some time ago by the Government of India (in the Ministry of Law) to examine the question of legal aid and advice available to the weaker sections of the community[1] had occasion to discuss why remedies are not availed of in the case of a large number of victims of accidents arising from the use of motor vehicles. The Committee suggested that people should be made aware of the right to claim compensation and to approach the Claims Tribunal for the purpose.

The Committee has observed that "one other radical and yet simple stratagem...Can be adopted for the purpose of removing the handicap arising from legal unawareness". After referring to the procedure being followed in the State of Jammu and Kashmir, the Committee recommended that a duty should be cast on the Police Officer and the Doctor to submit details of the accident to the Claims Tribunal. We quote below the relevant passage from the Report of the Committee:

> "7.04. Whenever there is an accident arising out of the use of a motor vehicle, it would ordinarily almost invariably be reported to the police and where any person is injured, he would ordinarily be taken to a hospital except where the injury is of a minor character. It may, therefore, be provided that whenever an accident is reported at a police station, the police should be required, legislatively or by administrative instructions, to note down in a printed proforma supplied to the police station by the State Government or the State Board, various particulars in regard to the accident, such as the name and address of the injured person and where the injury has resulted in death, the name and address of the deceased as also the names and addresses of his dependents, the number of the motor vehicle involved in the accident, the name of the driver, if available, the place and time of the accident and the details of the manner in which the accident took place. The police should immediately take steps to find out from the records of the registering authority the name and address of the owner of the motor vehicle and the name of the insurance company with which the motor vehicle is insured and incorporate these particulars in the printed proforma.

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[1]Report on National Judicature, Equal Justice—Social Justice (August 1977), Chapter 7, pages 44, 45, paragraph 7·04.

"The police should then forward the printed proforma to the Claims Tribunal having jurisdiction over the area where the accident took place. Where an injured person or a deceased is brought to a Primary Health Centre or a Hospital, private, municipal or Government owned, the officer incharge must also fill in a similar printed proforma after gathering particulars from the injured person or the relatives of the deceased accompanying the body and forward it to the Claims Tribunal. The Registrar of the Claims Tribunal should then get in touch with the police station having jurisdiction over the place of the accident and require the police to obtain and furnish the name and address of the motor vehicle owner and the name of the insurance company. We should suggest that the police and the hospital authorities should be laid under an obligation not only to gather the requisite particulars and fill in the printed proforma and forward it to the Claims Tribunal but also inform the injured person or the relatives of the deceased that they are entitled to file a compensation claim before a particular Claims Tribunal and also hand over to them written intimation to that effect.

"The Claims Tribunal, on receipt of the printed proforma, should forward it to the legal services committee attached to the Claims Tribunal and where an injured person or the dependants of the deceased come to the Claims Tribunal directly for claiming compensation, they must also be referred to the legal services committee."

Recommendation to insert new sections imposing obligation on the police and the Hospital authorities to communicate certain information as to accidents.

6.4. We find the suggestion made on the subject by the Committee[1] on Legal Aid and Advice substantially sound, and recommend that it should be immplemented by inserting suitable provisions[2] at an appropriate place in the Chapter.

Position in Tamil Nadu.

6.5. We may mention that in Tamil Nadu, the Legal Aid Board has launched a programme of assistance to victims of motor vehicle accidents who are not able to afford a lawyer.[3] The Tamil Nadu Government have issued from time to time administrative orders as well as rules under the rule-making power. There had been frequent complaints of exploitation of these unfortunate people. From the beginning, it was felt that this was an area where the Board could help.

Rule in Tamil Nadu.

6.6 In August, 1976 the State of Tamil Nadu introduced a rule[4] which requires the investigating police officer to obtain an application for compensation signed by the victim (or by the legal representatives of the deceased victim) and to send it to the Claims Tribunal, without waiting for the result of the investigation into the accident.

We do not, however, consider it necessary to go to that length. In our opinion, it is enough if a duty to transmit information is imposed, as above.

Recommendation to insert sections 109A and 109B.

6.7. In the light of the above discussion, we recommend that two new sections—sections 109A and 109B—should be inserted on the following lines:—

"109*B*.(1) *Where an accident arising out of the use of a motor vehicle and involving the death of, or bodily injury to, any person has occurred and has been reported to the officer incharge of a police station under section* 109, *such officer shall forthwith forward the material particulars of the accident, in such form as may be prescribed, to the Claims "Tribunal constituted under section 110 and having jurisdiction over the area.*

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[1]Para 6·3, *supra.*

[2]Para 6·7, *infra.*

[3]P. B. Patwari, "Saga of Unique etc. Justice (3 April, 1980) M.L.J. 39-40, 41.

[4]Tamil Nadu Motor Vehicle Accident Claims Tribunal Rules, Rule 3A (August, 1976). P.B. Patwari : "Saga of Unique etc. Justice (3 April, 1980) M.L.J. 39, 41.

(2) The Claims Tribunal to whom the material particulars of an accident have been forwarded under sub-section (1) may order the officer incharge of the police station to furnish such further particulars relating to the accident as the Tribunal may consider necessary and such officer shall carry out the order forthwith.

(3) The officer incharge of the police station shall also forward a copy of the particulars of the accident, forwarded under sub-sections (1) and (2), to the injured person, and if a death has been caused by the accident, to the legal representatives of the deceased person, and shall inform them of their right to file before the Claims Tribunal an application for compensation in respect of the death of bodily injury, and shall obtain a written acknowledgement of such information having been communicated.

Obligation of the hospital authorities to communicate certain information as the accidents.

"109B. (1) Where an accident of the nature specified in section 109A has occurred and any person injured or dead as a result of the accident has been brought to a hospital, the person "incharge of the hospital[1] shall forward the material particulars of the accident, in such form as may be prescribed, to the Claims Tribunal having jurisdiction over the area.

(2) The Claims Tribunal may order the person incharge of the hospital to furnish such further particulars relating to the accident as the Tribunal may consider necessary and such person shall carry out the order forthwith".

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[1]The expression "person incharge of the hospital could be suitably defined, if necessary.

CHAPTER 7

THE CLAIMS TRIBUNAL : SECTION 110

Scope.

7.1. We propose to deal in this Chapter with certain procedural matters, confining ourselves to those provisions that appear to need either a change, or at least some discussion of matters that require consideration.

Appointment of members of the Tribunals.

7.2. Section 110(1) empowers the State Government to constitute Claims Tribunals for adjudicating the specified questions. The Tribunals are to be constituted by a notification, for such area as may be specified in the notification. There is a proviso to the sub-section, to which we shall advert later.[1] Sub-sections (2) and (3) deal with the composition and qualification of the Tribunal[2] and sub-section (4) with the distribution of business amongst the Tribunals.[3]

The Law Commission of India, in its Report on Delay and Arrears in Trial Courts, made certain recommendations as to the authorities by which the appointment of members of the Tribunals should be made, including arrangements for the distribution of business. We shall revert to the topic later[4].

Section 110(1), proviso—Claims for damage to property.

7.3 We now come to the proviso to section 110(1), (as amended in 1969). Section 110(1), main paragraph, empowers the Tribunal to adjudicate not only claims for compensation for death or bodily injury, but also claims for damage to any *property* of a third party so arising or both. The proviso to this sub-section, however, enacts that "where such claim includes a claim for compensation in respect of damage to property exceeding Rs. 2,000, the claimant may, at his option, refer the claim to a civil court for adjudication and where a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claims".

Difficulties created by section 110(1), proviso.

7.4. The proviso to section 110(1), quoted above, creates difficulties[5] where the claim exceeds Rs. 2,000. The claimant can, in such cases, "refer the claim to the civil court for adjudication", under the proviso as it now stands. The choice of the forum thus lies with the claimant. Such a procedure creates practical difficulties and complications, in this particular case. The practical difficulties and complications arise from the fact that if the claimant decides to "refer the claim to a civil court for adjudication", then two parallel proceedings in respect of the same accident would be going on at two different places. Several common questions of fact or law may arise in such proceedings and these questions may be decided differently in the parallel proceedings. This is not a satisfactory situation. It should not be left to a claimant to decide the nature of the Tribunal in which he will proceed *if such a course is likely to create scope for conflicting decisions.* It is true that certain laws,—e.g. the Act providing for workmen's compensation—leave it open to the workman to pursue his claim either in the ordinary court or before the commissioner. But that Act does not contemplate the filing of parallel proceedings in different Tribunals that may possibly lead to conflicting decisions. Only one proceeding can be filed. In contract, under the Motor Vehicles Act, if the claimant chooses to approach the civil court, the claim for personal injury would be under adjudication in a Claims Tribunal, while the claim for damage to property (exceeding Rs. 2,000) would go on in the civil court. The possibility of conflicting adjudications is obvious; such a conflict (between the ordinary court and the Claims Tribunal) is bound to create confusion.

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[1]Para 7·3, *infra.*

[2]*Cf.* Law Commission of India, 77th Report (Delay and Arrears in Trial Courts), paragraphs 10·3 and 10·4.

[3]See also para 1·8, *supra.*

[4]Para 7·10, *infra.*

[5]Para 7·3, *supra.*

Practical impact of proviso.

7.5. This demonstrates the need for considering at greater length the question whether the present provision restrictive of the competence of Claims Tribunals is satisfactory. We must point out that in this particular case, the restriction on the competence of Tribunals is not of mere academic interest. In regard to pleadings, court fees and limitation, there is an important difference between an ordinary civil court and the Claims Tribunal constituted under the Motor Vehicles Act. Proceedings under the Motor Vehicles Act do not, for example, require elaborate pleadings. There is no *ad valorem* court fees under the Act, unlike in civil suits. The period of limitation for a claim under the Motor Vehicles Act is six months. In contrast, in the civil court, the period of limitation is much longer[1].

Need for section 110, proviso debatable—Deletion recommended.

7.6. *Prima facie,* therefore, there is a case for deleting the proviso to section 110 in the light of the above considerations. We have not been able to think of any counter-balancing considerations that would justify its retention. If the intention is that claims for a high amount, i.e. exceeding a particular figure, should be tried only by ordinary courts, then the same reasoning should apply to claims for personal injuries which exceed that particular figure. But there is no such pecuniary limit on the competence of the Tribunal in regard to claims for compensation for personal injuries.

Nor is the proviso needed to protect the interests of the Insurance Company. There is, as the law now stands, no difference in the statutory liability of the insurance company, whether the proceedings are held under the Motor Vehicles Act or under the ordinary law.

Recommendation.

7.7 In view of what is stated above. we recommend that the proviso to section 110(1) should be deleted.

Section 110(2),

7.8. Section 110(2) needs no comment.

Section 110(3).

7.9. Section 110(3) prescribes the qualifications of a member who is appointed to preside over the Accident Claims Tribunal, and requires that he should be a person who:—

"(a) is, or has been, a judge of a High Court, or

(b) is, or has been, a district judge, or

(c) is qualified for appointment as a judge of the High Court".

The sub-section needs no change.

Section 110(4).

7.10. Section 110(4) provides that where two or more Claims Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.

Distribution of business should be appropriately vested in the High Court[2].

Accordingly, in this sub-section, the High Court should be substituted in place of the "State Government".

Power to transfer suit appeals and other proceedings.

7.11. In regard to section 110, it is also appropriate to mention the controversy that has arisen on the question whether the provisions of section 24 of the Code of Civil Procedure (transfer of suits and proceedings) apply so as to empower the High Court to transfer cases from one Claims Tribunal to another.

One view is that section 24 does not apply in regard to proceedings before the Tribunal[3]. This is based on the reasoning that the "Claims Tribunal" constituted under section 110 is a mere "Tribunal", and not a court.

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[1]Articles 81, 82 and 113, Limitation Act, 1963.

[2]Para 7·2, *supra.*

[3]*Laxminarain Misra* Vs. *Kailash Narain Gupta,* A.I.R. 1974 Raj. 155.

A contrary view as to the status of the Tribunal[1]—[2] has been taken in some other cases, though this specific point was not in issue.

Recommendation to insert section 110(5).

7.12. In our opinion, it would be proper to vest a power in the High Court to transfer cases. We recommend that new sub-sections should be inserted in section 110 to achieve the above object, as follows:—

[C.P.S. 28, C.P.C.]

"110(5) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, or of its own motion, the High Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any proceeding be transferred from a Claims Tribunal in the State to another Claims Tribunal in the State.

"110(6). Every application under this section shall be made by a motion which shall be supported by an affidavit.

"110(7). *The Tribunal to which such proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.*

"110(8). *In dismissing any application under this section, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay, by way of compensation to any person who has opposed the application, such sum, not exceeding one thousand rupees, as it considers appropriate in the circumstances of the case."*

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[1]*Krishan Gopal* Vs. *Dallotray*, A.I.R. 1972 M. P. 125.

[2]*Shardaben* Vs. *M. I. Pandya*, A.I.R. 1971 Guj. 151.

CHAPTER 8

APPLICATION FOR COMPENSATION : SECTION 110A.

Section 110A(1).

8.1. An application for compensation under the Act is governed by section 110A. Sub-section (1) of the section deals with the persons by whom the application can be filed.

Section 110A(2).

8.2. The forum for filing the application (claim) is thus dealt with in section 110A(2):—

> "(2) 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."

In this sub-section, the words "in such form" should be replaced by the words "*according to such* form", in order to eliminate objections based on mere technicalities.

Section 110A(3)—Limitation.

8.3. Limitation for the application (claim) is thus provided in sub-section (3) of section 110A:—

> "(3) No application for compensation under this section shall be entertained unless it is "made within six months[1] of the occurrence of the accident:
>
> Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

No change.

8.4. This sub-section needs no change. It originally prescribed a period of sixty days in that behalf. This created some hardship, and the period was later increased.

Another question to be considered later.

8.5. We propose to consider separately another question which (though also relatable to section 110A), has a wider importance[2] namely, the question of limitation in regard to cases where the claim arises before the constitution of the Claims Tribunal for a particular area.

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[1]See amendment by Act 56 of 1969.

[2]See Chapter 16, *infra*.

CHAPTER 9

EFFECT OF DEATH, AND THE MEANING OF "LEGAL REPRESENTATIVE: SECTION 110A(1)(b)

Effect of death—Death of the wrong-doer.

9.1. We propose to consider in this Chapter the position regarding the effect of death of the party to the proceedings in claims before the Tribunal. Broadly speaking, in a suit in a civil court, two questions—one substantive and the other procedural —come up for consideration when a party dies—(1) Does the cause of action survive after the death? (2) Assuming that the cause of action so survives, is any particular formal step to be adopted to bring the legal representative of the deceased party on the record?

Survival of the cause of action—Death of tort feasor.

9.2. The substantive question is dealt with in section 306 of the Indian Succession Act;[1] a cause of action for personal injury not causing death **does** *not survive* in favour of, or against, the wrong-doer's legal representatives under that section. In regard to certain cases, the Legal Representatives Suits Act, 1855 is also relevant.

Therefore, *when a tort-feasor dies,* proceedings for damages for bodily injury caused by him do not survive under the Succession Act and the question of substituting his legal representative[2] does not, in civil suits, arise.

But, in regard to proceeding under the Motor Vehicles Act, the Motor Vehicles Act expressly over-rides section 306 of the Succession Act,[3] and provides that the death of a person in whose favour a certificate of insurance had been issued shall not be a bar to survival of any cause of action (arising out of the event which has given rise to a claim) against his estate or against the insurer. The cause of action thus survives under the Motor Vehicles Act where the wrong-doer is the holder of a certificate of insurance.

