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ANALYSING MOTOR VEHICLE CLAIMS IN INDIA: THE PROCESS, ESSENTIAL JUDGEMENTS, CRITICISMS AND POSSIBLE SOLUTIONS

AUTHORED BY – SURYAANSH KISHAN RAZDAN

- **Introduction:**

When it comes to the Law of Motor Vehicle Insurance or third-party risk insurance or claims related to motor vehicle accident, the saying “*reality is stranger than fiction*” rings true. And why wouldn't it? The law related to motor vehicle accident insurance claims is a clear example of the grave differences which one comes across while analysing Theory and Practise.

Just like any other legislation, the words of law try and establish as exhaustive of a framework as possible and prescribe the general rule that is to be followed, but if the law were to be analysed from a mere keyhole perspective, there would be left no scope for Judicial Interpretations or Judicial Development/Evolution.

Law as a subject, profession or an element of human society cannot afford to be stagnant, it needs to evolve and adapt to the society. This is where the discussion regarding the “Word of Law” and the “Spirit of Law” comes into play.

The “word of law” when it comes to motor vehicle insurance and its claims is plain and simple. For example Section 146 of the Act states:

“146. Necessity for insurance against third party risk. - (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.”¹

This section makes its clear that any vehicle without a valid insurance policy will not be applicable to be covered under the ambit of a vehicle allowed to be on the road.

However, the anvil of judgements of the Hon'ble Supreme Court and various Hon'ble High Courts make the aspect regarding the “Spirit of Law” clear. The spirit being, that the Motor Vehicle Act is a “beneficial legislation” and therefore it must be construed in a similar manner.

¹ Motor vehicles Act, Section 146, No. 59, Acts of Parliament, 1988 (India)

The interpretation of the statute must be befitting to the needs of the people it effects. The Judiciary in most cases functions in the grey area and provides relief to those who are aggrieved. By this it becomes clear that the Interpretation of the Motor Vehicle Act or even the law in general pertaining to motor vehicle claims is rather biased against the Insurance Companies.

Through the various judgements of the Hon'ble Supreme Court the stance of the Judiciary regarding the process of evaluating motor vehicle claims will become clear. Multiple case studies and examples will be referred to as well in order to provide more clarity regarding the same.

Although stated above, that the stance the judiciary takes in most cases is against the Insurance Companies, as the aim is to interpret the legislation in the perspective for which it was created i.e. a Beneficial Legislation. But that does not negate the fact that various landmark judgements of the Hon'ble Supreme Court have provided a streamlined structure to evaluate the claims that are awarded to the claimants, most notably, the judgements of the Hon'ble Supreme Court in the cases of "National Insurance Co. Ltd vs Pranay Sethi"² and "Sarila Verma & Ors vs Delhi Transport Corp.& Anr"³.

But a defined structure to determine the amount to be awarded is not the only aspect of necessity when it comes to motor vehicle claims. Every case has an aspect which will determine the amount to be awarded (i.e. determine the aspect of increment, decrement or awarded the amount at all).

These aspects range from the fact whether the policy was in effect at the date of the accident; what qualifies as the appropriate evidence to support one's motor accident claim; did the accident take place or not; what if the vehicle or the driver did not have proper registration; what to do if the vehicle was reported stolen etc and the list goes on.

The present article aims to list the various aspects which are accounted for while evaluating motor vehicle claims all the way from the standard defined structure of awards to the various additions and their basis of evaluation. The basic aim of this article is to act as a guide to certain basics entailing a motor vehicle accident claim.

² AIR 2017 SUPREME COURT 5157

³ AIR 2009 SUPREME COURT 3104

- **The Concept of Third Party Insurance:**

As has been discussed above and is made amply clear vide Section 146 of the Motor Vehicle Act, that for a motor vehicle to be legally driven on the roads in India, it is pertinent for said vehicle to have Compulsory Third Party Insurance.

The concept and the importance of the same will become clear through an example:

X was driving his car rashly and got into an accident with Y. Y succumbed to his injuries and passed away. Now, surely there will be a criminal case initiated against X, but does the story end here? Taking note of the spirit of the Motor Vehicle Act which establishes it as a Beneficial Legislation, it clearly does not.

After the accident, the family of Y can file a Motor Vehicle Insurance Claim against X, but in reality the claim will be against the Insurance Company of X.

Insurance Policies are contracts between the policy holder and the Insurer wherein the Insurer (upon the payment of an amount called the Premium) provides protection to the Policy Holder in the instance of any loss. In simpler terms, it is a form of risk management in cases of unexpected or uncertain losses.

In the case of third party insurance, the beneficiary of the policy is someone else other than the 2 parties to the insurance contract i.e. the policy holder and the Insurance Company. Third party insurance does not provide any benefit to the policy holder but covers the Insured's (Policy Holder's) legal liability for death/disability of the Third Party or any other form of loss or damage to the Third Party.

Therefore, in the present example, since the offending vehicle had third party insurance, the insurance company (if it is established that there is any liability of the company) will pay the amount that has been claimed against the offending vehicle.

