

TOWARDS A VICTIM FRIENDLY MECHANISMS IN MOTOR ACCIDENT COMPENSATION CASES: CHALLENGES AND PROSPECTS *

Introduction:

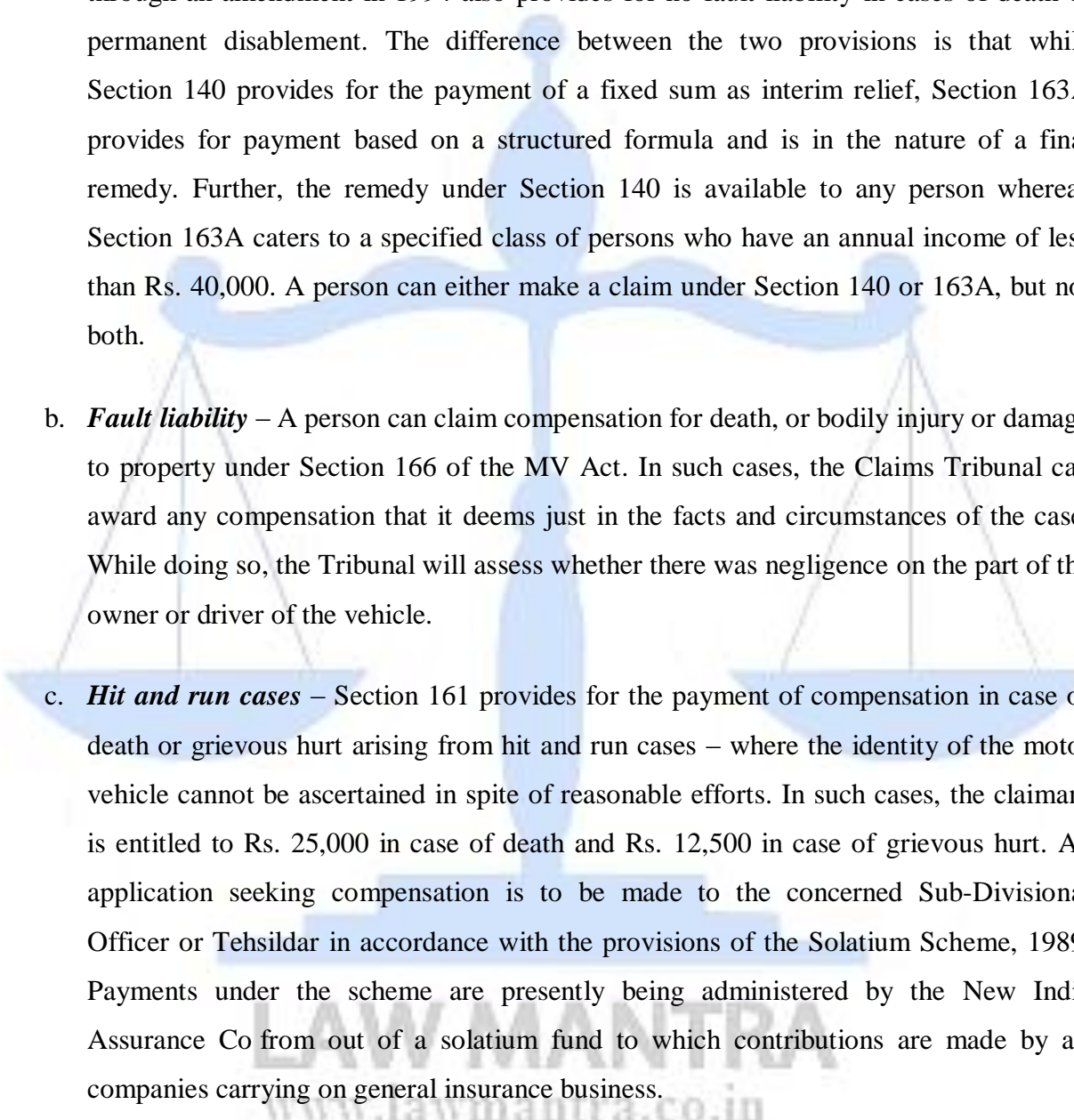
Motor Vehicles Act, 1988 (MV Act) is known to generate excessive litigation contributing to the large pendency of cases in courts. India has the largest number of road accidents in the world resulting in large numbers of accident claim cases being filed before the courts. Under Section 165 of the MV Act, State Governments have constituted Motor Accident Claims Tribunals as exclusive judicial forums to adjudicate upon claims for compensation arising out of motor vehicle accidents. Appeals from the Claims Tribunals lie to the High Courts. *As of June 2014, a total of 3,03,373 and 10, 13, 929 motor accident cases were pending before the High Courts and Subordinate Courts respectively.*¹ In this backdrop this brief policy note examines the current challenges existing in the system of dispensation of compensation for motor accident cases and discusses some possible recommendation to overcome these challenges.