Moreover, in practice, most claims under the Motor Vehicles Act would be against the insurer and the wrong-doer's death does not therefore have much practical importance.

Death of the claimant during pendency of the claim.

9.3. As to cases where the *claimant dies during the pendency* of the proceedings, there is no special provision in the Motor Vehicles Act, so that the substantive question as to the effect of death on the cause of section is left to be dealt with by section 30* of the Indian Succession Act.[4] If the death was the result of the bodily injury in question, the cause of action survives under that section.

Section 110A(1)(*b*)—"Legal representative".

9.4. As to cases where the (prospective) claimant dies *before the filing of the claim,* the position needs to be examined. Here again, if death resulted from the bodily injury,[5] the cause of action would survive under section 306.

Meaning of "Legal representative".

9.5. But there is some conflict as to the persons who can take proceedings as "legal representatives" under section 110A(1) (b) of the Motor Vehicles Act. Under section 110A(1) (b), an application for compensation arising out of an accident involving the *death* of a person caused by the use of a motor vehicle may be made by the "legal representatives" of the deceased.

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[1]Section 306, Indian Succession Act, 1925.

[2]Order 22, Rule 1, Code of Civil Procedure, 1908.

[3]Section 102, Motor Vehicles Act, 1939.

[4]Para 9·2, *supra.*

[5]For injury to property, see para 9·5, *infra,* and the Legal Representatives suits Act, 1855.

The expression "legal representative" is not, however, defined in the Act. The Code of Civil Procedure defines this term as meaning a person who, in law represents the estate of a deceased person and as including any person who intermeddles with the estate of the deceased and where a party sues or is used in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

Position under Fatal Accidents Act.

9.6. In the Fatal Accidents Act,[2] the working is slightly different. That Act provides that an action or a suit for damages in respect of the death of a person caused by the wrongful act, neglect or default of another person shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or "representative" of the person deceased. The Act further[3] provides that no more than one suit or action shall be brought for, and in respect of, the same subject matter of complaint.

Nature of right conferred by Fatal Accidents Act.

9.7. The precise nature of the right conferred by the Fatal Accidents Act has been considered more than once[4]. The word "representative" in this Act is not equivalent to "heirs", since, by the Legal Representatives Suits Act passed on the same day, the right is given to bring a suit against heirs or representatives of the deceased wrong-doer. The word "representative" means and includes in this context all or any one of the persons[5] for whose benefit a suit under the Fatal Accidents Act can be maintained. They are the persons taking the place of the deceased in obtaining reparation for the wrong done. Where there is no executor or administrator, or where there is one and he fails or is unwilling to sue, then the suit may be instituted by, and in the name of, the representative of the person deceased, but only one suit is allowed to enforce the claims of all the persons beneficially entitled. The right of each beneficiary is only to receive compensation in proportion to the loss occasioned to him by the death of his deceased relative.

Thus, in the Fatal Accidents Act, the expression "representative" means not the legal representative in the strict sense, but the wife, husband, parent and children of the deceased, and any one of them can also bring the suit for the benefit of others[6].

Controversy as to meaning of "Legal representative" in Motor Vehicles Act.

9.8. So much as regards the legislative precedents. As to the Motor Vehicles Act itself, the Act contains no definition of "legal representative", and there is a want of uniformity in the rules and in the judicial decisions as to the precise scope of the expression. Fos example—to take rules first—in some States[7] the expression "legal representative" is defined as having the meaning assigned to it[8] in clause (11) of section 2 of the Code of Civil Procedure, 1908.

However, the Mysore High Court[9] struck down such a rule on the ground that the power to make rules under section 111A is only to *carry into effect* the provisions of section 110A and rules cannot *restrict the right* given by section 110A to only some of the persons contemplated by that section.

Question for consideration.

9.9. Amongst the High Courts, there is a conflict of views.

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[1]Section 2(11), Code of Civil Procedure, 1908.

[2]Section 1A, Fatal Accidents Act, 1855 (13 of 1855).

[3]Section 2, Fatal Accidents Act, 1855 and proviso.

[4]*Cf. Johnson* Vs. *The Madras Railway Company*, (1905) I.L.R. 28 Cal. 479.

[5]Spouse, parent or child.

[6]*Jeet Kumari* Vs. *Chittagong Engineering & Electric Supply Co.*, A.I.R. 1947 Cal. 195, 198, 199, paragraphs 16-17.

[7]Bihar, Assam, West Bengal, Tamil Nadu, U. P. and Union Territory of Delhi.

[8]See para 9·4, *supra*.

[9]*M. Vasaalingaih* Vs. *T. P. Papanna*, A.I.R. 1972, Mysore 63.

Various shades of view—First view.

9.10. According to one view,[1–5] the claim under the Motor Vehicles Act would be governed by the substantive provisions of the Fatal Accidents Act.

Second view.

9.11. According to a second view, the Fatal Accidents Act does not control the matter; on this basis the sister of the deceased was held to be entitled to file a claim, even though she does not find a mention in the Fatal Accidents Act.[6]

Third view.

9.12. According to a third view,[7] while the right to compensation is confined to those who are mentioned in section 1A of the Fatal Accidents Act, the claim can be brought by the representatives. That expression is not limited to those entitled to the benefits of the Fatal Accidents Act. Thus, in a Madras case, the married sister of the deceased (who had died a bachelor) was allowed to file a claim. It was held that an application can be put by a "legal representative", and that the Motor Vehicles Act is free of any reference to the Fatal Accidents Act. Apparently, on this reasoning, the grandfather and the father were held to be legal representatives for the purposes of the Motor Vehicles Act, though they also do not find a mention in the Fatal Accidents Act[8].

Recommendation to define "legal representative".

9.13. On a careful consideration of the matter, we are of the view that the law on this important point should be settled, and to achieve that object, a precise definition of the expression "legal representative" should be inserted in the Act.

9.14. Further, in our opinion, it would be appropriate to assign to the expression "legal representative" the same meaning as has been given to the expression "representative" for the purposes of the Fatal Accidents Act[10]. This would effectively carry out the purpose of social justice underlying Chapter 8 of the Act, to which the Fatal Accidents Act is the nearest approximation.

We would also prefer to make the provision to be inserted on the subject self-contained.

Recommendation to insert section 2(11).

9.15. Accordingly, we recommend that in section 2 of the Act, which contains the definitions, clause (11) should be inserted as under :—

> "(11) *'legal representatives', in relation to claims under Chapter VIII of this Act, means the spouse, parent and children of the deceased.*"

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[1]*Dewan Hari Chand* Vs. *Municipal Corporation of Delhi*, A.I.R. 1973 Delhi 67, 69, 70, paragraphs 9-10 (Ansari J.).

[2]*P. B. Kader* Vs. *Thachamma*, A.I.R. 1970 Kerala 241.

[3]*Kamala Devi* Vs. *Kishan Chand*, A.I.R. 1970 M. P. 168.

[4](a) *M. Bhsavalingaiah* Vs. *T. P. Papanna*, A.I.R. 1972 Mys. 63, 66, paragraphs 23-24.

(b) *M. Avappan* Vs. *Moktar Singh*, A.I.R. 1970 Mys. 66, 70, para 10 (Parent).

[5]*Northern India Transport Insurance Co. Ltd.* Vs. *Amravati*, A.I.R. 1966 Punj. 288, 293, para 14 (D.B.).

[6]*Veena Kumari Kohli* Vs. *Punjab Roadways*, (1967) Accidents Claims Journal 297 (Punjab) (Sister).

[7]*Vanguard Insurance Co.* Vs. *Challu Hanumantha Rao*, (1975) Accidents Claims Journal 182 (A. P.).

[8]*Mohammed Habibulla* Vs. *K. Sethammal*, A.I.R. 1967 Mad. 123, 124, paragraphs 3-4.

[9]*State of Orissa* Vs. *Kapil Biswas*, (1976) Accidents Claims Journal 395 (Orissa).

[10]Para 9·12, *supra*.

CHAPTER 10

OPTION REGARDING CLAIMS FOR COMPENSATION : SECTION 110AA

Section 110AA.

10.1. This takes us to section 110AA, which is a negative provision and reads—

> "110AA. *Option regarding claims for compensation in certain cases.* Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may claim such compensation under either of those Acts, but not under both."

No change.

10.2. The section deals with a very special case, and needs no change.

CHAPTER 11

PARTIES : SECTION 110B

Scope.

11.1. This Chapter is concerned with the parties to proceedings by way of claims for compensation.

Section 110B—Persons entitled to claim compensation —controversy as to case of death.

11.2. The persons *who can claim compensation* are dealt with in the first part of section 110B. It reads—

> "110B. *Award of the Claims Tribunal.* On receipt of an application for compensation made under section 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be."

The controversy that has arisen rests mainly on the question whether, *in case of death,* the persons entitled to compensation, are the same as those entitled under the Fatal Accidents Act, or whether the matter has to be decided independently of that Act.

Controversy as to persons entitled to claim compensation.

11.3. The Karnataka High Court, for example, holds that the brother and sister of the deceased are entitled[1] to compensation as "legal representatives",[2] provided they can prove their dependency on the deceased. It construes the expression "persons" in section 110B as meaning the persons who are "legal representatives", and takes the latter expression, in its turn, as including brothers and sisters.

A contrary view has, however, been taken by the Delhi[3] and Kerala High Courts,[4] which deny any such right to brothers and sisters.

Delhi view.

11.4. The Delhi High Court has expressly held[5] that brothers are not entitled to compensation under the Motor Vehicles Act, and that only the persons mentioned in section 1A of the Fatal Accidents Act are so entitled.

Kerala View.

11.5. The Kerala High Court has also held,[6] in a case involving death caused by a motor accident, that brothers and sisters are not entitled to rank as dependants under the *Fatal Accidents Act.* The judgment, though not directly discussing the question of construction of the Motor Vehicles Act, seems to imply that the Fatal Accidents Act would govern right to compensation.

No change in section 110B.

11.6. As the controversy relates to the persons in whose favour section 110B can operate, we have considered the question whether any clarification defining the scope of that section in this regard is needed. However, we have come to the conclusion that it is not required. We have separately made a recommendation for an amendment defining "legal representatives"[7]. This amendment will not only apply to section 110A, but would also indirectly serve to limit the scope of section 110B. We do not therefore consider a separate amendment of section 110B necessary on the point just now discussed.

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[1] *General Manager, Karnataka State Road Transport Corporation, Bangalore* Vs. *Peerappa Parasappa Sangolli,* A.I.R. 1979 Karnataka 154, 157—159, paragraphs 12—14 (August-September issues).

[2] *Cf. Meghjibhai* Vs. *Chaturbhai,* A.I.R. 1977 Guj. 195.

[3] *Dewan Hari Chand* Vs. *Delhi Municipality,* A.I.R. 1973 Delhi 67, 70, para 10 (Ansari J.).

[4] *P. B. Kader* Vs. *Thalchamma,* A.I.R. 1970 Ker, 241.

[5] *Dewan Hari Chand* Vs. *Delhi Municipality,* A.I.R. 1973 Delhi 67, 70, para 10 (Ansari J.).

[6] *P. B. Kader* Vs. *Thalchamma,* A.I.R. 1970 Ker. 241.

[7] See recommendation as to section 2(11) Para 9·15, *supra.*

Section 110B to be amended to cover all persons liable.

11.7. The above discussion was concerned with the persons *to whom compensation can be awarded*. There is some deficiency in the law as to the persons *against* whom liability arising from an accident can be enforced. It is to be noted that the liability of the owner of vehicle—or, for that matter, the liability of any other person for death or bodily injury caused by the use of a motor vehicle,—arises not under the Motor Vehicles Act, but under the general rule of the law of Torts, modified (where applicable) by the Fatal Accidents Act[1] or other statutory provisions. The owner and driver are not the only persons who may become liable.[2] There may be other persons who are liable, particularly if, at the time of the accident, they were in possession or control of the car, either personally or though servants acting in the course of their employment.

Position examined.

11.8. It appears to us that section 110B needs to be amplified on this point. It should be noted that the Act is not confined to a claim against particular categories of persons, such as the insurer, the owner and the driver. Even the jurisdiction of the Claims Tribunal is unrestricted in this respect, under section 110. If all the situations in which a cause of action may arise are not taken care of by section 110B, then a certain amount of incompleteness would survive in section 110B. All claims under section 110 are not fully taken care of by section 110B. And yet the jurisdiction of civil courts would be barred by reason of section 110F. This would not be a satisfactory situation. This difficulty arising from section 110B particularly needs to be remedied.

There may be several situations in which a person who is neither the owner nor the driver might, under common law principles, become liable for an accident caused by the use of a motor vehicle. A claim for compensation in such a case would fall within section 110(1), being a claim for compensation "in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles.....". But section 110B—the provision which requires the Tribunal to make an order as to quantum of compensation *against* owner, driver or insured,—leaves out the case. The following are a few illustrative situations:—

(i) A car is given to a prospective purchaser, whose driver drives the car and causes an accident. In such a case, apart from the driver, the prospective purchaser would also be liable.

(ii) The car is sent to a garage.[3] The repairer and his driver who caused the accident.

(iii) The registered owner may *loan* the car to X, who allows his driver to drive the car and the victim is injured.

(iv) The registered owner asks a passenger to close the door. The passenger closes the door, but, in doing so, negligently slams the door on the fingers of the victim.

It is also worthy of notice that section 110 [unlike section 95(1) (b) and also unlike section 94(1)] is not confined to the use of a motor vehicle in a *public place*. The provisions of section 110 are wide enough to cover accidents which occur in a private place[4].

To cover all these cases, in which section 110 would come into play, section 110B should be expanded.

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[1] *Ariyamma*, Vs. *Narasimhiah*, A.I.R. 1972 Mys. 73, 75.

[2] *Branch Manager, Hindustan General Insurance Co.* Vs. *Saramma*, A.I.R. 1969 A.P. 390.

[3] *Cf. Govindarajulu* Vs. *Govindaraja*, A.I.R. 1966 Mad. 332.

[4] *L.I.C.* Vs. *Karthyani*, A.I.R. 1976 Orissa 21, 24, Para 13 (S. Acharya J.).

Recommendation to amend section 110B.

11.9. To achieve this object, we recommend that in section 110B, after the words "by the insurer" or "owner or driver of the vehicle involved in the accident", the words "*or any other person who was in possession or control of the vehicle at the time of the accident*" should be inserted. The amendment will eliminate the controversy arising from the obscurity of the expression "owner", as revealed by the case law[1-4], and will make the section comprehensive[5].

Amendment of section 110B to save limits as to quantum of compensation recommended.

11.10. While this amendment would widen the scope of the power of the Tribunal, there is also need for an amendment of the section on another matter, by drawing attention to the limits on compensation that can be awarded. When making this comment, we do not have in mind the existing limits on compensation laid down in section 95(2). These limits, according to our recommendation,[6] should be abolished. Even if they are retained, our recommendation is to increase them, and they will apply only to ordinary courts.

We are primarily concerned with the limits which, according to our recommendation in this Report[7], will become applicable as regards the quantum of compensation that can be awarded on a "no fault" basis (i.e. in claims tried by the Claims Tribunals on that basis).

In our opinion, it is desirable to ensure that the wide language of section 110B should not become a source of oversight, thereby leading to litigants and others to overlook the limits. We therefore recommend that in section 110B, a new sub-section should be inserted on the subject discussed above, after renumbering the present section as sub-section (1).

The following is a very rough draft of what we have in mind:—

"(2) *Nothing in this section shall affect any provision of this Act imposing a maximum limit on the amount of the compensation that can, in respect of any accident, be claimed by any person before the Tribunal.*"

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[1] *Goolbai* Vs. *Pestonji*, A.I.R. 1935 Bom. 333.

