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FROM “FAULT LIABILITY” TO “NO-FAULT” LIABILITY

AUTHORED BY - ANALEKHA DODDAMANE

ABSTRACT:

This paper examines the transition from a fault-based liability system to a no-fault liability system and its impact on the legal and insurance industries. Fault-based liability systems hold individuals accountable for the harm they cause, while no-fault systems compensate victims regardless of fault. The shift to no-fault liability systems is driven by several factors, including a desire to simplify legal proceedings and reduce costs, particularly in areas such as automobile insurance. No-fault systems have been implemented in several jurisdictions with varying degrees of success, and this paper analyzes the challenges and benefits of these systems.

One major challenge of no-fault liability systems is determining the appropriate level of compensation for victims, particularly in cases where the harm is difficult to quantify, such as pain and suffering. Additionally, no-fault systems can lead to moral hazard, where individuals may take greater risks knowing they will be compensated for their losses regardless of fault. On the other hand, no-fault liability systems can reduce the adversarial nature of legal proceedings and provide quicker compensation to victims. Furthermore, no-fault systems can reduce disparities in compensation, particularly for individuals who may have difficulty proving fault, such as pedestrians in automobile accidents.

Overall, the transition from a fault-based liability system to a no-fault system involves trade-offs between fairness, efficiency, and deterrence. Policymakers and stakeholders must carefully consider these trade-offs and design liability systems that achieve the desired balance between these goals.

Introduction

A form of liability commonly referred to as "fault liability" requires the plaintiff to show that the defendant's actions were either negligent or malicious. Fault is described as a negligent or deliberate failure to act reasonably or in accordance with the law; it is an act or omission that has legal ramifications in the form of a criminal conviction or a civil tort lawsuit. The tort of the defendant must be proved to be the cause of the loss.

In India, motor vehicle accidents account for the majority of tort lawsuits. In general, a claimant must show that the injurer has violated a duty owed to the victim in order to win a lawsuit. An injurer is considered to be "at fault" or "negligent" when he violates his legal obligation. Breach of duty occurs when someone does something that a reasonable person would not do in the same situation. When both parties are negligent, this provision includes a proportional share of responsibility of both parties in India. That is, the victim's compensation is diminished in proportion to his or her negligence.

Prior to 1988, the insurer's responsibility for motor vehicle accidents was mostly dependent on fault. However, the aspect of "no fault" was added to the Act in 1988. No-fault liability refers to a legal (liability) to compensate another person for injury, regardless of the person who would pay carelessness or negligence. This principle wasn't included in the initial legislations and evolved with time.

In the case of *Haji Zakaria v. Naoshir Cama*¹, the question was raised whether the owner could be held liable for compensation even though there were no negligent or acts on his or her behalf. The Supreme Court, however, disagreed. The Supreme Court held that if there was no negligence on the part of the owner, driver, or motor vehicle, there could be no liability. "No-fault liability" came about to remedy victims of "hit and run" incidents.

The concept stated that the victim was not necessitated to prove negligence of the driver or the owner and that the concerned person should be held responsible without regard to contributory negligence in the interest of social justice under Section 140. In light of the fact that the *Motor Vehicles Act* is essentially a welfare legislation, denying compensation to a victim on these grounds doesn't live up

¹ MANU/AP/0115/1976

It was also established that the victim in a particular case can also claim compensation under sections other than Section 140 of the *Motor Vehicles Act*, 1988 and any other provision that can remedy the aggrieved party, based on the circumstances of the case. The provisions for interim compensation came into effect in 1994 and had no retrospective effect. Under Section 140(1)(3) of the act, the liability of the vehicle's owners was determined to be joint and several.

The scope of this Act was broadened based on the cases of *Samir Chandra v. Assam State Transport Corporation*² and *Varalakshmi v. M. Nageswara Rao*³ on the principle of 'no fault liability' in order to provide the victim with the best possible compensation. A provision was also enacted under the said Act to claim permanent compensation under Section 163(A) in case the amount exceeds as mentioned in Section 140 or exceeded the interim compensation.

This was favourable to the deceased's beneficiaries because it would have been challenging for them to assert the defendant's negligence and then seek damages, otherwise.