Relevant Provisions and Judicial Decisions

As per Sections 146 and 149 of the MV Act, it is mandatory for all vehicles to be insured against liability to third parties and the payment of victim compensation is linked to such third party insurance. In case of vehicles that are not insured, the victim has to proceed directly against the owner of the vehicle for seeking compensation. The following are the different categories of compensation envisaged under the MV Act:

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¹ Statistical information about pending motor accident cases in High Court and Subordinate Courts country wide is collected from Annexure-III of the reply given by Shri. D.V. Sadananda Gowda, Hon'ble Minister of Law and Justice to the Parliament in response UNSTARRED QUESTION NO.2858 on AUGUST 06, 2015 (available at <http://doj.gov.in/sites/default/files/LS-21-July-13-August-2015-Eng.pdf>).

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- a. **No fault liability** – Section 140 provides for the payment of a fixed sum - Rs. 50,000 in case of death and Rs. 25,000 in case of permanent disablement – as compensation to accident victims without any requirement to prove that the accident occurred due to the neglect or default of the owner or driver. Similarly, Section 163A, which was inserted through an amendment in 1994 also provides for no fault liability in cases of death or permanent disablement. The difference between the two provisions is that while Section 140 provides for the payment of a fixed sum as interim relief, Section 163A provides for payment based on a structured formula and is in the nature of a final remedy. Further, the remedy under Section 140 is available to any person whereas Section 163A caters to a specified class of persons who have an annual income of less than Rs. 40,000. A person can either make a claim under Section 140 or 163A, but not both.
- b. **Fault liability** – A person can claim compensation for death, or bodily injury or damage to property under Section 166 of the MV Act. In such cases, the Claims Tribunal can award any compensation that it deems just in the facts and circumstances of the case. While doing so, the Tribunal will assess whether there was negligence on the part of the owner or driver of the vehicle.
- c. **Hit and run cases** – Section 161 provides for the payment of compensation in case of death or grievous hurt arising from hit and run cases – where the identity of the motor vehicle cannot be ascertained in spite of reasonable efforts. In such cases, the claimant is entitled to Rs. 25,000 in case of death and Rs. 12,500 in case of grievous hurt. An application seeking compensation is to be made to the concerned Sub-Divisional Officer or Tehsildar in accordance with the provisions of the Solatium Scheme, 1989. Payments under the scheme are presently being administered by the New India Assurance Co from out of a solatium fund to which contributions are made by all companies carrying on general insurance business.

A claim for compensation is ordinarily required to be made under the MV Act by a person who has suffered a loss on account of a motor accident. However, certain amendments were introduced to the MV Act in 1994 with a view towards more expeditious determination of compensation claims. These included the introduction of Section 158(6), which provides that upon receiving information about an accident the Station House Officer should submit an accident information report to the Motor Accident Claims Tribunal within 30 days of the accident, with a copy to the concerned insurer. At the same time, a new Section 166(4) was

also included to provide that the Claims Tribunal should treat the said report as a claim petition and conduct an inquiry into the same.

In *Jai Prakash v National Insurance Company Ltd.*², the Supreme Court directed the Director General of Police of each State to instruct all police stations to comply with Section 158(6) of the MV Act. The Court further stated in its order that the Registrar Generals of each High Court should instruct all Claims Tribunals to register the reports of accidents as applications for compensation under Section 166(4) of the MV Act.