[2] *In re Bhagwant Gopal*, A.I.R. 1943 Nag. 22.

[3] *King* Vs. *Ba Ba Sein*, A.I.R. 1938 Rang. 400.

[4] *State* Vs. *Prema Bai*, A.I.R. 1979 M. P. 85, 87.

[5] Also see para 11·7, *supra*.

[6] Paragraphs 5·6 to 5·8, *supra*.

[7] Para 3·63, *supra*.

CHAPTER 12

APPEARANCE OF PARTIES : SECTION 110BB (PROPOSED)

Appearance through legal practitioner.

12.1. The next question concerns appearance by parties through legal practitioners, before the Claims Tribunal. The Act does not make any express provision on the subject. Like many other matters of procedure it is left to rules. However, some difficulty is created in this regard by the manner in which the rules are framed in some States, which in substance, provide that the Tribunal *may in its discretion* allow any party to appear through legal practitioner.

In our opinion, having regard to the nature of the proceedings before the Tribunal, which though summary in character, may, often involve intricate questions of fact and law, it is proper that the Act should provide *a right to appear* through legal practitioners.[1] The State rules on the subject will, of course, then become inoperative.[2]

Madhya Pradesh rule.

12.2. We may in this connection, refer to the Madhya Pradesh rule[3], which provides that any appearance, application or act required to be made or done by any person before a Claims Tribunal (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner, or by an officer of an insurance company, or with the permission of the Claims Tribunal, by other person so authorised. It is desirable to insert a similar provision permitting a party to appear by a legal practitioner or by other authorised person in proceedings relating to claims for compensation under the Act.

Section 110BB to be inserted.

12.3. In the light of the above discussion, we recommend the insertion of the following new section :—

> 110B. *Any appearance, application or act required to be made or done by any person before a Claims Tribunal (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done by such person or, on behalf of such person,—*
>
> "(a) *by a legal practitioner,*
>
> (b) *in the case of any insurance company, by an officer of the company, or*
>
> (c) *with the permission of the Claims Tribunal, by any other person, duly authorised by the first-mentioned person.*"

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[1]Compare section 30(*ii*), Advocates Act, 1961.

[2]Andhra Pradesh, Rule 520; Assam, Rule 9; Delhi, Rule 8·11; Maharashtra, Rule 308; Tamil Nadu, Rule 9 and so on.

[3]Rule 18, Madhya Pradesh Motor Accidents Claims Tribunal Rules, 1959.

CHAPTER 13

EVIDENCE AND PROCEDURE: SECTION 110C

Mode of recording evidence.

13.1. We now come to the question of evidence and procedure in proceedings before the Claims Tribunal.

The Tribunal has power to take evidence on oath.[1] The Act does not lay down, in detail, the mode of recording evidence; the matter is left to be dealt with by rules to be made by the State Governments.[2] Generally, these rules require that the Tribunal should make a brief memorandum of the substance of the evidence of each witness. Though the award of the Tribunal is subject to certain monetary limits,[3] a *verbatim* record of the evidence is not, as a rule, required, though sometimes medical evidence is required to be recorded *verbatim*.

The position does not seem to need modification.

Procedure in the Act.

13.2. As to procedure, the Act provides[4] that in holding inquiries the Tribunal may, subject to rules, follow such summary procedure as it thinks fit. State Governments have, under their rule-making power,[5] adopted or copied various rules contained in the Code of Civil Procedure on specific matters. But it is often found that these rules are not comprehensive and leave out important matters that arise frequently in practice.

Because of want of specific rules, the awards of the Tribunals are, in many cases, sought to be challengtd in appeal [6-7] on minute points of procedure causing avoidable delay and injustice. To give one example, there has arisen a question whether a claimant before the Tribunal can sue as an indigent person. Fortunately, the question has been answered in the affirmative[8].

There are many other points of a procedural nature which, if dealt with by rules, would avoid controversies and expedite disposal.

Provisions to be made in rules.

13.3. All this shows the need for well-drafted and comprehensive rules as to matters for procedure. We do not consider it necessary to recommend an amendment of the Act for the purpose mentioned above, but we would draw the attention of the State Governments to the need for making comprehensive rules on the subject of procedure, so as to expedite disposal and avoid controversies on matters of detail.

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[1]Section 110C(2).

[2]Section 111A, main paragraph.

[3]Section 110D.

[4]Section 110C(1).

[5]Section 111A(b).

[6]*Calcutta State Transport Corporation* Vs. *Laxmi Rani Pal*, A.I.R. 1977 Cal. 249, 250, para 5 (Re-examination of witnesses).

[7]*M. Krishnan* Vs. *Pankaj Jethalal Shah*, A.I.R. 1970 Mad. 259, approved in *P. Sanmugham* Vs. *Madras Motor General Ins. Co. Ltd.*, A.I.R. 1974 Mad. 363, 366 paragraphs 10, 11 (Commissions).

[8]*Darshana Devi* Vs. *Sher Singh*, A.I.R. 1978 P & H 265, 267, paragraphs 2-3.

CHAPTER 14

INTEREST : SECTION 110CC

Section 110CC.

14.1. The subject of interest on awards is dealt with in section 110CC, which reads :—

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

In this connection, it may be noted that extensive amendments have been made by the legislature—many of them on the recommendation of the Law Commission,[1] in the general law relating to interest. It is proper to take note of them[2] and to examine how far section 110CC needs reform in the light of those amendments[3].

Two periods to be dealt with.

14.2. It will be convenient to deal first with the interest awardable for the period before the making of the claim, and then with the interest awardable for the period subsequent to the making of the claim.

Interest prior to making of claim.

14.3 As to interest prior to the making of the claim under the present law as contained in the Act, interest is not granted from the date of the accident, but only from the date of the claim. Such has been the judicial construction.[4] Section 110CC, by its express terms, also does not provide for such interest.

Position under Interest Act, 1978.

14.4. Similar position prevailed in civil courts in regard to interest on damages before 1978. Until very recently, in a civil court, interest could not be awarded on unliquidated damages.[5] It could only be awarded on a liquidated sum—"debt or sum certain", as is often put.

Later Acts.

14.5. Notice should, however, be taken of the wider power[6] to award interest conferred by the revised statutory law of interest—the Interest Act, 1978—on all courts, including Tribunals. That Act specifically empowers the court to award interest on damages, and "court" (as defined in the Act)[7] includes a Tribunal and an arbitrator.

It is enough to quote section 3(1) and 3(2) of that Act which read[8]—

> "3(1). In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

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[1]Law Commission of India,—
(a) 54th Report (Code of Civil Procedure, 1908).
(b) 63rd Report (Interest Act, 1839).

[2]Para 14·3, *infra*.

[3]For the suggested amendment, see para 14·6, *infra*.

[4](a) *Orissa Mining Corporation* Vs. *Kopula*, I.L.R. (1975) Cutt. 1072.
(b) *New India Assurance Co.* Vs. *Surjyamoni*, A.I.R. 1980 Orissa 17, 19, para 12.

[5]See Law Commission of India, 63rd Report (Interest Act, 1839), page 21, para 5·1.

[6]Section 3, Interest Act, 1978.

[7]Section 2(1), Interest Act, 1978.

[8]Section 3(1) and 3(2), Interest Act, 1978.

(a) If the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings ;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed ;

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents *or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a* person's death, then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the Court considers appropriate for the whole or part of the period from "the date mentioned in the notice to the date of institution of the poceedings, unless the Court is satisfied that there are special reasons why no interest should be given in respect of those damages".

Need for parity as regards period before claim.

14.6. In our opinion, justice requires that the Court or Tribunal adjudicating a claim under Chapter 8 of the Motor Vehicles Act should, in this particular sphere, have the same powers as a Court which tries a civil suit. It would therefore be appropriate to revise section 110CC to confer such a power.

Period after the making of the claim—need for parity.

14.7. As to the period after the making of the claim, the subject (in regard to civil courts) is governed by section 34 of the Code of Civil Procedure. This position should also be reflected in the section dealing with the power of the Court or Tribunal under Chapter 8, and at this stage also, the Court or Tribunal should, in our opinion, have the same power as a civil court.

Section 110CC Recommendation as to rate of interest and making interest mandatory.

14.8 Coming to the rate of interest, generally, in the past, 6 per cent interest has been allowed on amounts awarded under the Act.[1] In some cases only 4 per cent was allowed.[2] In our view, the rate of interest should be specifically mentioned in the section and it should ordinarily be 12 per cent per annum. The award of interest at this rate would expedite realisation of the amount awarded. It may be noted that section 34[3] of the Code of Civil Procedure, 1908 (as amended), allows interest upto 12 per cent for "commercial transactions". The case for a suitably high rate of interest on compensation awarded under the Motor Vehicles Act is still stronger.

Further, it is, in our opinion. desirable to override contrary laws and to make the grant of interest mandatory unless reasons exist to the contrary.

Recommendation to revise section 110CC.

14.9. In the light of the above discussion, we recommend that section 110CC should be revised as under :—

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[1](a) *Hanuman Das* V. *Usha Rani*, A.I.R. 1978 Punj. & Har. 177—180, para 14.

(b) *Sushil Kumar* V. *Binodini Rath*, A.I.R. 1977 Orissa 112.

[2]*Kailash Wati* Vs. *State*, A.I.R. 1975 H. P. 35.

[3]Section 34, Code of Civil Procedure, as amended in 1976.

"110CC. Where any Court or Claims Tribunal allows a claim for compensation made under this Chapter, such Court or Tribunal *shall have the same power to direct the payment of interest on the sum awarded as a civil court trying a civil suit has under the law for the time being in force, including the Interest Act,* 1978 *and "section* 34 *of the Code of Civil Procedure,* 1908, *and shall, notwithstanding anything to the contrary contained in any law for the time being in force, make a direction accordingly unless the Court or Tribunal, for reasons to be recorded, considers such a direction unjust* :

Provided that unless the Court or Tribunal, for reasons to be recorded, directs otherwise, the rate of interest shall not less than twelve per cent per annum for the period beginning with the date of making of the claim.

CHAPTER 15

APPEAL AND EXECUTION : SECTION 110D AND 110E AND NEW SECTION 110EE

Section 110D(1)—Appeal.

15.1. An appeal is provided by section 110D against the decision of the Claims Tribunal. Sub-section (1) provides that the appeal shall lie to the High Court at the instance of any person aggrieved by an award of a Claims Tribunal. The period of limitation is ninety days relaxable by the High Court for sufficient cause.

Recommendation to amend section 110D(1).

15.2. It is often noticed that appeals are filed by the insurer on insubstantial, if not flimsy grounds, thereby causing *avoidable hardship* to the claimant who has succeeded in his claim after considerable labour and expense. In our view, it is necessary to require deposit of the amount awarded by the Tribunal before an appeal can be filed. It may be noted that under the Workmen's Compensation Act,[1] the entire amount of money has to be deposited in the Court before preferring an appeal from the decision of the Commissioner under that Act.

Section 30(1), 3rd proviso, Workmen's Compensation Act reads :—

> "Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against."

A similar provision should be introduced in the Motor Vehicles Act, requiring deposit of the entire amount awarded, before filing an appeal.[2]

Section 110D(2)—Appeal in petty cases.

15.3. The next point concerns sub-section (2). At present, under section 110D(2), no appeal lies against an award of the Tribunal when the amount in dispute does not exceed Rs. 2,000. This figure was inserted in 1956. Since then, there has been a steep fall in the purchasing power of the rupee. In view of this development, we recommend that subsection (2) of section 110D should be revised by substituting, for the words "two thousand rupees", the words *"five thousand rupees"*.

Section 110E—Recommendation for deposit of amount of award.

15.4. Section 110E provides that where any money is due *from any person* under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall recover the same in the same manner as arrears of land revenue. Every one knows the long delay that is involved in the complex and time-consuming process of the recovery of any amount as an arrears of land revenue. Considerable delay is therefore caused in the payment of the compensation amount to the person entitled to it. It is, therefore, desirable that a specified provision should be included in the Act, laying down that when an award is made under section 110B, the person directed to pay and involved in the accident shall deposit the amount in the Claims Tribunal within thirty days of the date of the making of the award. The amount may be deposited either in cash or by a cheque on a Scheduled Bank.

In the event of an appeal being filed by the assured or the person against whom the award is made, the amount deposited in the Claims Tribunal should be made payable to the person entitled to it, only on his furnishing a bank guarantee for the return of the amount if the High Court sets aside the award or in appeal reduces the amount of compensation.

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[1]Section 30(1), 3rd proviso, Workmen's Compensation Act, 1923.

[2]See para 15·6, *infra*—proposed section 110EE.

Deposit in High Court.

15.5. The procedure just now indicated in regard to the deposit of the amount of compensation should also be made applicable for the deposit of amount in the High Court when, the High Court on a disposal of the appeal, awards compensation for the first time or enhances the amount awarded by the Claims Tribunal.

New section 110EE recommended.

15.6. In the light of the above discussion, we recommend the insertion of the following new section in the Act :—

Deposit of amount awarded.

"110EE. (1) *When an award is made under section* 110*B the person against whom it is made shall within thirty days of the date of the making of the award deposit the entire amount awarded in the Claims Tribunal, either in cash or by a cheque on a scheduled bank.*[1]

(2) *Where an appeal against such award is filed in the High Court by the person aggrieved by the award, the amount deposited in the Claims Tribunal shall not be paid to the person entitled thereto except on his furnishing a bond, with a scheduled bank as surety, to the effect that if the High Court in appeal sets aside the award or reduces the amount of compensation, he shall "return the amount of such part thereof as may be necessary for compliance with the decision of the High Court.*

(3) *Where no such appeal is filed within the period allowed for filing an appeal or where the appeal, if filed, is dismissed by the High Court, the amount deposited in the Claims Tribunal shall, if not already paid under sub-section* (2), *be paid to the person entitled thereto.*

(4) *Where an appeal against an award is filed and the High Court awards compensation for the first time or enhances the amount awarded by the Claims Tribunal, the provisions of sub-section* (1), (2) *and* (3) *shall, with such modifications as may be necessary, apply in relation to deposit in the High Court of the amount awarded by the High Court of the amount representing the increase ordered by the High Court, as the case may be, as they apply in relation to deposit of an amount awarded by the Tribunal."*

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[1]The expression "Scheduled bank" may be suitably defined.

CHAPTER 16

JURISDICTION AND LIMITATION

SECTION 110F AND 110A(3)

I. Limits of Jurisdiction

Scope of the Chapter.

16.1. We propose to deal in this Chapter with a few points concerning the jurisdiction of Claims Tribunals constituted under the Act, We shall be primarily concerned with sections 110A and 110F. The matter could be conveniently considered under a few possible heads of limits of jurisdiction—territorial limits, pecuniary limits, pre-existing causes of action and the like.

Limit of jurisdiction—Territorial.

16.2. 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 problems so far.

Pecuniary limits.

16.3. As regards the *general pecuniary* jurisdiction of Claims Tribunals, there is no provision laying down limits thereon.

II. Damage to property

Section 110F—Discrepancy with section 110(1), proviso (Damage to property).

16.4. Some difficulty exists in regard to claims for proprietary damage made by third parties. Under the proviso to section 110(1), (as it now stands), claims above rupees two thousand in relation to damage to a third party can, at the option of the claimant, be referred to the civil court ; but, under section 110F, 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 the area (the rest of the section is not material. as it relates to the grant of injunction).