Evolution of no-fault liability into the *Motor Vehicles Act*, 1988

The first legislation relating to motor vehicles and road transport in India was introduced pre-independence and was called The Indian *Motor Vehicles Act*, 1914. This Act went on to be replaced by the Motor Vehicle Act of 1939. Initially, this Act included only the fault liability and not the no-fault liability. It was in the case of *Majnurshri Raha and Ors. v. B. L. Gupta and Ors.*⁴, that the Honourable Supreme Court of India recommended the legislators for the inclusion of no-fault liability. Justice Fazal Ali, who presided over the case, opined that there was a need to include no-fault liability in the Act due to the alarming increase in road traffic⁵. Perusing the Courts

² MANU/GH/0079/1994

³ MANU/AP/0269/1988

⁴ MANU/SC/0251/1977

⁵ Justice Ali Fazal observed that, "At a time when we are on the way to progress and prosperity, our country can ill-afford to lose so many precious lives every year, for through the percentage of deaths caused by motor accidents in other countries is high, in our own country the same is not by any means negligible, but is a factor to be reckoned with. Our lawmakers being fully conscious of the expanding needs of our nation have passed laws and statutes to minimise motor accidents and to provide for adequate compensation to the families who face serious socio-economic problems if the main bread-earner loses his life in the motor accident. The time is ripe for serious consideration of creating no-fault liability.

recommendations, the Act was amended to include Sections 92-A to 92-E. These sections made compensation in the form of payment compulsory in no-fault cases. In spite of several amendments, the Act of 1939 was lacking as it was not comprehensible and did not cater to the fast-paced revolution of the transportation industry.

In 1984, a Working Group was established to examine the loopholes in the *Motor Vehicles Act* of 1939 and provide plausible solutions. The Law Commission of India also assessed the drawbacks of the 1939 Act. Furthermore, the Transportation Ministers of the states and union territories also met to discuss the issues posed by the Act. These events were the precedents for the tabling of the Motor Vehicles Bill in the Parliament and subsequently its passing too. Referred to as the *Motor Vehicles Act* of 1988, this new statute came into force on the 14th of October 1988. Corresponding to the Sections 92A – 92E of the old Act, similar provisions were included in Sections 140- 144 under Chapter X of the new Act. In cases of death or permanent injury caused by traffic accidents, Section 140 discusses no-fault liability. The compensation for death is Rs. 50,000 and for permanent disability is Rs. 25,000. Section 141 entails the provisions as to other rights to claim compensation in cases of death or permanent disability. Section 142 defined the phrase ‘permanent disability’.⁶

In 1994, the Act was amended to include Sections 163A and 163B. The Second Schedule was also inserted. This Schedule ensures compensation to be paid to third party injury claims. The scope of no-fault liability was extended so that aggrieved parties could claim maximum relief. Section 163A makes the owner or insurer liable to pay compensation in cases of death or permanent disability. Negligence cannot be claimed under this provision. An individual cannot seek restitution under Section 140 or Section 163A if he or she violates Section 163A.⁷ Section 2 is a standardized formula that can be used in both fatal and permanent injury situations. Victims are categorized according to their age, and multipliers are assigned. In death cases, victims are categorized based on their annual salary. Maximum compensation is stated as Rs 40,000 and this amount can be multiplied as the case may be. In fatal injuries, the amount of liability must not be less than Rs 50,000. It includes funeral costs, lack of consortium whether the complainant is the victim's partner, loss of estate, and medical expenses accrued due to the victim's death in addition to the necessary payout.⁸

⁶ The *Motor Vehicles Act*, 1988 No. 59, Act of Parliament, 1988 (India)

⁷ *ibid.*⁶

⁸ *ibid.*⁶

IMPACT ON LEGAL AND INSURANCE INDUSTRY:

No-fault liability systems have been implemented in several jurisdictions around the world, including in the areas of automobile insurance and workers' compensation. These systems provide compensation to injured parties regardless of fault, simplifying legal proceedings and reducing administrative costs. However, the implementation of no-fault systems also has significant impacts on the legal and insurance industries.

1. IMPACT ON LEGAL INDUSTRIES:

The implementation of no-fault liability systems has significant impacts on the legal industry. In a fault-based liability system, legal proceedings are focused on determining fault and assigning liability for damages. This process can be time-consuming and expensive, particularly in cases where multiple parties are involved or the harm is difficult to quantify. By contrast, no-fault liability systems remove the need to prove fault and calculate damages, streamlining legal proceedings and reducing administrative costs.

However, the implementation of no-fault systems also poses challenges for the legal industry. One major challenge is determining the appropriate level of compensation for victims, particularly in cases where the harm is difficult to quantify, such as pain and suffering. In addition, no-fault systems can lead to moral hazard, where individuals may take greater risks knowing they will be compensated for their losses regardless of fault. Finally, the implementation of no-fault systems can reduce the deterrent effect of liability, as individuals and entities may be less incentivized to take precautions if they are not held strictly liable for damages.