In *Rajesh Tyagi v Jaibir Singh*³, Delhi High Court appointed a committee to evolve a time bound mechanism for settlement of motor accident claims. The said committee consulted the Delhi Police and all seventeen non-life insurance companies operating at that time and prepared a Claims Tribunal Agreed Procedure, which was approved by Delhi High Court and came into force in 2010. This Agreed Procedure specifies that claimant must get compensation within 120 days of the accident without the need of filing a claim petition. However, the successful implementation of the same depends upon the proper co-ordination between the police, insurance companies and Claims Tribunal.

Along with the expeditious settlement of compensations claims, it is also necessary to build safeguards to ensure that claimants who receive awards for accident compensation are able to properly utilize the same over a sustained period. In order to protect the award amount, the Supreme Court and Delhi High Court have issued various directions in pursuance to which some banks have started a special scheme for accident awards. Under these schemes, the award amount is directly deposited by the concerned insurance company with the bank and the interest on the fixed deposits directly credited to the savings bank account of the claimant.

Deficiencies in the Existing Mechanism

The process for obtaining compensation under the MV Act is riddled with a number of problems, both on account of the provisions of the Act and the manner in which they are implemented. The Act provides for the payment of a fixed sum as compensation under Section 140 for no fault liability and Section 161 for hit and run cases but the amounts specified in both these cases are very meager. Further, despite the mandatory requirement of third party insurance, many vehicles continue to ply on the roads without insurance. In case of such vehicles which are not insured or those that do not have insurance to cover the risks relating to

² (2010) 2 SCC 607.

³ Case No. FAO No.842/2003, order dated 5th November 2009.

gratuitous passengers/riders, there is little or no chance of recovery of compensation even if the driver/owner may be held liable under an award of the Tribunal.

Section 169 of the MV Act provides that the Tribunal may follow such summary procedure as it thinks fit while settling claims for compensation. However, as noted by the Supreme Court in the *Jai Prakash* case, Tribunals tend to conduct motor accident cases as regular civil trials instead of following suitable summary procedures. This results in excessive delays in the settlement of claims. Further, insurance companies also contribute to the delays, often on the ground that they did not receive timely intimation of the road accident.

Recommendations for change:

i. Increasing the amount of compensation

Considering the above it is clear that amendments to the MV Act are necessary to smoothen the process of settlement of accident claims. To begin with, the compensation amounts specified in Sections 140 and 161, which are currently very low, need to be revised immediately to ensure that accident victims are entitled to an effective remedy. Further, the insertion of a provision similar to Section 163A(3) should be considered in relation to those Sections. Section 163A(3) allows the Central Government to amend the Second Schedule (containing the formula for calculation of no fault compensation) from time to time through a notification in the Official Gazette, keeping in view the escalations in the cost of living.

ii. Voluntary settlement of claims

It is desirable that the Act should incorporate a more victim friendly compensation mechanism where the victim need not take recourse to litigation for realizing his/her claim. A recommendation in this regard was made by the Sundar Committee that was set up by the Ministry of Road Transport and Highways to review the MV Act. The committee proposed that all provision relating to payment of compensation in motor accident cases should be moved to a separate statute on motor vehicle insurance and this new law should contain a provision requiring insurers to endeavour to settle compensation claims directly with the claimant by mutual consent.⁴ This was also recommended by the Working Group on Insurance, Pensions, and Small Savings (IPS Working Group) set up by the Financial Sector Legislative Reforms Commission. The IPS WG recommended that “*the law should provide the accident victim,*

⁴ Report of the Expert Committee on Review of the Motor Vehicles Act, 1988, available at http://www.indiaenvironmentportal.org.in/files/Expert_Committee_Report_0.pdf

insurer and insured an opportunity to arrive at a voluntary settlement of the claim without having to go through the adjudication process.”⁵

A provision of this nature is seen in the Claims Tribunal Agreed Procedure that was formulated in the *Rajesh Tyagi* case. The agreed procedure provides that upon receipt of a detailed accident information report the Claims Tribunal will allow the relevant insurance company a period of 30 days to examine the report and take a decision as to the quantum of compensation payable to the claimants. If the insurance company makes an offer that is acceptable to the claimant, the Claims Tribunal will pass a consent award recording the same after being satisfied that the claimant is being awarded just compensation in accordance with law. Being a procedure formulated under the instructions of the Delhi High Court, this process is not applicable in other States. Various States may however choose to voluntarily adopt the Claims Tribunal Agreed Procedure with the cooperation of all stakeholders, namely the police, insurance companies and Claims Tribunals.