If, as already recommended by us,[1] section 110(1), proviso is deleted, this point would not survive.

III. Causes of action arising before constitution of the Tribunal

Section 110F—Causes of action arising before constitution of Tribunal.

16.5. The jurisdiction of a Claims Tribunal would obviously be exercisable as to future causes of action. As regards a cause of action arising before the constitution of a Claims Tribunal, obscurity seems to have prevailed for some time. The majority of the High Courts took the view that once a Tribunal is constituted, the jurisdiction of civil court is barred in respect of all claims preferred after the constitution of Tribunal even though the accident occurred before such constitution.[2-4] The High Court of Madhya Pradesh,[5] however, held that a suit for damages in an ordinary civil court is not barred where the cause of action arose before the Claims Tribunal was constituted.

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[1]See discussion as to section 110(1), proviso, para 7·11, *supra*.

[2](a) *Devendra Kumar* Vs. *Pilokhri Brick Kiln*, A.I.R. 1972 All. 61.

(b) *V.C.K. Bus Service* Vs. *H. G. Sethna*, A.I.R. 1965 Mad. 149; virtually dissenting from *Chandrasekharan*, Vs. *Narayanasundaram*, (1963) 76 M.L.W. (S.N.) 44.

[3]*United Motor & General Insurance* Vs. *Kartar Singh*, A.I.R. 1965 Punjab 102, 105, 106, Paragraphs 7, 10 (discusses the question of pending proceedings also).

[4]*M. Ayappan* Vs. *Mukhtar Singh*, A.I.R. 1970 Mys. 67.

[5]*Sushma Mehta* Vs. *C. P. Transport Ltd.*, A.I.R. 1964 M. P. 133.

Supreme Court judgment.

16.6. The Supreme Court has now held[1] that as soon as the Claims Tribunal is constituted, the jurisdiction of the ordinary civil court is ousted. The person injured would have a vested right of action, but not a vested *right of forum* and the change of forum under sections 110A and 110F must be given effect to. The legislature did not think it necessary to affect pending suits, but wanted the cheap remedy to be available as soon as the Tribunal was constituted by the State Government in all cases, *irrespective of the date of the accident,* provided the remedy of going to the court was not barred on the date of the constitution of the Tribunal.

Difficulty as to limitation.

16.7. Recognising that on this construction, certain difficulties might arise in relation to limitation, the Supreme Court also held that the time for the purpose of filing the application under *section* 110*A did not start running before the constitution of the Tribunal.* In the case before the Supreme Court, time had started running for barring of the suit, but before its expiry, the forum was changed and for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum had been made available.[2] The following passage from the judgment of the Supreme Court represents the principle enunciated by the Supreme Court on the question of limitation[3] :—

> "Apropos the bar of limitation provided in section 110A(3), one can say, on the basis of the authorities aforesaid, that strictly speaking the bar *does not operate in relation to an application for compensation arising out of an accident which occurred prior to the constitution of the claims Tribunal.* But since in such a case there is a change of forum unlike the fact of the said cases the reasonable view to take woud be that such an application can be filed within a reasonable time of the constitution of the Tribunal, which ordinarily and generally, would be the time of limitation mentioned in sub-section (3). If the application could not be made within that time from the date of the constitution of the Tribunal, in a given case, the further time taken in the making of the application may be held to be the reasonable time on the facts of that case for the making of the application or the delay made after the "expiry of the period of limitation provided in sub-section (3) from the date of the constitution of the Tribunal can be condoned under the proviso to that sub-section. In any view of the matter, in our opinion, the jurisdiction of the civil court is ousted as soon as the Claims Tribunal is constituted and the filing of the application before the Tribunal is the only remedy available to the claimant. On the facts of this case, we hold that the remedy available to the respondents was to go before the Claims Tribunal and since the law was not very clear on the point, the time of about four months taken in approaching the Tribunal after its constitution can be held to be either a reasonable time or the delay of less than two months could well be condoned under the proviso to sub-section (3) of section 110A."

Need to amend section 110F.

16.8. Subject to what we are going to say about limitation,[4] we would like to incorporate the proposition laid down by the Supreme Court[5] by a suitable amendment dealing with jurisdiction in regard to an accident occurring before the creation of a Claims Tribunal. We, therefore, recommend that an Explanation should be added to section 110F as follows :—

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[1] *New Indian Insurance Co. Ltd.,* Vs. *Shanti Mishra,* A.I.R. 1976 S. C. 237.

[2] Page 241, para 7 in the A.I.R. 1976 S. C. 237.

[3] Para 242, para 10 in the A.I.R. 1976 S. C. 237.

[4] Para 16·9, *infra.*

[5] Para 16·7, *supra.*

"Explanation—The Claims Tribunal shall have jurisdiction whether or not the accident occurred before the Tribunal was constituted, but nothing herein contained shall affect any proceedings pending before a Civil Court involving any question relating to any claim for compensation arising out of any accident which occurred before the constitution of the Claims Tribunal."

IV. Limitation for claims

Section 110A(3)—Recommendation for amendment.

16.9. At the same time, the starting point for limitation for a claim on a cause of action which arose before the constitution of the Tribunal[1] should be altered by suitably amending section 110A(3).

A time limit of six months is prescribed by section 110A(3) for making an application for compensation. This time limit is to be computed from the date *on which the accident occurred,* subject to a proviso which is not material for the present purpose. In our opinion where the Tribunal is constituted after the occurrence of the accident, the period of limitation (six months) should be counted from the date of the constitution of the Tribunal. If the time limit is computed from the date of occurrence of the accident, certain practical problems may arise in regard to a cause of action which arose prior to the constitution of the Tribunal. These practical difficulties would be avoided if the amendment suggested above is carried out.

Recommendation to amend Section 110A (3).

The reason is that "to require a claimant to apply to the Tribunal within sixty days[2] of the accident when the Tribunal itself did not exist within that period is to ask him to do the impossible.[3]

16.10 We therefore recommend that the following further proviso should be inserted below section 110A(3) :—

"Provided that where the accident occurred before the date of constitution of the claims Tribunal, the period of six months specified in this sub-section shall be computed from the date of constitution of the Claims Tribunal if on that date a suit for damages, or compensation in respect of the accident is not barred under the law of limitation for the time being in force."

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[1]*Cf.* para 16·7, *supra.*

[2]Sixty days was the earlier limitation period. It is now six months.

[3]*Iqbal Prakash* Vs. State of M. P., (1962) M.P.L.J. 465, quoted in *Sushma Mehta* vs. *O.P.T.*, A.I.R. 1964 M.P. 133, 135, para 12.

CHAPTER 17

RULES : SECTIONS 111 AND 111A

Present position.

17.1. It remains now to notice briefly the provisions as to rules in Chapter 8 of the Act. Section 111 confers a power to make rules on the Central Government; section 111A (inserted in 1956) confers a power to make rules on the State Government also. The power of the Central Government is to make rules for the purpose of carrying into effect the provisions of this Chapter, while the power of the State Government is to make rules for the purpose of carrying into effect the provisions of sections 110 to 110E—broadly speaking, the sections concerned with the Claims Tribunal. In both the cases, there is the usual provision under which the Government concerned may, without prejudice to the generality of the power conferred on it, make rules dealing with certain matters specifically enumerated in the relevant section.

We have already drawn attention[1] to the need for comprehensive rules on the subject. We have no further comments in the matter.

[1]Para 13·3, *supra*.

CHAPTER 18

SUMMARY OF RECOMMENDATIONS

We summarise below the recommendations made in this Report :—

CHAPTER 2—*The present law and general recommendation as to Chapter* 8.

(1) The present heading of Chapter 8 of the Motor Vehicles Act, 1939 should be revised so as to read "Insurance of Motor Vehicles and Adjudication of Claims for compensation in respect of accidents caused by Motor Vehicles".[1]

CHAPTER 3—*Liability without fault*

(2) By inserting new section 92A (to be placed under a new Chapter 7A), 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 110(1). This will apply to all claims for compensation in respect of such accidents tried before the Claims Tribunal.[2]

(3) On the introduction of such liability, there should be a monetary limit, prescribing the maximum compensation that can be awarded by the Claims Tribunal for death or personal injury. The maximum amount awardable (after inserting "no fault liability") should be Rs. one lakh.[3]

CHAPTER 4—*Beneficiaries of compulsory insurance* : *section* 95(1)

(4) Section 95(1) proviso (ii), which excludes certain persons from the benefit of a direct remedy against the insurer, otherwise available to a claimant for compensation, should be deleted.[4]

CHAPTER 5—*Monetary limits on the liability of the insurer* : *section* 95(2)

(5) In section 95(2), which imposes a pecuniary limit on the liability of the insurer on the basis of the class of vehicle and other criteria specified in the section, the limit should be either delected, or raised to Rs. two lakhs per claimant (in regard to claims before ordinary courts).[5]

[This is in regard to claims before ordinary courts which would have jurisdiction only when no Tribunal has been constituted. In regard to claims before Claims Tribunal, there is a separate recommendation as to the pecuniary limits of compensation for death or bodily injury.][6]

CHAPTER 6—*Duty to furnish particulars of insurance and accident* : *sections* 109*A and* 109*B* (*proposed*)

(6) Two new sections—sections 109A and 109B—should be inserted, imposing obligations on the police and the hospital authorities to communicate certain information relating to the accident and other specified matters to the Claims Tribunal and also to the injured person or his legal representatives.[7]

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[1]Para 2·7.

[2]Para 3·63.

[3]Para 3·63.

[4]Para 4·8.

[5]Paragraphs 5·6, 5·7 and 5·8.

[6]See item (3), *supra*.

[7]Para 6·7.

CHAPTER 7—*The Claims Tribunal*: *section* 110

(7) Section 110(1), proviso, which gives a third party an option to make a claim in the civil court in cases of proprietary damage excedeing Rs. 2,000, should be deleted.[1]

(8) Section 110(4) should be amended so as to vest the power to distribute business amongst the Claims Tribunals in the High Court and not (as at present) in the State Government.[2]

(9) In section 110, a provision shoud be inserted empowering the High Court to transfer proceedings from one Claims Tribunal to another (in the State) in the ends of justice.[3]

CHAPTER 8—*Application for compensation* : *section* 110*A*

(10) Section 110A(2) should be amended as recommended in the Report. (This is a minor verbal change).[4]

CHAPTER 9—*Effect of death and the meaning of "legal representative"* : *section* 110*A*(1)(*b*) *and section* 2(11) (*proposed*)

(11) In section 2, clause (11) should be inserted providing a definition of the expression "legal representatives", as meaning the spouse, parent and children (of the deceased).[5]

CHAPTER 11—*Parties* : *section* 110*B*

(12) In section 110B, a provision should be inserted empowering the Tribunal to make an order for compensation to be paid by a person who (though not the owner or driver) was in possession or control of the vehicle at the time of the accident.[6]

At the same time, a saving should be inserted regarding provisions fixing a maximum limit[7] for the compensation that could be awarded.

CHAPTER 12—*Appearance* : *section* 110*BB* (*proposed*)

(13) A new section 110BB should be inserted to provide for appearance before the Claims Tribunal through a legal practitioner or other authorised person.[8]

CHAPTER 13—*Evidence and procedure* : *section* 110*C*

(14) Attention of State Governments should be drawn to the need to make comprehensive rules of procedure.[9]

CHAPTER 14—*Interest* : *section* 110*CC* (*proposed*)

(15) A new section 110CC should be inserted to provide that in proceedings on a claim for compensation, the Court or Tribunal shall have the same power to direct the payment of interest on the sum awarded as a civil court has under the law (including the Interest Act, 1978 and section 34 of the Code of Civil Procedure, 1908). This provision will have effect notwithstanding anything to the contrary to any other law. Further, unless there are reasons to the contrary, it should be mandatory to give a direction for the payment of interest.

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[1]Para 7·7.
[2]Para 7·10.
[3]Para 7·12.
[4]Para 8·2.
[5]Para 9·15.
[6]Para 11·9.
[7]Para 11·10.
[8]Para 12·3.
[9]Para 13·3.

80-L/B(D)457MofLJ&CA—5

The rate of interest should ordinarily be twelve per cent, and interest should begin with the date of making the claim.[1]

CHAPTER 15—*Appeal and execution : sections* 110*D and* 110*E, and proposed section* 110*EE*

(16) Provisions should be introduced, requiring a person against whom an award is made by the Claims Tribunal to deposit the entire amount awarded. Detailed provisions are also recommended as to deposit of the amount where the award is made for the first time on appeal (or amount awarded in appeal) and as to the effect of appeal on an amount already deposited.[2]

CHAPTER 16—*Jurisdiction and limitation : sections* 110*F and* 110*A*(3)

(17) In section 110F, an Explanation should be added to provide that the Claims Tribunal, once constituted, shall have jurisdiction even if the accident occurred before its constitution. But pending proceedings shall not be affected.[3]

(18) In section 110A(3), a further proviso should be inserted to provide that where the accident occurred before the date of constitution of the Claims Tribunal, the period of limitation (six months) specified in this sub-section, shall be computed from the date of constitution of the Claims Tribunal, unless a suit for damages or compensation for the accident has already become barred under the law of limitation[4] for the time being in force.

Sd/-
P. V. Dixit — Chairman

Sd/-
S. N. Shankar — Member

Sd/-
Gangeshwar Prasad — Member

Sd/-
P. M. Bakshi — Member Secretary
27th May, 1980.

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[1]Para 14·9.
[2]Para 15·6.
[3]Para 16·8.
[4]Para 16·10.

APPENDIX 1

EXTRACT FROM THE INDIAN RAILWAYS ACT, 1890

82A. *Liability of railway administration in respect of accident to trains carrying passengers* :—

(1) When in the course of working a railway an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then, *whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof,* the Railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompanying the passenger in his compartment or on the train, sustained as a result of such accident.

(2) The liability of a railway administration under this section shall in no case exceed fifty thousand rupees in respect of any one person.[1]

[1]See amending Act 45 of 1973.

APPENDIX 2

EXTRACT FROM THE WORKMEN'S COMPENSATION ACT, 1923

3. *Employer's liability for compensation.*—(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

Provided that the employer shall not be so liable :—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days ;

(b) in respect of any injury not resulting in death, caused by an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purposes of securing the safety of workmen.

APPENDIX 3

Extract from the carriage by Air Act, 1972 First Schedule, Chapter III, Rules 17—21

CHAPTER III

LIABILITY OF THE CARRIER

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sutained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of sub-rule (1) comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the peformance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

20. (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may exonerate the carrier wholly or partly from his liability.

APPENDIX 4

POSITION IN SELECTED COUNTRIES AS TO COMPENSATION FOR AUTOMOBILE ACCIDENTS

Introductory.

Several schemes providing for 'no fault compensation for auomobile accident's have come to be enacted in some of the Commonwealth countries and also in some jurisdictions outside the Commonwealth. It would be tedious to give details of the legislation in force in the various countries. The material on the subject is overwhelmingly vast. The following is a brief statement of the position in selected countries.[1]

It may be mentioned that, these schemes mostly contemplate the payment of compensation without proof of fault. Payment in such cases is mostly made by a corporation created by law or from a fund maintained by the State and is generally subject to certain monetary limitations. Compensation exceeding that limit can, however, be claimed under the ordinary process. The fund from which payment is made is financed by contributions levied from the insurers.

In some countries[2] payment is made by the insured person or by the insurer, but the State undertakes liability if there is no insurance or if the owner is not identified.

In a few other countries, fault is not abolished, but the burden of proof of fault is reversed.

Brief discussion of the position in selected countries follows.

Austria.