The Claim will be filed before the Concerned Motor Accidents Claim Tribunal and after taking note of the evidence presented before it, the MACT will decide whether a claim is made or not and what amount is to be paid to the claimant in the present case.

- **About MACT Trials:**

Chapter 12 of the motor vehicles Act is titled “Claims Tribunal” and talks about the general powers, procedures and method to initiate claim proceedings. Motor Accident Claim Tribunal (MACT) proceedings are not different from any other trial proceeding.

It comprises of a petition to initiate the claim proceedings, the petition is supported with relevant evidence and the respondents in the case present arguments and evidence to refute the claim.

Section 166 of the Motor Vehicles Act states:

“166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be”⁴

First and foremost an application is to be filed before the concerned MACT providing details of the incident and praying for a specific amount as the claim. The amount claimed is to be substantiated by suitable evidence as well, although in all cases the claimants state exorbitant amounts with hopes of setting a benchmark amount.

There are certain documents which are essential to be annexed with the Claim Petitions, they are:

1. Copy of the FIR registered in connection with said accident, if any.
2. Panchnama copy (this is a list of damages that is drawn by cops in the presence of witnesses).
3. Copy of the MLC/Post Mortem Report/Death Report as the case may be.
4. The documents of the identity of the claimants and of the deceased in a death case.

⁴ Motor vehicles Act, Section 166, No. 59, Acts of Parliament, 1988 (India)

5. Original bills of expenses incurred on the treatment along with treatment record.
6. Documents of the educational qualifications of the deceased, if any.
7. Disability Certificate, if already obtained, in an injury case.
8. The proof of income of the deceased/injured.
9. Documents about the age of the victim.
10. The cover note of the third party insurance policy, if any.
11. An affidavit detailing the relationship of the claimants with the deceased.
12. RTO Certificate (showing name and address of owner and insurance Particulars of vehicle/s involved in the mishap).
13. Passport-Size Photograph.
14. Court-Fee Stamp

It is based on the evaluation of the information provided by such documents that the MACT decides upon the validity of the claim and the amount to be awarded.

In many cases, when the claim is awarded to the claimant, the insurer has the right to pay the amount to the claimant and recover the same from the Policy Holder.

However, if either of the party is dissatisfied with the judgement of the MACT, the same can be challenged before the Hon'ble High Court of the appropriate jurisdiction and if further dissatisfied, the same may be brought before the Hon'ble Supreme Court.

Now that we have a basic understanding of the procedure involved in Motor Vehicle Claims, it is imperative to discuss that what are the parameters which are used in order to finalise an amount which is to be awarded to the claimants.

The calculation of the amount to be awarded was based on various precedents and there seemed to be a lack of clarity or even certain amount of uniformity in evaluating the amounts to be awarded. However, recent judgements of the Hon'ble Supreme Court have thrown light upon the same issue and have provided a basic structure to prescribe the amount which is to be awarded based upon the pecuniary heads, the other additions are under non-pecuniary heads.

- **The Pranay Sethi & Sarla Verma Method: The Streamlining of Calculation of Claims-**

The Hon'ble Supreme Court was of the opinion that there needs to be a set structure in order to determine the amounts to be awarded in Motor Vehicle Accident Claims. The issue of

establishing certain guidelines in order to evaluate claims was addressed in great detail in the judgement of Sarla Verma & Ors vs Delhi Transport Corp.& Anr⁵ and then taking note of the various findings of the afore-mentioned judgement, came the judgement of National Insurance Co. Ltd vs Pranay Sethi⁶.

The Hon'ble Supreme Court in the Judgement of Pranay Sethi⁷ noted that the concept of "fair compensation" should be determined on grounds of fairness, reasonableness and on acceptable legal standards, since such a provision "can never be in arithmetical exactitude".

The essential aspect in calculating the amount to be awarded to the claimant is the income of the deceased or the injured. Based on the income, it is evaluated that what sort of loss has the claimant or the family of the claimant undergone and therefore taking into consideration other non-pecuniary criterions, a final amount is awarded.

While calculating the income of the deceased or injured it is essential to include the aspect of future prospects i.e. in order to ascertain that if the claimant had not been injured or had the relative of the claimant not died, there would have been eventual increments in his income and for the same, a standardised system is provided to determine the income after inclusion of future prospects.

The judgement of Pranay Sethi clearly states that:

*"(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*⁸

After an addition of future prospects is made, the next step comes regarding the deduction of personal expenses from the salary of the deceased or injured. The deduction of personal expenses is made on the basis of the number of dependants the claimant or the deceased has.

⁵ AIR 2009 SUPREME COURT 3104

⁶ AIR 2017 SUPREME COURT 5157

⁷ National Insurance Co. Ltd vs Pranay Sethi(AIR 2017 SUPREME COURT 5157)

⁸ National Insurance Co. Ltd vs Pranay Sethi(AIR 2017 SUPREME COURT 5157)

The judgement of Pranay Sethi has stated that the amount that is to be deducted is to be determined based on Paras 30-32 of the Judgement of Sarla Verma.