In order to facilitate adoption of the voluntary settlement mechanism it would be advisable for such a provision to be incorporated in the MV Act itself. This was suggested in the Motor Vehicles Amendment Bill, 2007 which proposed the insertion of a new Section 167A in the MV Act to provide for the out of court settlement of accident claims. The draft provision suggested that insurers should endeavour to settle claims directly with the claimant either *suo motu* or on receipt of a notice within a period of three months. On receipt of the compensation by the claimant, the Tribunal or the court should satisfy itself that a lawful compromise or agreement has been arrived at between the parties and accordingly dispose of the application filed by the claimant. The amendment however could not take effect and the Bill has since lapsed.

A suggestion relating to out of court settlement was also made by the Supreme Court in the *Jai Prakash* case, where the Court urged insurance companies to voluntarily settle claims relating to accident deaths without waiting for the decision of the Motor Accidents Claims Tribunal or a settlement before a Lok Adalat.

iii. Insurance sector reforms

The premium rates for third party liability insurance are currently fixed by the Insurance Regulatory and Development Authority (IRDA). Post the liberalization of the insurance sector,

⁵ Report of the Working Group on Insurance, Pensions, and Small Savings, available at https://macrofinance.nipfp.org.in/fslrc/documents/wg_insurance_report.pdf

this remains the only area of insurance where the regulator still continues to determine the rates. This is on account of the mandatory character of third party liability insurance. As per the IPS Working Group, “*fixed premium rates coupled with high claims ratios and unpredictable compensation awards have created significant problems for the viability of general insurance companies.*” It accordingly recommended the detariffing of third party liability insurance. This suggestion has also been made in the past by other expert bodies including in the Report of the Group for Motor Own Damage Detariffing.⁶

As per the IRDA Annual Report 2012-13,⁷ the authority is considering such a move whereby the owners of motor vehicles would obtain insurance based on market determined rates and the premiums would be market determined – low premium for low risk consumers and high premium for high risk consumers – rather than being fixed by the regulator. This would allow insurers to take into account factors such as age, driving experience and record, location and extent of use of the vehicle, etc., while determining the premium. The IRDA may however impose an overall ceiling on the insurance rates to ensure that customers are not charged an exorbitant price. Reports indicate that in the view of the general insurance industry such detariffing would work only if it is accompanied by other amendments to the MV Act such as the reintroduction of a limitation period for bring compensation claims and the setting of a cap on the statutory liability.⁸

iv. Dealing with uninsured vehicles

At present, victims of accidents involving uninsured vehicles have to proceed for a compensation claim directly against the owner, which in many cases may not result in an effective remedy. One way to address this issue would be by making focused efforts to reduce the number of uninsured vehicles on the road. Motor insurance policies are typically issued for a period of one year and in many cases vehicle owners fail to ensure subsequent renewals resulting in an increase in the number of uninsured vehicles. IRDA is now considering devising a long term policy, of say 3-5 years, for third party motor insurance coverage, which can help reduce the number of uninsured vehicles. Another suggestion made in this regard was by

⁶ Report of the Group for Motor Own Damage Detariffing (2004), available at https://www.irda.gov.in/ADMINCMS/cms/frmGeneral_Layout.aspx?page=PageNo1218&flag=1&mid=Committee%20reports

⁷ IRDA Annual Report (2012-13), available at https://www.irda.gov.in/ADMINCMS/cms/frmGeneral_Layout.aspx?page=PageNo2159&flag=1&mid=Annual%20reports%203E%3E%20Annual%20reports%20of%20the%20Authority.