Legislation in Austria[3] represents a pruning down of the available defences and a consequential expansion of liability. In regard to a road traffic accident, the law of that country[4] allows only the defence that the accident was due to an unavoidable event that is caused neither by a defect in the condition of the vehicle nor by failure of its mechanism.

Canada—Saskatchewan.

In one of the Provinces in Canada, the legislation goes the whole way. The Province of Saskatchewan was the first to legislate on the subject of no fault compensation. In 1946 was passed an Act which (as amended) is the Automobile Accident Insurance Act, 1963-1964[5] of Saskatchewan.

Under this statute, drivers are required to purchase insurance from a Government insurance office, which, in turn, provides a fixed scale of compensation, *without the need to establish fault,* for accident victims, including drivers. This is not an exclusive method of recovery, and the victim may sue to obtain additional compensation upon the ordinary common law principles. The amount paid under the scheme is deducted from any verdict obtained at common law. The drunken, the un-insured or the suicidal driver is excluded from the benefits. The Saskatchewan plan was not directed to relieving court congestion or to meeting criticisms against the trial of automobile cases by judge or jury.

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[1]*Countries covered*—Austria, Canada, Denmark, England, Finland, France. (West) Germany Japan, New Zealand, Norway, Sweden, Switzerland and U.S.A. (Illinois, Massachussets, Michigan and New York.)

[2]E.g. Japan.

[3]Fleming, comment in (1975) A.J.C.L. 513, 518, fn. 30.

[4]Austrian Railway & Motor Vehicle Liability Act, (E.K.H.G.) 1959, section 9·1.

[5]Mr. Justice Herron and Mr. Justice Aspray, Paper on 'Motor Car and the Law' page 12 (Commonwealth Law Conference, 1965).

The frequency of motor accidents accounts for legislation in Saskatchewan providing for payment of a fixed and limited amount of compensation to the injured party *regardless of negligence.*[1] Its self-advertised primary object was to prevent destitution resulting to persons injured by automobile accidents by guaranteeing the recovery of some sum by the injured. Periodical payments are featured during disability. Its scale of benefits is law, e.g., $ 5,000 for the primary defendant in the case of death.

Under the Saskatchewan scheme, an application for a vehicle registration or for a driving licence must be accompanied by a certificate of accident insurance, the insurer being the provincial government insurance officer. Persons injured by the operation of motor vehicles may, under the terms of this insurance, recover specified benefits without proof of fault. The scheme, as a general rule (with exceptions as to drunken driving, driving without licence and certain other special circumstances), reduces liability based on fault as regards the owner and the operator as already stated. Claims based on negligence are not eliminated.[2]

Saskatchewan Legislation.

The Saskatchwan Automobile Insurance Act, provides[3] that "every person is hereby insured" against loss resulting from bodily injury sustained in an accident while driving or riding in a moving motor vehicle in Saskatchewan, or as a result of a collision with or being run over by a motor vehicle, regardless of fault.[4] The certificate of insurance projects not only the person named in the certificate, but also any other person in Saskatchewan riding in the vehicle while it is being operated by a properly licenced driver. Any person injured, who is not named as an insured, is also 'deemed to be a party to the contract and to have given consideration therefor, and is protected. The certificate itself protects all persons domiciled in Saskatchewan injured while driving or riding in a vehicle outside Saskatchewan anywhere on the North American continent.[5]

Protection under the Saskatchewan Act is coincidental with the licencing of the vehicle and the issue of a driver's licence, the premium being paid at the time when such licences are issued. A resident of the province will lose the protection of the Act only,

(1) where he is under the influence of intoxicating liquor or drugs to such extent as to be incapable of property controlling the vehicle ;

(2) where he drives without a licence or in a vehicle not properly registered ; and

(3) where he rides on a part of the vehicle not designed to seal passengers or carry a load.[6]

Fund created to cover the scheme.

This coverage (in Saskatchewan) is secured under an exclusive provincial insurance fund. All drivers and car owners must pay for government insurance annually, concurrently with their applications for renewal of licences and registrations. The terms of the insurance contract are contained in the statute, and the registration certificate of the driver's licence, coupled with the statute, constitute the only "policy of insurance". This lapses with the expiration of the licence and registration.[7]

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[1]See (1952) 66 Harv. L. R. 191.

[2]Mr. Mustice Herron and Mr. Justice Aspray, Paper on 'Motor Car and the Law' page 12 (Commonwealth Law Conference, 1965).

[3]Note in (1961) 39 Can. Bar Rev. 107, 110.

[4]S. S., 1946, C. 11, s. 12(1), now R.S.S., 1953, C. 371, s. 19(1).

[5]R.S.S., 1953, C. 371, s. 192 19(2).

[6]R.S.S., 1953, C. 371, s. 29-30.

[7]R.S.S., 1953, C. 371, s. 19(2).

The law is administered by the Saskatchewan Government Insurance Office, a Crown corporation, which was first incorporated by an Act of the legislature for the purpose of effecting insurance in competition with private companies.[1] In respect of its functions under the Automobile Accident Insurance Act, however, it is a statutory body and the procedure resembles that of an administrative board under workmen's compensation legislation.

The scheme in Saskatchewan has been amended several times and is now found as the Automobile Accident Insurance Act of 1963, 5 Rev. Stat. Saskatchewan, Ch. 409 (1965). The full statutory text requires some 60 pages.[2] A brief sketch of its provisions follows.[3]:—

(i) All drivers are required, as a condition of driving, to secure a certificate of insurance by paying a basic premium; paragraphs 3(1), 3(5).

(ii) All insurance is provided by the Saskatchewan Government Insurance Office. Paragraph 2(p).

(iii) For his premium the driver buys, in effect, three kinds of coverage: accident protection (Part II), property loss (collision, theft, casualty) protection (Part III), and liability insurance (Part IV).

(iv) It is the accident insurance that is the key to the compensation plan. If provides accident coverage for "every person" suffering bodily injury from the use or operation of a motor vehicle.

(v) There is an elabroate schedule of benefits. For total disability, the maximum benefit is 25 per week for a maximum period of 104 weeks, paragraph 22(2); for partial disability, the amount is $ 12.50 per week, paragraph 22(3). In case of death the benefits are $ 5,000 for the primary dependant and $ 1,000 to each secondary dependant; if the decedent (deceased) was a housewife, the award is $ 2,000; and if a child, it varies from $ 100 to $ 1.000 depending on the age of the child. Paragraph 24.

(vi) Common law actions for negligence are left intact by the Act, subject to deduction of any accident insurance benefits paid under the Act. Paragraph 77.

(vii) Since the province has an independent scheme of health insurance, it is not necessary for this Act to cover medical expenses resulting from auto accidents.

Canada—Other Provinces.

In many other provinces of Canada, while liability continues to be based on negligence, the victim's prospects for collection of damages have been improved by the enactment of "safety-responsibility" legislation. There were also enacted "impounding Acts". These Acts provide that after an accident, a vehicle involved in the accident shall be impounded at the instance of a public official unless proof of financial responsibility has been furnished. The vehicle impounded is not released until all claims are settled or security given for the payment and until proof of financial responsibility for the future is given.

Denmark.

In Denmark, the existing (Denish) Road Trffic Act[4] imposes a duty to obtain third-party motor insurance. It defines the scope of the insurance as covering claims made under the special compensation rule of the Act. This rule imposes liability upon the owner or user of the motor vehicle under a fault rule providing for a reversed burden of proof (that is, a presumption of liability)[5].

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[1]R.S.S., 1953, C. 371, s. 3, 4 and 5.

[2]Gregory & Kalven, Cases and Materials on Torts (1969), page 898.

[3]For details, see Keeton and O'Connell, Basic Protection for the Traffic Victim (1965), pages 140—148.

[4]Gomard, "Compensation for auto accidents" (1970) 18 A.J.C.L. 80, 82.

[5]Lovbekendtgorelse (Consolidation Act) No. 231, 27th June, 1961, as amended, s. 66(1) and s. 65.

Denmark has, for time being, retained fault liability with a reversed burden of proof. A certain hesitance to abandon the present systems has been expressed, noting that these systems grant compensation to the great majority of injured persons, and that they have been built into the practices of courts and of insurance companies[1].

England—statutory provision.

In England, the Road Traffic Act, 1972[2] which re-enacts earlier legislation requires every person who uses a vehicle on a road to take out a policy of insurance indemnifying him in respect of any liability which may be incurred by him in respect of the death, or bodily injury to, any person (including a passenger) caused by, or arising out of, the use of the vehicle on a road. Further, a third person who suffers bodily injury as a result of a tortious act of the insured is given a direct right of action against the insurers, provided that the liability of the insured is first established[3].

England—extra-statutory machinery.

These provisions first passed in 1930 left one gap-a motorist might have no, or no effective, insurance. This gap was filled by an extra-statutory piece of machinery described below.

The statutory provision—section 145 of the Road Traffic Act 1972—reads:

> "145. (1) In order to comply with the requirements of this Part of this Act, a policy of insurance must satisfy the following conditions.
>
> (2) The policy must be issued by an authorised insurer, that is to say, a person or body of persons carrying on motor vehicle insurance business in Great Britain.
>
> (3) Subject to sub-section (4) below, the policy:—
>
> (a) must insure such person, persons or classes of persons as may be specified in the policy in repect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by, or arising out of, the use of the vehicle on a road; and
>
> (b) must also insure him or them in respect of any liability which may be incurred by him or them under the provisions of this part of this Act relating to payment for emergency treatment.
>
> (4) The policy shall not, by virtue of sub-section (3) (a) above, be required to cover—
>
> (a) liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or
>
> (b) any contractual liability."

The extra-statutory machinery is in the form of an agreement.

Motor Insurer Bureau in England.

In 1946, the Motor Insurers' Bureau in England entered into an agreement on the subject with the government (later replaced in November, 1972 by another agreement). Under the agreement, the Bureau undertook to satisfy unsatisfied judgments in respect of any liability[4], required to be covered by a policy of motor vehicles insurance in specified cases. The Bureau even makes payments in the case of an unidentified hit-and-run driver—a matter governed by separate agreement.

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[1]Gomard, "Compensation for auto accidents" (1970) 18 A.J.C.L. 80, 84.

[2]Sections 43 and 145, Road Traffic Act, 1972.

[3]*Post Office* V. *Norwich Union Insurance Society Ltd.*, (1967)1 Q.B. 363.

[4](a) For the text of the 1946 agreement see *Hardy* V. *M.I.B.*, (1964) 2 All E. R. 742.

(b) Also see Law ommission of India, 51 St Report pages 7—10, paragraphs 22—26 and (October 24, 1968) New Law Journal.

There is no legal liability on the part of the Bureau to the third party, as he is not privy to the Agreement, although the Minister might obtain specific performance[1].

The statutory provisions for compulsory third party insurance, together with the agreement referred to above, do not, of course, cover every accident. The system was not intended to provide universal compensation, but only compulsory cover for negligence. The Bureau will repudiate liability when the accident has been caused in circumstances not legally required to be covered by insurance—e.g. wholly on private land as distinct from a road. Hence it is a condition precedent to recovery under such a system of liability insurance that a judgment should be obtained against the defendant if liability is contested by his insurance company. The Bureau may require the party bringing the proceedings to take all resonable steps to obtain judgement against all tortfeasors responsible, and in other ways the 1972 agreement gives it wide powers to control the steps to be taken by the injured party[2].

Hence it may still be necessary to embark on the lengthy and expensive process of a trial in order to prove fault, and if this cannot be proved, the plaintiff today is in no better position than he was forty years ago[3].

Finland.

In the Nordic countries, the expediency of maintaining presumptive liability, and attaching insurance coverage to this "reversed fault" rule, was actively debated. The Finnish Act[4] of 1959 has now practically abolished[5] the personal liability of the owner and of the user, in so far as the insurance covers the loss or damage. Their liability has been replaced by a compulsory insurance system for the direct benefit of the injured person[6].

France.

In certain other countries on the Continent, while, traditionally, liability has been based on fault, a broader liability was developed, *inter alia*, in motor vehicles cases by judicial interpretation. An example of such an approach is furnished by the position in France, where the result was reached on an interpretation of a provision of the French Civil Code[7].

French Civil Code and the legislative frame work as to tortious liability.

The legislative framework of delictual liability in France is comparatively straight forward and is detailed in just five articles of the Civil Code[8]. The traditional basis of liability is fault, understood as an intentional, reckless or negligent act[9]. In addition, there are some special cases where the plaintiff need not prove fault in order to establish liability[10] ; where the defendant is answerable for the acts of certain classes of persons (e.g. parents for the acts of their children ; masters for the acts of their servants); where the defendant has the *use, direction and control* of an animal; and where the defendant is the owner of a building which, through structural defects or lack of repair has caused damage by its collapse.

In these cases, the burden of proof is shifted: responsibility is presumed without proof of fault and can be rebutted only by defendant's proof of an absence of casual connection between the act in question and the damage to plaintiff or, in some cases, other particular facts.

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[1]*Gurtner* V. *Circuit*, (1963) 2 Q. B. 587; (1968) 1 All E. R. 328, 333.

[2]*White* V. *London Transport Executive*, (1971) 2 Q.B. 721.

[3]As in *Hunter* V. *Wright*, (1938) 2 All E. R. 621.

[4]Finnish Traffic Insurance Act, 6th June, 1959.

[5]Gomard, "Compensation for Auto Accidents" (1970) 18 A.J.C.L. 80, 85.

[6]Finnish Motor Vehicle Insurance Act (26th June, 1959).

[7]French Civil Code, Article 1384, para 1.

[8]Harding, "Fault in French Law of Delict" (July 1979) Vol. 28, Part 3, I.C.L.Q. 525, 526.

[9]See Arts. 1382 and 1383 of the Civil Code.

[10]Civil Code, Arts. 1384 to 1386.

More important is Article 1384, aline a 1 of the Code.

According to one translation[1] of the provision in question—

"A person is responsible not only for the damage caused by his own act, but also that which has been caused by the acts of ..... things which are under his care."

[On est responsible non seculement du dommage que l'on caus per son propre fait, mais encore de celui qui est cause par les faits ..... des choses que Pon a Sous as garde][2].

The same provision has been thus[3] translated in another book on French law:—

> "A person is liable not only for the damage he causes by his own act but also for that which is caused by the acts .....of things which he has under his control."

Judicial construction of Article 1384.

This provision has had interesting history. For most of the nineteenth century, French courts read this clause as being simply introductory to be the special cases dealt with by Articles 1385 and 1386 (damage by animals and collapsing structures). However, with the increasing industrialisation and mechanisation of society and the resultant enlarged risk of accidents which were often anonymous in character (i.e. where it was difficult to establish fault on the part of a particular person) and moreover a growing feeling that the law of delict should serve the ends of compensation as much as those of penalising wrongdoers Article 1384(1) came to be given a much wider interpretation.

"Thing" was interpreted as even something as diffuse as electricity or gas[4], and liability was imposed, without proof of fault, for damage caused by such things (which were usually dangerous, such as motor Vehicles and machines), provided that they were under defendant's "garde" or, more exactly, under "use, direction and control[5-6].

Contributory negligence in France.

Contributory negligence is, however, recognised in France as a defence in certain cases by judicial decisions. The matter is too intricate to permit discussion in this brief study. But it may be noted that one writer[7] has critised this approach as "an introduction or fault into article 1384(1), liability and therefore ..... contrary both to the logic of the provisions interpretation and to the policy behind that interpretation"[7].

Forum in France.

It would be of interest to note that in France[8] liability for motor accidents has been entirely taken out of the hands of administrative courts and subjected to the principles of private law and the jurisdiction of ordinary courts.