2. IMPACT ON INSURANCE INDUSTRIES:

The implementation of no-fault liability systems also has significant impacts on the insurance industry. In a fault-based liability system, insurance companies play a critical role in determining fault and calculating damages. Insurance companies may engage in extensive investigations and negotiations to determine the appropriate level of compensation and apportion liability among multiple parties. By contrast, no-fault liability systems remove the need for insurance companies to determine fault and calculate damages, simplifying the claims process and reducing administrative costs.

However, the implementation of no-fault systems also poses challenges for the insurance industry. One major challenge is determining the appropriate level of premiums to charge policyholders, given that fault is no longer a factor in determining liability. In addition, no-fault systems can lead to moral hazard, where policyholders may take greater risks knowing they will be compensated for their losses regardless of fault. Finally, the implementation of no-fault systems can reduce the ability of insurance companies to differentiate themselves based on their claims handling and risk assessment capabilities.

Landmark Cases:

a. Introduction of no-fault liability

The Motor Vehicle Act, 1939 at first only provided for the principle of 'fault liability'. The Supreme Court proposed the introduction of the 'no-fault liability' in the case of *Manjushri Raha and Ors. v. B.L. Gupta and Ors.*⁹ The Law Commission of India recommended the same, and as a result, Sections 92-A to 92-E was added to the Act of 1939. These sections stipulated that compensation must be paid based on the no-fault liability principle.

Due to the rise in vehicular traffic, Justice Fazal Ali had stressed the need to introduce no-fault liability in the case of *Manjushri Raha and Ors. v. B.L. Gupta and Ors.* B.L Gupta and Smt Manjushri Raha (hereinafter referred to as "Raha") filed appeals in the Supreme Court in the present case, which were consolidated by the Supreme Court after being settled and disposed of by a common judgement of the High Court and the Claims Tribunal. Raha is the main appellant in the present case while the respondents are the Oriental Fire & General Insurance Company, New India Insurance Company, Smt Manjula Devi Bhuta (hereafter referred to as "Bhuta") and B.L Gupta (hereafter referred to as "Gupta") representing the vehicle belonging to the M.P Speedways Company. The facts of the case are as follows.

Satyendra Nath Raha and Uma Shanker Shastri were travelling by a bus belonging to Gupta of M.P Speedways Company. A bus came from the opposite direction on the highway, which belonged to Bhuta. Ram Swaroop was driving the bus of the M.P. Speedways Company and Sushil Kumar was the driver of the bus belonging to Bhuta. Due to the negligence of both the bus drivers, there was a

⁹ *ibid.* 4

head-on collision of the buses. Raha and Shastri were injured fatally and succumbed to their injuries on the same day. Late Satyendra Nath Raha's wife under Section 110-A of the Motor Vehicles Act filed a case against Bhuta and Sushil Kumar and claimed compensation of Rs. 3,00,000. Late Mr Shastri's wife claimed Rs. 1,20,000 as compensation from the aforementioned respondents.

Mrs Raha was compensated Rs. 60,000 by the Claims Tribunal based on the income that Mr Raha would have earned if he had worked until he was 55 years old, after deducting half of his income. Mrs Shastri was decreed to the extent of Rs. 40,000. The High Court upheld the quantum granted by the Tribunal. Gupta and Raha filed the present appeals to the Supreme Court. Raha claimed that the compensation awarded was 'grossly inadequate' and should be increased, while Gupta argued that the compensation awarded was excessive. The Supreme Court remedied the two significant considerations that were overlooked by the Claims Tribunal and the High Court in the present case. The first being the raises Mr Raha might have earned if he had worked his way up to the maximum of his grade before retiring. Secondly, the pensionary benefits to be obtained on retiring. The Court said that it is justifiable to believe that the deceased would have continued to live to be at least 65 years old had he not died in the accident. As a result, the Court raised the compensation awarded to Raha from Rs. 60,000 to Rs. 1,00,000.

The Court held that unfortunately, the liability of the Insurance Companies is restricted to Rs. 2,000/- only in case of a third party under section 95(2)(d) of the Motor Vehicles Act. A suggestion to the lawmakers to increase the insurance company's liability was put forth in order to plug in this lacuna. Furthermore, the court proposed that insurance companies' liability should not be limited to a set amount as a representation of the value of human life, but rather should be left to the court's discretion depending on the facts of each case.

The Court expressed its concern about the need for appropriate legislation to establish no-fault liability, stating that the law of torts based on no-fault requires changes.

b. Evolution of no-fault liability

As mentioned above, no-fault liability is predominantly different from the concept of strict liability with respect to the fixation of the compensation, i.e., in no-fault liability, the compensation due to the

aggrieved party is not predetermined by the statute whereas it is so under strict liability. The other tangential difference between the two concepts is the burden of establishing negligence does not fall on the claimant in the concept of no-fault liability. This has been provided for under Sections 140-144 of the *Motor Vehicles Act*, 1988. Section 140(1)(3)¹⁰ states that the liability of the person who owns the vehicle is fixed to be joint and several.

