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## IMPACT OF MOTOR VEHICLE ACT ON TORTS LAW IN INDIA

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### ABSTRACT

The Motor Vehicles Act (MVA), hereinafter MVA in India stands as a pivotal legislation governing road safety, vehicle operations, and liability in cases of accidents. This research paper delves into the multifaceted impact of the MVA on tort law in India. Through an extensive examination of legal provisions, judicial interpretations, and scholarly analyses, the paper elucidates how the MVA has influenced the landscape of tort law, particularly concerning negligence, compensation, and liability determination in motor vehicle accident cases. By exploring key legal principles, case studies, and legislative developments, the paper provides valuable insights into the interplay between statutory regulations and common law principles, shedding light on the complexities and implications of the MVA on tort law jurisprudence in India.

### I. INTRODUCTION

#### A. Overview of the Motor Vehicle Act.

The Motor Vehicles Act of 1988, enacted by the Indian Parliament, governs a wide range of aspects related to road transport vehicles, including traffic regulations, vehicle insurance, registration, permits, and penalties. Effective from July 1, 1989, it aimed to ensure road safety.

To enhance road safety, the Government of India collaborated with state transport ministers to introduce amendments to the Motor Vehicles Act, 1988, through the Motor Vehicles (Amendment) Bill. The Lok Sabha passed this bill on April 10, 2017. Subsequently, on July 31, 2019, the Rajya Sabha also approved the bill, with 108 votes in favour and 13 against, following amendments proposed by Road Transport and Highways Minister Nitin Gadkari.

The Motor Vehicles (Amendment) Bill, 2019,<sup>2638</sup> proposes significant increases in penalties for traffic violations, offers protection to Good Samaritans, mandates the recall of defective vehicle parts by automobile manufacturers, holds builders accountable for substandard

infrastructure, and imposes criminal liability on vehicle owners for violations committed by underage drivers.<sup>2639</sup>

#### B. Importance of tort law in adjudicating civil claims arising from motor vehicle accidents.

**Tort law** plays a critical role in resolving civil claims stemming from motor vehicle accidents, offering essential frameworks for fair adjudication:

##### 1. **Claims Tribunals:**

- **Motor Accidents Claims Tribunals**, established by state governments, serve to resolve compensation claims arising from motor vehicle accidents involving death, injury, or property damage.

- These tribunals prioritize swift resolution to provide timely remedies without prolonged legal proceedings.

##### 2. **Specialized Forum:**

- Initially, tort claims were handled under common law in civil courts, but recognizing the unique nature of motor

<sup>2638</sup> Motor Vehicles (Amendment) Bill, 2019.

<sup>2639</sup> What is motor vehicles (amendment) Bill, features, sections, punishment, Business Standard. Available at: <https://www.business-standard.com/about/what-is-motor-vehicles-act> (Accessed: 02 June 2024).

accident claims, legislative measures, such as **Section 110 of the Motor Vehicles Act, 1939**,<sup>2640</sup> established specialized forums.

### 3. Principal Remedy: Damages:

- Monetary compensation, or damages, stands as the primary remedy in tort cases, allowing victims to seek recompense for injuries, loss of life, or property damage.
- Tort law ensures that victims receive just compensation for their losses. In essence, tort law forms a crucial framework for resolving motor accident claims, prioritizing fairness, efficiency, and victim compensation.

### C. Significance of analysing the intersection between the MVA and tort law in India.

The convergence of the Motor Vehicles Act (MVA) with tort law holds significant importance in India for several reasons:

#### 1. Road Safety and Accident Prevention:

- The MVA regulates motor vehicles, drivers, and traffic to ensure road safety.
- Tort law addresses civil wrongs like negligence and liability.
- Understanding how these laws intersect helps identify gaps in safety measures and opportunities for tort law to enhance accident prevention.

#### 2. Compensation for Victims:

- The MVA provides a framework for compensating accident victims through insurance and tribunals.
- Tort law also deals with compensation for injuries resulting from negligence.
- Analysing the interaction between these laws ensures fair compensation for victims.

### 3. Adjudication and Liability:

- Motor Accident Claims Tribunals (MACTs) established by the MVA adjudicate claims.
- Tort law principles guide MACTs in determining liability and assessing damages.
- Examining case laws at this juncture helps refine liability standards.