West Germany—the legislative framework.

In the Federal Republic of Germany, somewhat similar developments have resulted, but these have been achieved more by direct legislative provision than by judicial decisions For tortious liability in general, the relevant articles of the Code of Civil (in West Germany) is Article 823, paragraph 1, of the Burgerliches Gesetzbuch (B.G.B.).

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[1]Article 1384, para 1, French Civil Code.

[2]Harding, "French Law of Delicts" (1979 July) Vol. 28, Part 3, I.C.L.Q. 525.

[3]Amos & Walton, Introduction to French Law (2nd Edn. 1963), pages 226, 237 (Article 1384).

[4]See Encyclopedie Dalloz, 4, No. 139, 141.

[5]Ch. reum. 2 Dec. 1941, D. C. 1942, J. 25.

[6]Harding, "Fault in French Law of Delict" (July 1979) Vol. 28, Part 3, I.C.L.Q. 525, 526.

[7]Harding, "Fault in the French Law of Delict" (July 1979) I.C.L.Q. 525, 529.

[8]Kahn-Freund, Lowy and Rudden, "Source Book of French Law" (1973) page 203 (Law of 1 December, 1957).

It reads:—

"Anyone whose intentional or negligent act causes unlawful harm to the life, body, health, liberty, property or any other right of another is liable to make preparation for the resulting damage".

Article 823, paragraph 2 imposes on any person who infringes a statutory provision intended for the protection of others, the same obligation to pay compensation.

A special law—The Road Traffic Act—makes certain special provisions for traffic accidents in (West) Germany.

Then, there is the work accidents insurance scheme.

Hence, in general, in West Germany, compensation for injuries must be sought by either proof of fault under Article 823 of the Code Civil or by reliance on the Road Traffic Act of 1952, or by claiming under the work accidents insurance scheme.

Apportionment on the basis of contributory negligence.

This is the position as to creation of liability. The question of its apportionment under section 254(1) of the Civil Code (West Germany) is also of interest. If the plaintiff's fault has contributed to the damage, then the defendant's obligation—and the extent of his obligation—depend upon the circumstances and, in particular, on how far the injury has been caused predominantly by one or the other party.[1]

Position as to collisions.

However, in the situation where both the plaintiff and the defendant are in control of a *motor vehicle*, both are strictly liable for any damage caused by their vehicles on the basis of the operational risk (Betriebsgefahr) involved in using the vehicles."

Road Traffic Act The Civil Aspect.

The Road Traffic Act, 1952 (Germany), imposes strict liability[3] on the keeper of a vehicle, though, if he can show that the accident was due to an "unavoidable event that is caused neither by a defect in the condition of the vehicle, nor by a failure of its mechanism" and that he or his driver had shown the care of a skilled driver, he can avoid liability. The driver, as such, may also be found liable under a separate provision of the Act which reverses the burden of proof.

Contributory negligence.

There is a maximum sum awardable (at present DM 250,000[4] by way of lump sum or DM 15,000 by way of annuity, in respect of one accident). These damages do not include compensation for pain and suffering or aesthetic loss, and hence questions of fault will often have to be adjudged on, for an action under the Road Traffic Act does not preclude a suit under Article 823 of the B.G.B.

Germany—Road Traffic accidents in Germany—Some matters of detail.

The West German law concerning road traffic accidents is detailed and complicated. The following quotation from an article[5] on West German legislation on this subject would be of interest, as showing the attention paid to

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[1]Harding, "Fault in the French Law of Delict" (July 1979), Vol. 28, Part 3, I.C.L.Q., 525, 529.

[2]See the *Strassenverkehrsgesetz* of Dec. 19, 1952.

[3]Section 7, West Germany Road Traffic Law.

[4]The exchange rate of the German Mark on May 1, 1978 was £1=DM 3·93.

[5]H. C. Horton, "Motor Traffic Accidents and West German Law" (1976) 126 New L. J. 1201-1202.

certain matters of detail in order to facilitate proof :—

"A German driver who is involved in a road traffic accident and knows that an accident has occurred is obliged not only to disclose his name, address, car registration number and insurance details but also to do all that he can to give a clear picture of the facts connected with the accident and to keep to a minimum any damage which could result therefrom [paragraph 71(2)3, The General Conditions of Motorised Vehicle Insurance].

"This requirement can lead to practical difficulties since, to fulfil it totally, it is often necessary that the vehicles involved remain exactly where the accident occured. Sometimes this is possible, until the police arrive. Yet, traffic conditions can necessitate that the vehicles be removed from the highway because they constitute "an obstacle, dangerous to other road users. If such be the case it will suffice if the collision-position of the vehicles is clearly marked out on the road, together with any skid marks, before they are removed. Chalk markings, measurements taken with a tape-measure, a sketch or photograph will suffice. The Federal Court of Justice (BGH) has decided that full compliance with paragraph 7 can be excused only if it is absolutely necessary to remove the vehicles in the interests of maintaining a safe flow of traffic (BGH II ZR 35/59). At night, for example, it would be unreasonable to leave collision-vehicles and injured persons on a busy road (BGH IV ZR 527/58). A German driver who, without good reason, does not comply fully with paragraph 7 runs the risk of losing his insurance indemnity, for, although his insurance company must meet third party claims, it will be entitled to recoup any sums paid out from the driver himself.

"A driver involved in a road traffic accident has a duty also to prevent further accidents arising from his mishap. He must stay by his vehicle to warn other road users, and, when the police arrive, may only leave it when ordered to do so by the police (BGH VI ZR 195/59). Warning triangles should also be placed on the road at "least 50m to 80m from the accident spot ; at night they should be illuminated (BHH Vers R 69,668). Other road users must exercise due care if they see that an accident has occurred or signs which might so indicate, e.g. a stationary police vehicle with flashing blue warning light.

"On being involved in an accident and knowing that an accident has occurred there is a duty to stop. Paragraph 142 of the Penal Code (St GB), formerly headed Verkehrsunfellflucht ("hit and run" traffic accident), was revised in 1976 and is now entitled Underlaubtes Entfernen Vom Unfallort (illegal leaving of the scene of the accident). The paragraph, which imposes criminal sanctions in certain circumstances, in primarily concerned with the procedure to be followed when an accident takes place *so that civil law remedies can be the more easily pursued and the settlement of insurance claims facilitated.* It states, *inter alia,* that any person whose conduct, in the given circumstances, may have contributed to the accident must remain at the scene of the accident. 'Any person' includes other road users, passengers and also pedestrians, if there is a possibility that they caused, or partially caused, the accident. All such persons "must declare that they were involved in the accident, but none needs to say how he was involved. In fact, the elimination, concealment or removal of evidence, even taking a drink to alter the alcohol level in one's blood to defeat a blood test, is not punishable under paragraph 142. (But such conduct makes one liable to a fine under paragraph 34 of the Strassenverkehrsordnung (Road Traffic Act). Also, the Federal Court of Justice has decided (BGH II ZR 53/65) that such action can result in the loss of one's insurance indemnity, since paragraph 1, **supra,** would not be observed). Even an incorrect statement as to one's own involvement in the accident is not punishable under paragraph 142. So, if, after an accident, an involved party just stands there without saying a word he is

liable to prosecution under paragraph 142. But, an involved person, who falsely describes his involvement, is not. In both instances, however, he would contravene the requirements of paragraph 7, *supra.*

"Paragraph 142 recognises that there might well be circumstances in which one has to leave the scene of the accident at once, e.g. to transport an injured person to hospital or to obtain medical attention for oneself (even if it should turn out that the injuries were only minor); "perhaps to evade threatened violence from the other part. In such cases the formalities required by paragraph 142 must be completed as soon as possible later (unverzuglichnachtraglich), on returning to the police.

"If an accident takes place and no one else is present, a problem arises. For example, one bumps into an empty parked car or damages a fence on a lonely country road. An accident has taken place and there is a duty to stop. But for how long? In the first example one might wait for half an hour, leave one's name and address under the windscreen wiper and then inform the nearest police station of one's involvement in an accident giving the registration of the damaged car. In the second example, one would not be expected to camp all night at the scene of the accident before trying to find the owner of the fence—one would inform the nearest police station. The test is : did the driver act reasonably and responsibly in the circumstances? It should be added that if a driver acts as described in such circumstances as just instanced he would not fail to comply with paragraph 7, *supra,* (nor paragraph 142) and so would not lose his insurance protection (BGH II ZR 24/65).

"If, however, an accident occurs and no-one is injured except the driver himself or there is no damage to property other than that of the driver himself, there is no duty under paragraph 142 to stop nor to report the accident to the police (BGH St R 148/55) even if the driver was in any way unfit to drive at the time of the accident.

"Paragraph 142 makes it clear that repentance is irrelevant. Thus, if a driver has an accident decides not to stop, then repents and returns to the scene of the accident 'to do the decent thing', the driver is guilty of illegally leaving the place of the accident and can be imprisoned for up to three years or fined. The fact of repentance may, however, lead the police not to prosecute or, if they do, result in a reduced sentence or fine. In 1974 there were 32,372 successful prosecutions under paragraph 152.

"when a road traffic accident occurs it is always advisable to call the police to the scene of the accident. The police are obliged to investigate any accident, being considered 'to be in the position to ascertain the necessary facts with the requisite expertise and reliability'. Even if the accident damage is only to property (Sachschaden) and is of a minor nature the police cannot refuse to investigate (Bayr OLG lb st 288/65). When the "police arrive the parties to the accident are not obliged to make any statement (except to fulfil the requirements of paragraph 142) and are advised to check the accident sketch and report made by the police since, in subsequent proceedings, whether civil or criminal, there will be a rebuttable presumption by the court that both documents are accurate and complete. In cases where only very minor damage is caused, e.g. a dented mudguard, the participants may decide to settle repair costs between themselves. This could be unwise on the party of the defaulting driver, since the other driver might still decide to report the accident to the police, and to the other party's insurance company, especially if be discovers the damage to be more extensive than originally diagnosed. In such a case he would put himself in a much stronger position than the other party since he has asked the police (the proper authority) to investigate the collision. The driver who was willing to settle would also be acting

contrary to his insurance contract in that he, by paying or promising to pay for the damage he caused, contravened paragraph 7 11(1) of the General Conditions of Motorised Vehicle Insurance which states: On causing damage which involves liability to third parties the insured person is not permitted, without the previous "consent of the insurer, to admit or to satisfy a claim totally or partially. In all but exceptional circumstances he might well lose the protection of his insurance company (paragraph 7 11(2) of the General Conditions and BGH 11 ZR 173/63)".

Japan—Liability under the Civil Code—Conditions of civil liability.

In Japan, the basic provision of the Japanese Civil Code regulating tortious liability is article 709, which provides:

"A person who, wilfully or negligently, has injured the right of another is bound to compensate him for the damage which has arisen therefrom."[1]

Article 722(2) of the Civil Code of Japan, dealing with the plaintiff's negligence, provides :[2]

"If there has been fault on the injured party, the court may take it into account in determining the amount of compensation for damages." This is the civil-law rule of comparative negligence; fault on the part of the injured party does not necessarily "extinguish the wrongdoer's liability, but only reduces the damages he must pay. Thus if a pedestrian or a cyclist who was injured by an automobile was himself at fault, the damages are reduced according to the degree of fault of the parties and at the discretion of the court. When two automobiles collide, reciprocal liabilities generally arise."

The court then reduces the amount of damages owed to each party under the principle of comparative negligence, and the difference is paid by the party owing the larger amount. These computations are often difficult to make and may, in some cases, hinder or prevent settlement out of court.

When a driver is employed by a taxi company, a trucking company, or an individual, the employer is ordinarily liable for injury caused by the employee, assuming that the latter would be held liable under article 709. Article 715(1) of the Japanese Civil Code prescribes the employer's liability in these terms:[3]

"A person who employs another for the purpose of any undertaking is bound to compensate for damages which his employee has inflicted on a third party in the execution of this undertaking. Provided, however, that this does not apply if the employer has exercised adequate care in the selection of the employee and the superintendence of the undertaking, or if the damage would have arisen even though adequate care had been exercised."

Literally, this provision exempts an employer from liability if he can prove that his selection and supervision of the driver were faultless; but the courts have long refused to allow such proof. The employer who has paid such compensation may demand reimbursement from the employee, however, under article 715(3), although often he does not do so.

Legislation in Japan.

The Japanese Automobile Damage Compensation Security Act primarily compels[4] liability insurance covering fixed amounts, but the government makes a contribution to the cost and there is an entirely new system of "provisional payments". "The mere fact of ..... death or injury (having been caused) by the operation of an automobile entitles the victim to demand payment from the insurer in an amount of about one-third of the compulsory policy limits. Reimbursement of amounts, thus 'provisionally' paid in the absence of liability, is limited to a *claim by insurer* against the government which in turn may, but hardly ever will, recoup itself from the victim".

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[1]Von Mehren (Ed.), Law in Japan (1963), page 401.

[2]Von Mehren (Ed.), Law in Japan (1963), pages 401, 402.

[3]Von Mehren (Ed.), Law in Japan (1963), page 402.

[4]Ehrenzweing in (1956) 5 American **Journal of Comparative** Law 273.

This last provision goes some way towards the approach of *compensation irrespective* of fault.[1]

The Damage Law can be best discussed by being broken down into three topics: liability, compulsory liability insurance, and governmental compensation of injured persons not otherwise compensated through insurance.[2]

Liability in Japan.

As to liability, article 3 of the Damage Law[3] provides as follows:

> "A person who, for his own benefit, places an automobile in operational use, if he has injured the life or body of another, is bound to compensate him for the damage which has arisen therefrom. Provided, however, that this does not apply if he can prove that he and the driver did not neglect care in the operation of the automobile, that there was wilfulness or negligence on the part of the injured party or a third party other than the driver, and that there was no structural defect nor functional disorder in the automobile."

Use of concepts.

Some concepts in article 3 of the Automobile Damage Law are used in a special sense[4]. The term "automobile", as defined in article 2(2) of the Road Transport Vehicle Law, includes almost every kind of motor vehicle except motor-bikes, that is, passenger cars, trucks, buses, motorcycles, and motor scooters.

The "owner of an automobile or a person otherwise having the right to use an automobile, who, for his own benefit, places an automobile, in operational use" is defined as a "holder" of a motor vehicle. This term does not include an unauthorised operator, such as a thief. However, the broader language of article 3 is less restrictive and embraces the unauthorised operator as well. But a mere "driver" engaged by an owner, since he is not operating the vehicle "for his own benefit", is not liable under article 3 but only under Civil Code.

"Operation" is defined in article 2(2) of the Damage Law as the ordinary use of motor vehicle without regard to whether it is used in the transportation of persons or goods. This definition is applied somewhat arbitrarily, however. If an unoccupied motor vehicle starts moving because it was improperly parked, or if a pedestrian is injured when a door of a parked vehicle is opened, an injury inflicted results from the "operation" of the vehicle. But when one driver, working on his vehicle at a service station, ignited a fire by dropping a spark that fell on a gasoline can, the injured service-station attendant was held to have no rights under the law because the accident did not result from the operation of a motor vehicle.

Article 3 covers injuries to a taxi passenger, for there are no specified injured persons who can claim recovery. As is pointed out below, however, it is disputed whether article 3 applies to injuries suffered by passengers who are either guests or members of the holder's family.

Coverage under article 3 is limited to the damages arising from death or personal injury ; accordingly, the provisions of the Civil Code govern claims for property damage. The exclusion of property-damage coverage in the law is due to the heavy economic burden on holders of motor vehicles that would result from nearly strict liability and compulsory insurance for property damage.