⁸ <http://timesofindia.indiatimes.com/business/india-business/IRDA-plans-to-free-up-motor-third-party-rates/articleshow/31298082.cms>.

Sundar Committee which proposed that the certificate of insurance should be made co-terminus with the validity of certificate of registration of the motor vehicle, which is presently 15 years. The viability of this proposal would however need to be assessed by the insurance regulator.

In any event, stricter action needs to be taken by the enforcement agencies to check against the use of uninsured vehicles on the road. One way to facilitate easier enforcement would be by linking the insurance status of a vehicle to the high security number plate system (containing radio frequency identification chips) that has now been made mandatory for all vehicles. This would allow easier detection of uninsured vehicles by the police.

Until the implementation of such measures, several uninsured vehicles are bound to remain on the roads. In accidents involving such vehicles, the owner should be directed to provide an adequate amount of security that would satisfy the award that may be ultimately be passed, as a condition precedent for release of the seized vehicle. This was suggested by the Supreme Court in the *Jai Prakash* case. In the event that the deposit is not made within a specified period, the vehicle may be disposed and the amount held as deposit until the disposal of the claim. The Supreme Court suggested that the appropriate Governments may consider incorporating such provisions in their respective Motor Claims Tribunal rules.

v. *Alternate models for accident compensation*

In the *Jai Prakash* case, the Supreme Court recommended that the Government should consider alternate schemes for the payment of compensation to victims of road accidents, in place of the third party insurance. The following are some examples of alternate models seen in other countries:

- a. *South Africa* – The South African model involves the provision of accident cover by a public body called the Road Accidents Fund (RAF), thereby eliminating the need for third party insurance. The RAF is funded through fuel surcharge collected on the sale of petrol and diesel. It currently operates on a fault based system whereby all accident victims, without exception, are entitled to compensation for loss or damage resulting from the death or bodily injury caused by the negligent driving. The indemnity however does not apply to claims for damage to motor vehicles or other property caused due to an accident. An amendment is currently under consideration in South Africa to shift from a fault based system to a no fault regime.

The RAF determines the validity of compensation claims, the merits of the case and the appropriate quantum of compensation. It also serves a broader mandate by examining the factors responsible for accidents such as excessive speed, drunk driving, vehicle fitness (overloading, poor brakes etc.) and road conditions.

- b. *New Zealand* – The Accident Compensation Corporation (ACC) in New Zealand provides comprehensive, no-fault personal injury cover for all injuries, which may occur at work, at home or on the road. The funding mechanism followed by ACC varies depending on the category of injuries. Work related injuries are funded by employers and self-employed people through an annual ‘work levy’; non-work injuries are funded through an ‘earner levy’ paid by the entire working population; and road injury cover is met through levies charged on the cost of petrol and through the levy of a vehicle licensing fee.

The vehicle license fee is required to be paid by all vehicles that are used on public roads. The fee helps to pay for roading projects and road safety programmes. It varies for different classes of vehicles based on data relating to the level of risk posed by that category of vehicles.