The case of *Shivaji Dayanu Patil v. Vatschala Uttam More*¹¹ further widened the ambit of coverage of the act by introducing the phrase “arising out of the”. The case dealt with a major road accident between a petrol tanker and a truck. After four hours of the collision between the two vehicles, an explosion took place which led to the death of Vatschala Uttam’s (respondent) son. The respondent went on to file a case in the court claiming compensation. The owner and the insurers (petitioner) argued that there was no causal relationship or in other words, there was no link between the crash and the explosion causing the death as the two events took place after a long-time interval. It was at this juncture that the supreme court interpreted the phrase “arising out of” in a wider sense. In the judgement, it was decided that causal relationships did not have to be clear and proximate, but that it was sufficient even if it was “less immediate”. This understanding and use of the term made the provision more accessible to a wider number of victims, and it stayed true to the mark of "welfare legislation." The accident and the explosion were confirmed to be connected events, and no proper conclusion could be drawn that there was no causal link. It was also suggested that this phrase could be extended to cover the time when the car is not running or has become immobile due to a malfunction. This extension was applied ever since the judgement of Shivaji Dayanu's case, which has been followed in many cases ever since.

¹⁰ Liability to pay compensation in certain cases on the principle of no-fault. —

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

¹¹ MANU/SC/0402/1991

Defences and Exceptions:

The Act also provides for defences from the principle of no-fault liability under Section 149¹² which lays down conditions or the criteria the insurer must meet in order to shift the liability onto the claimant. This was upheld by the Andhra Pradesh High Court;

"The burden is upon the insurer to prove that (1) the owner of the vehicle has committed not mere breach, but a wilful breach of the conditions embodied in the policy (2) the insurer is liable under Section 149 of the *Motor Vehicles Act* to indemnify the owner of the vehicle involved in the accident who suffered a decree for both fault liability as well as no-fault liability, and (3) the insurer can validly take the defence available under Section 149 of the Act not only in respect of fault liability but also in respect of no fault liability."¹³

CHALLENGES OF IMPLEMENTATION:

No-fault liability is a legal framework that holds a party responsible for damages or injuries regardless of their degree of fault. In India, the idea of no-fault liability has been discussed in the context of motor vehicle accidents, but the implementation of this system may pose several challenges.

Firstly, the implementation of a no-fault liability system requires significant changes in the legal framework. The current system in India follows a fault-based approach where the party responsible for the accident is liable for compensation. Therefore, introducing a no-fault liability system would

¹² Section 149 (2)(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely: —

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motorcycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

¹³ Divisional Manager, New India Assurance Company Ltd., Ongole vs. Tumu Gurava Reddy and Ors., (13.07.1999 - APHC): MANU/AP/0773/1999

require extensive amendments to existing laws and regulations. This would require a considerable amount of time, resources, and political will, which may not be readily available.

Secondly, implementing a no-fault liability system in India may also face challenges related to the country's socio-economic conditions. For instance, a significant portion of the population, particularly in rural areas, does not have access to insurance. This could result in individuals facing financial difficulties and being unable to pay compensation under a no-fault liability system.

Thirdly, there may be challenges in determining the appropriate compensation for victims. In a no-fault liability system, compensation is usually based on a pre-determined formula that takes into account factors such as the extent of injury, loss of income, and medical expenses. However, there may be difficulties in implementing this system in India as there is currently no standardized approach for calculating compensation for victims of accidents.

Lastly, there may be resistance from insurance companies and other stakeholders in the motor vehicle industry to the implementation of a no-fault liability system. This is because the current fault-based system places the burden of compensation on the party responsible for the accident, thereby reducing the financial liability of insurance companies. In contrast, a no-fault liability system would place the financial burden on insurance companies and could potentially increase their costs.

Conclusion:

The *Motor Vehicles Act*, 1988 was a step ahead in terms of shifting the burden from the aggrieved party (claimant) to the insurer. This enabled the *Motor Vehicles Act* to become a welfare legislation which can be understood through the shift from the phrase “accident arising out of the use of the vehicle” to “accident caused by the use of motor vehicle”. Owing to the fast-paced development of the society lawmakers must ensure that the laws they formulate are in tandem with this progress. The *Motor Vehicles Act*, 1988 is a true testament of efficient legislation to cater to the dynamic nature of society, as it was expanded to benefit the people.