The holder bears the liability under article 3. Thus, if an employer is the holder, he must prove not only the absence of fault in his employee, but also other matters such as the fault of the injured person. The liability of the driver to his employer remains under article 715(3) of the Civil Code, if the employer can prove fault of the employee.

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[1]See Sir John Barry, "Compensation without Litigation" (1964) 37 Aust. L.J. 339, 349.

[2]Von Mehren (Ed.), Law in Japan (1963), page 406.

[3]The Automobile Damage Compensation Security Law (Japan) (No. 97 of 1955).

[4]Von Mehren (Ed.), Law in Japan (1963), pages 406—411.

This right of indemnification, however, comes into existence only when the total damage exceeds the amount covered by the compulsory insurance, because the insurance covers both the holder and the driver. Other matters not specifically mentioned in article 3, such as the measure of damages and comparative negligence, are still governed by the provisions of the Civil Code (Japan).

Compulsory liability insurance in Japan.

No one is to operate a motor vehicle unless it is covered by insurance as required by article 5 of the law. When a contract of libility insurance has been concluded, the insurance company issues a certificate to the insured; the document must be kept in the vehicle during operation and must be presented to the proper administrative officers upon request and when any interest in the vehicle is to be transferred. An insurance company may not refuse to write a contract of liability insurance. In order to make these provisions effective, violation of any of them is punishable by fine or imprisonment; for example, operating an uninsured vehicle may be punished by a fine of not more than 30,000 yen or imprisonment for not more than three months.

The law does not provide who shall procure the policy of liability insurance; in practice, the holder generally takes it out.

Under the liability-inusrance system, the insurer must indemnify the holder for any liability he has under article 3, up to certain limits. The amounts of insurance payments are prescribed by article 2 of the Enforcement order, implementing article 13 of the law, as follows: for death, 5,00,000 yen; for serious injury, 1,00,000 yen; for slight injury, 30,000 yen. These are the maximum benefits payable under compulsory insurance; when actual damages are less than those amounts, payments equal to the actual damages are to be made.

The provisions on compulsory insurance do not apply to motor vehicles operated by the state, public corporations, prefectural governments, and the five major Japanese cities. These holders presumably have the means to pay damages and are willing to do so. For holders of large fleets of vehicles, the law provides a system of self-insurance instead of liability insurance. Such possessors must obtain the approval of the Minister of Transportation; the standards for the grant of approval are ownership of more than two hundred vehicles (a bus being treated as two vehicles), the ability to pay damages, and the absence of danger of frequent accidents. Regulations provide that the self-insurer must maintain a reserve fund and must manage the assets thereof in order to meet whatever motor-vehicle liability it might incur.

Government compensation in Japan

In the usual case in Japan, the injured person has no difficulty in obtaining compensation for his injuries to the extent of the coverage of the liability insurance, but in some exceptional cases there is no such coverage. In these, the government pays compensation to the injured person, just as insurance companies often make direct payment to injured persons. Then the government is subrogated to the injured person's rights and may seek reimbursement from the injurer, who remains primarily liable. Thus an injured man always has the benefit of some kind of liability insurance. Governments do not ordinarily pay compensation for injuries incurred through an accident between private persons—in Japan, the only other example is the case of damage from atomic energy—and this exceptional and progressive provision shows that the relief of persons injured in motor-vehicle accidents is considered a problem of vital importance.

The government compensates injured persons for loss of life or personal injuries resulting from the operation of a motor vehicle in two types of cases. The first is that in which the injured person cannot demand damages under article 3 because the holder of the vehicle is unknown, that is, the case of hit-and-run driver. Even if the driver or the holder of the automobile was covered by liability insurance, the injured person cannot take the benefit of the insurance. The second case is that in which the required coverage has not been taken out, either because the holder has not obtained liability insurance, whether forgetfully, neglectfully, or intentionally, or because the accident was caused by a thief or other unauthorised driver whom the compulsory insurance does not cover.

New Zealand.

New Zealand has adopted a comprehensive plan for dealing with all *accidental injuries,* no matter how caused.

Abolition of tort action.

The New Zealand legislation has abolished all rights[1] of action in tort for personal injury or death and has provided instead, for State-funded compensation in respect of all those who suffered injury or death due to an accident, whether or not caused by the act or default of another.

New Zealand.

The New Zealand Act has been described as "the most ambitious reform of tort law in the common law word"[2]. It makes provision for the compensation of—

(i) earners who suffer personal injury by accident regardless of place, time or cause;

(ii) all persons who, in New Zealand, suffer personal injury by a motor vehicle accident;

(iii) certain dependants of those earners and motor vehicle accident victims where death results from the injury.

The only (very limited) survival of the fault principle is that a person who wilfully inflicts injuries on himself has no claim, but even then dependants may be compensated if in special need.

The Act[3] establishes an Earner's Scheme and a Motor Vehicle Accident Scheme, the former dealing with personal injuries to earners (but not limited to injuries arising out of employment), and the latter covering the entire population with respect to injuries inflicted by motor vehicles. Where the schemes operate, tort action is abolished.

Compensation—Scope of — in New Zealand.

Compensation under the New Zealand scheme includes medical and related benefits, compensation for lost earning capacity at a rate of 80% of earning up to $ 200 a week, lumpsum payments for non-pecuniary losses in cases of permanent loss or impairment of bodily function to a maximum of $ 5,000 and compensation for pain and suffering and loss of amenities to a maximum of $ 7,500. Other injury-related expenses are covered as well. Death benefits include funeral expenses, and an allowance for a dependant widow or widower of 50% of the amount that would have been payable to the deceased for loss of earning capacity. The dependants' allowance is higher where other dependants are involved.

Injuries covered in New Zealand.

As to the injuries covered, the New Zealand scheme provides for compensation for personal injury by accident as also for death. It should be noted that the scheme purports to be a unified and comprehensive scheme of accident compensation, inasmuch as it is not confined to injuries caused by motor vehicle accidents. The compensation awarded under this scheme is irrespective of fault. As a result, personal injury by accident is taken out of the field of the law of torts.

Statutory Commission.

The award of compensation is by a Commission constituted for the purpose under the Act. It is a body corporate with three members appointed for a three year term, on the recommendation of the Minister of Labour.

Procedure—Formal application.

The procedure is briefly this.[4] The applicant for compensation submits a formal application to the Commission, and in many cases the decision is made by the staff of the Commission, with scope for an application for review to the Commission (with hearing). There is an appeal to an independent appeal authority and a further appeal (with leave) to the Supreme Court. An appeal, with leave, can be filed in the court of appeal against the decision of the Supreme Court. There are detailed provisions for the assessment of earnings.

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[1]The Accidents Compensation Act, 1972 (New Zealand).

[2]Geoffrey W. Palmer, "Compensation For Personal Injury : A Requiem for the Common Law in New Zealand" (1973) 21 Amer. Jour. Com. Law I.

[3]Accident Compensation Act, 1972. New Zeland Statutes, 1972, Vol. 1, No. 43.

[4]See Hepple, Tort (1979) Appendix 5, pages 715—722 and Supplement page 732.

Earners' scheme in New Zealand.

Part III of the New Zealand Act provides for the establishment of an earners' scheme under which cover may be either (a) continuous cover, or (b) work accident cover[1].

(a) **Continuous cover:**

This entitles an earner to rehabilitation assistance and compensation in respect of personal injury, "if the accident occurs at any time while the cover continues whether or not the accident arises out of and in the course of his employment."[2]

Part IV of the Act provides that all persons "shall have cover under the motor vehicle accident scheme in respect of personal injury by a motor vehicle accident in New Zealand and death resulting therefrom", if the vehicle was registered and licenced or required to be registered and licensed[3]. Cover also extends to accidents involving motor vehicles of visitors to New Zealand,[4] towed registered and unregistered vehicles,[5] agricultural trailers[6] and invalid carriages[7].

Funds created in New Zealand.

The New Zealand Act creates two main funds from which compensation is to be paid: an Earners' Compensation Fund and a Motor Vehicle Accident Compensation Fund[8]. There is also an Active Service Compensation Fund in respect of accidents in the armed forces, and a General Fund to which most administrative expenses are charged and the income of which is largely derived rateably from the other Funds[9].

The Motor Vehicle Fund receives money from two sources:

(a) levies charged on every licensed and registered motor vehicle (the amount payable being an adaption of premiums payable under the former third party liability system, e.g., $ 11.35 on private motor cars, $ 7.90 on motor cycles)[10],

(b) an annual flat rate levy of $ 2 on every driver's licence[11]. There is power to prescribe different levies for different classes of drivers[12] and to impose penalty rates on drivers with bad records.[13]

The Earners' Fund in New Zealand pays compensation due to earners, including that payable in respect of motor vehicle accidents arising out of and in the course of employment. This fund receives money from levies on employers in respect of earnings of employees and levies on the self-employed[14]. The levies are payable at rates prescribed by order-in-council[15] and by notice in writing the A.C.C. may impose a penalty rate of levy on any employer or self-employed person whose accident record 'is significantly worse than that normally set by others of the same class'[16]. The A.C.C. may also set a rebate of levy where an accident rate is 'significantly better than that normally set by others of the same class'[17]. The levies must be within limits specified in Part I of the First Schedule (Between 0.25 per $ 100 and $ 5 per $ 100)[18], subject to a maximum amount (at present $ 10, 400) of the earnings on which levies are payable[19].

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[1]S. 6 Alternatively, one member must be so qualified.
[2]S. 7.
[3]S. 92.
[4]S. 93.
[5]S. 94.
[6]S. 95.
[7]S. 96.
[8]S. 31.
[9]S. 32 (3).
[10]First Schedule, Pt. II.
[11]First Schedule, Pt. III.
[12]S. 100.
[13]S. 100(d).
[14]S. 71.
[15]S. 72.
[16]S. 73(1) (a). This may not exceed the normal rate for that class by more than 100 per cent.
[17]S. 73. (1) (a).
[18]First Schedule Pt. I.
[19]S. 74.

Norway.

In Norway, as early as 1912, strict liability was introduced for road traffic accidents. The Norwegian Motor Traffic Act (1912) imposed strict liability for loss or damage caused by motor vehicle (with an exception for contributory negligence). As a result of fairly recent amendments, the general liability of owners of motor-cars has in the main been abolished. The traditional personal liability (whether based on a reversed fault rule or on a strict rule) has receded into the background and has been replaced in the main by a system of compulsory first party motor insurance[1-2].

Personal liability (of the owner and user) is thus abolished, in so far as insurance covers the loss or damage[3]. Their liability is replaced by the insurance system for *the direct benefit of the injured person*[4]. If the loss or damage exceeds the limits of the policy personal liability survives.

The development of the Norwegian compulsory traffic accident insurance for motor vehicles is of great interest. But we may confine ourselves to some of the salient features of the present system[5].

Accident insurance in Norway.

Every registered motor vehicle in Norway must carry traffic accident insurance for the benefit of all potential accident victims, including the passengers, except the driver himself. The victim has a direct claim against the insurer. As long as the claim does not exceed the compulsory insurance limit—Norwegian kr. 200,00 (about 28,000 Dollars) for each person wounded or killed—negligence on the part of the owner or the driver of the vehicle is irrelevant. The only requisites are that the damage in question was caused by the vehicle, that the vehicle was not being utilised for other purposes than as a means of transportation, and that it was not parked in a place to which the public had no access. Claims in excess of Norwegian kr. 200,000 follow traditional rules of tort law, and negligence or mechanical defects must be proved. Such claims may be reduced to an equitable amount, if full liability is considered too heavy a burden on the tortfeasor[6].

It may be noted that under the Norwegian Motor Vehicle Liability Act (section 10), insurance companies are liable also to pay compensation to victims of uninsured automobiles[7]. Under section 13 of the same Act, the company which pays has recourse against the person who should have taken out insurance and also against the driver.

Sweden—general position.

Sweden has recently introduced "no fault" liability for road traffic accidents. But the process has been gradual, and its evolution is of interest.

Until recently, Sweden retained fault liability (for road accidents), though with a reversed burden of proof.

Swedish law of torts.

General liability in Sweeden for personal injury is governed by the Tort Liability Act of 1972, which requires a person causing personal injury intentionally or through negligence to compensate the person injured[8]. An intentional or grossly negligent act on the part of the injured person may operate to reduce the damages payable, and there may also be a reduction if the liability would be excessively onerous for the defendant, having regard to his finances, though this must not operate unfairly towards the person injured.

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[1]Gomard, "Compensation for Auto Accidents" (1970) 13 A.J.C.L. 80, 82, 83.

[2]See also Hellner in (1972) 16 Scandinavian Studies in Law, page 187.

[3]Motor Vehicle Liability Act, 3rd Feb. 1961 Norway.

[4]Gomard, "Compensation for Auto Accidents" (1970) 18 A.J.C.L. 80, 85, 88.

[5]Selmer, "Interaction between Insurance & Tort Theories" (1970) 18 A.J.C.L. 145, 149.

[6]Selmer, "Interaction between Insurance & Tort Theories" (1970) 18 A.J.C.L. 145, 149.

[7]Gomard, "Compensation for Automobile Accidents" (1970) 18 American Journal of Comparative Law, 80, 97.

[8]See Hellmer, "New Swedish Tort Liability Act" (1974) 22 Am. J. Com. L. page 1.

Swedish Act of 1916 as to motor vehicles.

But the Swedish law of general tort liability does not govern injuries suffered in a road accident.

Statutory liability[1] for road accidents was based on two main principles :—

(i) rebuttable presumption of fault, and

(ii) liability of the owner of a car for the presumed fault of the driver.

As to the first principle, reference may be made to an important Swedish piece of legislation. This legislation imposed a liability[2] upon any person using or allowing a motor vehicle to be used for traffic on public roads unless he proved that the injured person himself had contributed towards the injury, or it appeared from the circumstances that the injury could not been averted by using all the attention and care required on the part of the driver[3].

The burden of proof was thus imposed upon the owner or user to show that a negligent act has not been committed. This statutory rule which imposes liability on the holder of the automobile unless he can prove absence of negligence in operating the vehicle and keeping it in good order, differs from the Anglo-American use of the maxim *res ipsa loquitur*, in so far as the reversal of the burden of proof applies to all cases covered by the statute, not only to those where the conditions necessary for the application of the maxim are present.

The second principle (vicarious liability) is nothing peculiar and need not be discussed.

Subject to these special rules, the general doctrine of fault continued to govern liability in Sweden for road accidents upto 1975.

A certain hesitance to abandon the tort system was expressed, noting that these systems granted compensation to the great majority of injured persons, and that they had been built into the practices of courts and of insurance companies[4].

This position continued upto 1975.

Swedish Act of 1975 as to traffic damage.

After 1975, in Sweeden, personal injury claims relating to road accidents came to be governed by the (Swedish) Traffic Damage Act of 1975. This Act[5] creates a "no fault" scheme of compensation based on compulsory insurance, *with claims being made directly against the insurer*. Contributory negligence may reduce or bar damages if it constitutes gross negligence or wilful misconduct (e.g. self-induced injuries), or if the driver is drunk and negligent. Though action in tort is not barred, the fact that compensation (even under the no fault scheme) is assessed on the same principles as tort damages makes future tort actions unlikely. An insurer has a right of recourse against the insurer of another vehicle which was responsible for the accident, and also against any person who caused the accident deliberately or by gross negligence.

Personal injury Boards in Sweden.