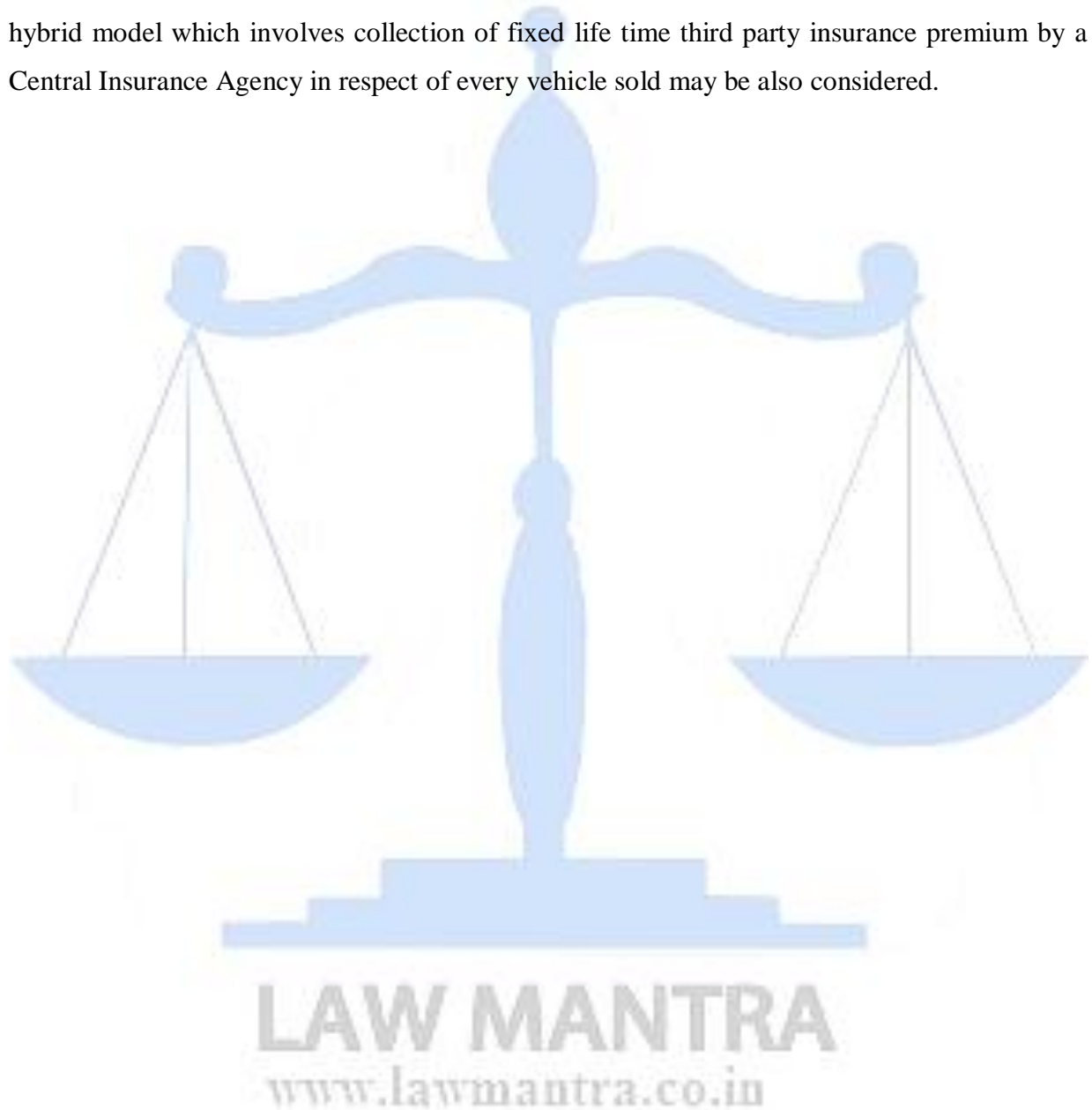
While referring to the South African model, the Supreme Court noted that while such a scheme may be successful in smaller countries, it could encounter difficulties and financial deficits in larger countries, particularly those with infrastructural deficiencies. The Court was of the view that a hybrid model, which involves collection of a fixed life time premium from each vehicle coupled with the imposition of a road accident cess, may provide a more satisfactory solution in a vast country like India.

Any alternative to the present model of mandatory third party insurance can however be considered only after conducting a rigorous cost-benefit analysis. To the extent that the goal of providing expeditious compensation to accident victims may be achieved through amendments to the MV Act and insurance sector reforms, that would be a more feasible solution.

Conclusion:

Considering the above it is challenges amendments to the MV Act are necessary to make the process of accident claims smooth. The new provisions should incorporate a more victim friendly compensation mechanism where victim need not take recourse to litigation for

realizing his / her claim. The Supreme Court has asked the Government to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, to replace third party insurance.⁹ The South African model is an example which could be followed. The model provides for the creation of a Road Accidents Fund. All accident victims, without exception, are paid compensation from the said fund by the Commission. Alternatively, a hybrid model which involves collection of fixed life time third party insurance premium by a Central Insurance Agency in respect of every vehicle sold may be also considered.



⁹ *Jai Prakash v National Insurance Company*, (2010) 2 SCC 607