However, the basic gist of the aspect of deduction is provided by Para 30 of the aforementioned judgement itself. It states:

“Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”⁹

This provides us with a base amount to which the multiplier is to be applied in order to ascertain the amount which is to be awarded to the claimant based on the income of the claimant or the deceased.

The judgement of Pranay Sethi has clearly stated that the amount which is to act as the multiplier to the income of the claimant or the deceased is to be determined based upon the age of the deceased/claimant.

The table for the same is provided in Para 42 of the Sarla Verma Judgement. The said paragraph establishes that the Multiplier starts from 18 for the age groups of 15 to 20 and 21 to 25 years, and from thereon the multiplier reduces one unit for every 5 years, that is M-17 for 26 to 30 years and so on and so forth.¹⁰

This establishes the amount which is to be awarded to the claimant based on the streamline method of evaluation of claims. From here on certain amounts are awarded under non-pecuniary or other conventional heads of loss of estate, loss of consortium and funeral expenses.

Other amounts such as medical expenses or future expenses in case of disabilities or whatever amounts the court feels justified to include are also added up to the total amount.

It is however imperative to note that the amounts which have been claimed by the claimants be it the income or even the medical expenses, need to be substantiated with suitable evidences.

⁹ Sarla Verma & Ors vs Delhi Transport Corp. & Anr (AIR 2009 SUPREME COURT 3104)

¹⁰ Sarla Verma & Ors vs Delhi Transport Corp. & Anr (AIR 2009 SUPREME COURT 3104)

- **Why The Motor Vehicle Act Is Rather Biased Against Insurance Companies/Criticisms Of The Act:**

That it is a very old saying that practise is different from theory. The realm of Motor Vehicle Insurance Claims is no exception.

On paper it seems that it is basic enough i.e. you present your claims and if it does not fit in the ambit of the insurance policy, you do not get your claimed amount.

In practise, when one analyses the anvil of judgements of the Hon'ble Supreme Court and various Hon'ble High Courts it becomes clear that the odds are generally stacked against the insurance companies.

It is correct that the legislation is in spirit and word a beneficial one, however, there must be certain guidelines like the one's in judgements of Pranay Sethi and Sarla Verma which prescribe certain reliefs to the Insurance Companies as well.

For example, it is evident that motor vehicle claims are filed when someone is injured or loses their life as a result of a motor vehicle "accident",. Therefore, when the death of the deceased is not caused a result of motor vehicle accident rather as a result of a robbery involving the vehicle or any reason which is not a motor vehicle accident their claim for the same should be dismissed.

This seems reasonable enough? However, the Hon'ble Supreme Court vide its judgement in Smt.Rita Devi & Ors vs New India Assurance Co.Ltd.¹¹ while going into the depth of what constitutes an "accident" has established that in a situation, where the death of the victim took place as an "accidental outcome" to the robbery of the victim or theft of the motor vehicle or any other instance involving the motor vehicle, then it falls under the ambit of a "Motor Vehicle Accident".

There are other instances where the Hon'ble Supreme Court has chosen to overlook various aspects in order to ensure that an amount is after all paid to the claimant. For example, in insurance policy cover notes it is stated that the policy is applicable to either the owner of the policy or any other person who at the time of the incident was holding a valid drivers licence. Thus showing that just like a valid policy is essential to drive a vehicle on Indian roads, so is a Driver's License (which goes without saying), however in various judgements, where even if

¹¹ AIR 2000 SUPREME COURT 1930

it was found that the driving licence was fake or invalid, the Supreme Court has chosen to award the claims.

The courts do take note of the fact whether the accident took place because of the rash and negligent driving of the deceased/injured or of the driver of the offending vehicle or was it a case of contributory negligence.

But still there is no specific relief for the Insurance Companies, years of precedents have however established certain basic contentions which are presented by Insurance Companies against the claims which have been awarded.

There are numerous instances ranging from allowing claims where there are invalid policies to allowing claims for un-registered vehicles such as *Jugaad*¹² which show that the insurance companies are at a rather disadvantage when it comes to such claims.

- **Conclusion:**

It is completely understandable that the Motor Vehicle Act is a Beneficial Legislation with its primary purpose (in terms of Accident Claims) being to ensure that the aggrieved are provided with some relief or the other in order to compensate them against the loss.

However, in order to level the playing field, the same way the judgements of *Pranay Sethi* and *Sarla Verma* have provided a structured formula to evaluate the claims, there must be established a structured method in order to ascertain the deductions which can be made to the total amount attributed to certain factors of the case.

For example, overlooking the absence of a valid driver's licence and allowing the claim is completely acceptable, however, such negligence should not go completely forgiven, there must be a penalty for the same and must be attributed to the negligence of the deceased/claimant.

Through this, 2 objects may be achieved:

- a) The legislation will maintain its spirit of being a beneficial legislation; and
- b) It will level the playing field and provide certain reliefs to the Insurance Companies as well.

¹² *Chairman, R.S.R.T.C. & Anr vs Santosh & Ors (AIR 2013 SUPREME COURT 2150)*