A special feature of the Swedish law governing tort compensation for death and personal injury is that the assessing of the awards is very much centralized. The insurance companies are obliged to consult central "personal injury boards" (there are separate boards for traffic insurance cases and other liability insurance cases), before settling with the injured party[6].

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[1]The Motorists Liability Act, 1916 (Sweden).

[2]In Denmark the stricter liability rule was introduced in 1903. Liability to insure was introduced in Denmark in 1918; in Sweden in 1929 (The Traffic Insurance Act, 1929).

[3]Gomard, "Compensation for Automobile Accidents" (1970) 18 A.J.C.L. 80, 83.

[4]Gomard, "Compensation for Auto Accidents" (1970) 18 A.J.C.L. 80, 84.

[5]Traffic Damage Act, 1975 (Sweden).

[6]Selmer, " Personal Injury Law in Nordic countries" (1970) 18 A.J.C.L. 54, 56.

The statutory Traffic Board in Sweden settles all disputed claims involving disability of 10 per cent or more, and fatal accident claims. The Board makes recommendations, which are not of binding effect, but they are normally followed by the insurers. In most cases, courts accept the figure suggested by the Board.

The Swedish Traffic Board is composed of four lawyers who are judges or former judges by profession (herein called the "judicial members"), and 16 insurance company officials, mostly lawyers (herein called the "insurance members"). The chairman, who must be one of the judicial members, is appointed by the Government, and the other members by the Swedish Association of Traffic Insurance Companies, subject to approval by the Insurance Inspectorate. When the Board deals with particular claims, it sits in panels of only four persons (two judicial members and two insurance members); if the voting is even, the vote of the chairman is decisive. The Liability Board is composed of two judicial members and eight insurance members, all of whom are appointed by the Association of Swedish Insurance Companies; a quorum requires one judicial member and three insurance members[1].

Each of the boards has a full-time working secretary (in the Taffic Board, a lawyer). The annual costs for the whole activity of the Traffic Board (including salaries to three other employees) amount to less than 300,000 Sw. kroner (about $ 60,000); the yearly expenses of the Liability Board can be calculated at about half this amount. In view of these rather modest resources, the yearly results of the board's activities are impressive. The Traffic Board deals nowadays with more than 1800 claims a year (1871 in 1967, 1885 in 1968); the Liability Board with 300—400 (372 opinions 1967, 300 in 1968)[2].

Procedure of Boards.

Some general traits of the procedure of the Traffic and Liability Boards may be of interest; on the whole, cases are dealt with in the same way in both. The insurer which refers the question of damages to the board delivers the documents in the case, stating the settlement that it proposes and the reasons for its position; this proposal is only preliminary, and the insurers feel at liberty to raise or reduce the amount at a later stage. At the same time, the insurer presents a short memorandum containing all the essential facts of the case, including medical testimony and reports made by some insurance company employee about the economic and social circumstances of the claimant. The memorandum and the proposal are distributed to the members of the board in good time before the meeting. If the victim is represented by counsel, the insurer will generally have provided counsel with all relevant information. Counsel are permitted to see the memorandum too, although it is not regularly communicated to them, but the proposal of the insurer is considered confidential. As for the claimant who has no lawyer, it is not always thought adviseable that he should read all the medical testimony and reports on his living conditions; in other respects, he is treated in the same way as his legal adviser would be.

Switzerland.

In Switzerland,[3] under the Swiss Road Traffic Law, the only defence allowed is that the accident was due to an unavoidable event caused neither by a defect in the condition of the vehicles nor by failure of mechanism[4].

It appear[5] that the Swiss Act[6] extends to damage to property as well as to death and bodily injury. The injured person is entitled to compensation unless the defendant proves that the accident occurred fortuitously or through 'serious fault' on the part of the injured person or some third party and that neither he nor any person for whom he was responsible was guilty of fault and that the vehicle concerned was not in a defective condition. If both parties are partly to

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[1]Bengtsson, "Personal Injury Boards in Sweden" (1970) 18 A.J.C.L. 108, 110.

[2]Bengtsson, "Personal Injury Boards in Sweden" (1970) 18 A.J.C.L. 108, 111.

[3]Article 591, Swiss Road Traffic Law (1958).

[4]Fleming, Comment in (1975) 23 A.J.C.L. 513, 518 and footnote 30.

[5]Society of Conservative Lawyers, Your Rights, Your Courts, Your Injuries (1970)., page, 81.

[6]Haftpflicht and Versicherung Inkrafttreten 1-1-1980 (Vol. 20-11-1959). Articles 58, 59, 60. 61, 65, 75 and 76.

blame, liability is apportioned taking account not merely the degree of fault on each side but also 'the operational risks of a vehicle'. As in many 'risk' system countries, the result of this provision is that in many cases, even if the fault is equal, a greater proportion of the blame will be put upon the vehicle user upon the basis that he is using something which is inherently dangerous.

U.S.A.

In U.S.A., the subject of "no fault" liability has received the maximum attention. Literature on the subject is prolific. Although statutory developments are of a comparatively recent origin, academic studies of "no fault" began much earlier, and the debate has since then continued unabated.

In fact, as early as 1925, one Judge[1] proposed certain reforms including compulsory insurance on the subject.

Some other Judges in U.S.A. also have strongly favoured the introduction of "no fault" liability. For example, Judge Friendly, writing a few years ago, expressed[2] himself in favour of the removal of all automobile accident cases from all judicial systems, federal and state. He suggested that this may be done even by a national "no fault" insurance law, if the states did not promptly proceed to adopt their own. Many persons were of the view that some system of "no fault" insurance must come, for the present system is extraordinarily inefficient in providing compensation for the ordinary claims resulting from automobile collisions[3]. These moves have borne fruit.

Schemes in U.S.A.

In many States in the U.S.A., statutory schemes have now been introduced for the compensation of victims of motor vehicles accidents. These schemes may be broadly classified into (i) those where benefits are paid through a fund contained and administered by a Government agency, and (ii) those in which benefits are paid through private enterprise insurers.

In some of the schemes, what has come to be known as "partial tort exemption" is incorporated[4]. Such an exemption bars claims in respect of pain and suffering for less serious injuries. In some of the other schemes more coverage is added without, however, changing the basic system of negligence law and liability insurance[4].

By way of illustration, the position in a few States is briefly stated below.

(i) Illinois.

In Illinois, the compulsory no-fault scheme, in effect since January 1, 1972,[5] pays for medical, hospital and funeral expenses incurred within a year of the accident that caused the injury, to a maximum of only $ 2,000. The maximum income continuation benefit is $ 150 a week, with a 52 week limit. Provision is also made for the payment of an amount upto $ 12 a day for one year on account of loss of services where an injured person is not a wage earner.

Limitations in Illinois plan.

An interesting feature of the Illinois plan is its provision for an optional additional coverage paying all medical, hospital and funeral expenses with no time limit, but with a maximum of $ 2,000 for funeral expenses, a limit of $ 50,000 per person and $ 100,000 per accident. This optional coverage would also extend wage loss benefit for five years and would pay survivors' benefits for five years as well. Also noteworthy in this plan, which preserves the negligence action, is the limitation imposed on recovery for pain and suffering. Such recovery can be had only in cases of dismemberment and disfigurement, and is limited to 50% of the first $ 500 and 100% of the excess.

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[1]Robert S. Marx, Judge of the Superior Court in Cincinnati, "Compulsory automobile insurance" (1925) Am. Bar Assn. Journal, page 731, referred to in Bombaugh, "Uniform Motor Vehicles Accidents Reparation Act" (1973) 59 Am. Bar Assn. Jour. 45.

[2]Henry J. Friendly, Federal Jurisdiction (1973), pages 133—138; see Clement Haynsworth in Book Review (1973-1974), 87 Yale L.J. 1082, 1085, 1086.

[3]Clement Haynsworth, Book Review in (1973-1974) 87 Yale L.J. 1082, 1085, 1088.

[4]Keeton & Keeton, Cases and Materials in Torts (1977), pages 796, 800, 801.

[5]P.A. 77—1430, amending Illinois Insurance Code of 1937.

(ii) Massachusetts.

One of the earliest plans in the United States for compensation for accidents caused by motor vehicles was the "Personal Injury Protection Plan" enacted in Massachusetts.[1] Its "no fault" limits are low: $ 2,000 per person.[2] The tort action continues to exist, with amounts paid by the Personal Injury Protection Plan deducted, and with damages for pain and suffering available only in cases of serious injuries.

It should be observed, of course, that the vast majority of automobile accident injuries come within the limit of the Massachusetts plan.

(iii) Michigan.

Perhaps the most complete and generous plan in the U.S.A. is the one enacted in the state of Michigan late in 1972, to come into effect in the autumn of 1973 [4]. Under the Michigan scheme, compulsory personal protection insurance is intended to pay for all medical and hospital expenses and for all recovery and rehabilitation costs. Lost income is to be made up with a 15% deduction (the deduction takes account of the fact that the benefits are tax free) and with a maximum of 1,000 dollars per month and a limit of 3 years. In this sense, the limit for wages comes to 36,000 dollars. There is no limit for medical expenses[5].

Provision is made in the Michigan law *for periodic adjustments to reflect changes in the cost of living*. In addition, upto $ 20 a day for other expenses may be claimed for a three year period. Death benefits include upto $ 1,000 for funeral expenses and payment of economic support to dependants at up to $ 20 a day per person to a maximum of $ 1,000 a month over a three year period. Benefits received from collateral sources are deductible from amounts payable under the personal protection insurance.

An injured party, in Michigan, is still entitled to bring a negligence action, but the personal protection insurer may recover (from the damages awarded) any amount paid out under the policy, or deduct the recovery from any benefits owing. Recovery for non-pecuniary losses is limited to cases of death, serious disability or disfigurement.

Unique aspect of Michigan law— Proprietary loss.

The unique aspect of the Michigan legislation is its compulsory "property protection insurance", which pays property losses, irrespective of fault, upto a maximum of one million dollars.

(iv) New York.

In New York, the Comprehensive Automobile Insurance Reparations Act[6] passed by the State legislature in January, 1973 is similar to the Michigan plan, but provides no death benefits and no property damage coverage. It pays medical, hospital and associated expenses, and psychiatric costs, as well as the cost of physical and occupational therapy and rehabilitation. Lost earnings have a 20% deduction. The maximum is 50,000 Dollars per claimant[7]. The New York plan pays upto $ 25 a day for other necessary expenses for a maximum of a year. Damages for non-pecuniary losses are limited to cases of serious injury. The right to bring an action in negligence is saved, but there can be no recovery for any loss covered by the personal injury insurance.

Tribunals in New York.

The law in New York has been recently amended in 1977[8]. One important feature introduced by the amendment of 1977 is the scheme of having two tribunals for the determination of two types of questions and also the introduction of guidelines for assessing medical fees.

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[1]Personal Injury Protection Act. Mass. Gen. Laws Ann. c. 90, sec. 34A, D, M, N, O (Supp. 1972); c. 175, secs. 22E-H, 113B-C (1972); c. 231, sec. 6D (Supp. 1972).

[2]Hepple, Tort (1979), Appendix G, pages 725-726.

[3]Hepple, Tort (1979), Appendix G, pages 725-726.

[4]Michigan Compiled Laws Annotated, S. 500·3103 *et seq*·

[5]Keeton & Keeton, Tort (1977), page 802 (Chart).

[6]McKinney's Insurance Law, Art. XVIII, section 670 *et sec.* (effective Jan. 1, 1974).

[7]Hepple, Tort (1979), 726, footnote 1.

[8]Richard Naimark, "No Fault In surance in New York State" (September, 1978), Vol. 33, No. 3, Arbitration Journal, pages 37—40.

Under the amended New York law, there are two basic tribunals, one for determining questions of a medical nature and the other for determining questions of a non-medical nature. "Non-medical" questions would include questions relating to loss of wages, miscellaneous expenses and the ambit of coverage of policy.

The medical tribunal in New York is to consist of medical experts, but it has also the power to require the claimant for compensation to submit to medical examination by a doctor appointed by the medical tribunal.

Non-medical questions are decided in New York by another tribunal, generally consitituted by the American Arbitration Association which has been given a recognised legal status in the New York law.

As regards the actual assessment of medical expenses the use of the schedule of fees prevalent in workmen's compensation law is prescribed as a guideline by the amendment of 1977. This amendment was in response to the earlier practical experience of the arbitrators who had to deal with the matter. They were of the view that such questions should not be left to the discretion of the arbitrator.

It seems that there was a feeling that insurance companies tried to hold the recovery for medical benefits to a low ceiling.[1]

Other States in U.S.A.

The notion of "no-fault" liability has proved successful in some other States in the U.S.A. having "no-fault" statues[2—4].

Uniform Motor Vehicle Accident Reparation Act.

There has also been prepared a uniform law, in the U.S.A. by the title of the Uniform Motor Vehicle Accident Reparation Act which, however, has not yet been enacted in any State[4].

In the Uniform Act, there is a reparation system in which each person insures himself against the loss incurred in operating a motor vehicle. This principle is regarded as essential to the full and efficient compensation of motor vehicle losses and the rational allocation of the resulting cost[5].

All persons insured in an automobile accident are assured of benefits for their injuries without regard to fault.

Benefits under the uniform Act in U.S.A.

The Uniform Act establishes certain compulsory minimum benefits called "basic reparation benefits" which are to be paid without regard to fault to persons suffering loss from injury arising out of the maintenance or use of a motor vehicle. Only the following persons are wholly excluded from the benefits:—

(1) Persons who intentionally injure themselves or others (and their survivors);

(2) person who "convert" motor vehicle—but they can claim under their own insurance or if they are under the age of 15 year[6].

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[1]Richard Naimark, "No Fault Insurance in New York State" (September 1978) Vol. 33, No. 3, Arbitration Journal, pages 37—40.

[2]Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Kansas Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota and Utah.

[3]Commerce Clearing House, Automobile Law Reporter (Insurance), page 1935 *et sec.*

[4]Uniform Motor Vehicle Accident Reparation Act.

[5]Bombaugh, "Uniform Motor Vehicles Accidents Reparation Act" (1973) 59 Am. Bar Assn. Jour. 45.

[6]Bombaugh, "Uniform Motor Vehicles Accidents Reparation Act" (1973) 59 Am. Bar Assn. Jour. 45.

There seems to be no over-all limit in point of dollars or for time with respect to benefits for loss of work, economic loss to survivors and replacement service loss.

Payment of benefits under the Uniform Act.

With two exceptions, the basic reparation benefits of a basic reparation insured are always paid by his own insurance company.[1] A basic reparation insured is a person identified by name as an insured in a contract of basic reparation insurance, his spouse, or other relative residing in the same household, and a minor in his custody or the custody of a relative residing with the named insured. An exception to the general rule is made for injuries to the driver or other occupant of a vehicle that occur while the vehicle is being used in the business of transporting persons or property. The other exception is an injury to an employee, his spouse, or other relative residing with him, if the accident causing the injury occurs while the injured person is driving or occupying a vehicle furnished by an employer. In both of these cases the insurance covering the vehicle is responsible for the benefits.

An injured person who is not a basic reparation insured recovers basic reparation benefits from the insurer of the vehicle he occupied or if, a pedestrian, from the insurer of any involved vehicle. The insurer paying basic reparation benefits to an uninsured pedestrian is entitled to contribution from the insurers of all involved vehicles. An unoccupied parked vehicle is not an involved vehicle unless it was parked so as to cause unreasonable risk of injury.

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[1]Bombaugh, "Uniform Motor Vehicles Accidents Reparation Act" (1973) 59 American Bar Association Journal 45, 47.

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