### 4. Third-Party Insurance:

- The MVA mandates third-party insurance for motor vehicles.
- Principles of tort law influence the evaluation of insurance claims.
- Studying this intersection enhances our understanding of disputes related to insurance.

### 5. Legal Precedents and Interpretation:

- Landmark judgments offer insights into how the MVA and tort law are applied in practice.
- These precedents shape legal interpretation and future cases.
- Analysis of such cases provides clarity on legal principles and their practical implications.

In essence, the overlap between the MVA and tort law in India impacts various aspects such as road safety, victim compensation, liability determination, insurance, and legal interpretation. This intersection is crucial for legal practitioners, policymakers, and accident victims.

## II. EVOLUTION OF MOTOR VEHICLE LEGISLATION IN INDIA.

### A. Historical background of motor vehicle laws in India

The **Indian Motor Vehicles Act of 1914** marked the initial legislation governing motor vehicles in British India, with some princely states adopting similar regulations. Amendments followed such as the **Indian Motor Vehicles (Amendment) Act**

<sup>2640</sup> Motor Vehicles Act, 1988, No. 59, § 110, Act of India, 1988, (India).



of 1920 and the **Indian Motor Vehicles (Amendment) Act of 1924**<sup>2641</sup>. The Act of 1914 was eventually replaced by the Motor Vehicles Act of 1939, which in turn was superseded by the **Motor Vehicles Act of 1988**, effective from July 1, 1989. This newer act provided comprehensive legislative provisions covering licensing, registration, permits, traffic regulation, insurance, liability, and penalties. Additionally, the Act mandated compulsory insurance for motor vehicles, ensuring coverage against third-party risks. In the event of accidents, **interim relief up to ₹500,000** was provided to victims' families, with cases adjudicated in **Motor Accident Claims Tribunals**.

**The Road Transport and Safety Bill of 2014**<sup>2642</sup> aimed at facilitating safer and more efficient transportation, eventually being replaced by the **Motor Vehicles (Amendment) Bill of 2017**. This amendment proposed various enhancements to traffic laws, including the introduction of body cams for officials to combat corruption, increased penalties for traffic violations, and mandatory third-party insurance. Despite passing the Lok Sabha in April 2017, the bill faced hurdles in the Rajya Sabha and ultimately lapsed due to disruptions and lack of support.

Subsequently, the **Indian Motor Vehicles (Amendment) Act of 2019** was introduced, similar to the 2017 bill but with higher penalties for traffic offences. Reintroduced in the first session of the 17th Lok Sabha by Union Transport Minister Nitin Gadkari, it passed both houses and came into effect on September 1, 2019. Official notification from the central government outlined the implementation of 63 clauses of the amended Act from September 1, 2019, covering various traffic offences and national transportation policies without further modifications to the **Central Motor Vehicles rules of 1989**.

## **B. Development and amendments of the Motor Vehicles Act over the years**

The Motor Vehicles Act of India, a comprehensive legislation governing all facets of road transport vehicles, underwent significant amendments with the enactment of the Motor Vehicles (Amendment) Act 2019, receiving presidential assent on August 9, 2019, and slated for implementation from September 1, 2019. These amendments were prompted by the alarming statistics on road accidents in India, as highlighted by the **World Health Organization's 2018 report**.<sup>2643</sup>

Key amendments include revisions to definitions within the Act, the introduction of Section 2A promoting innovation in vehicular engineering, and the addition of **Section 138(1A)** empowering state governments to regulate non-mechanical vehicles and pedestrian activities in public places and on national highways.

For passenger safety, **Section 194B**<sup>2644</sup> imposes fines for driving without safety belts, particularly targeting drivers with children under 14 years of age not restrained by seat belts or child restraint systems. **Section 129**<sup>2645</sup> mandates helmets for children above four years riding motorcycles, adhering to Bureau of Indian Standards specifications.

Further amendments empower the central government to recall vehicles failing standards (**Sections 110A and 110B**),<sup>2646</sup> penalize road contractors for faulty designs (Section 198A), and establish a national register of driving licenses (**Section 25A**)<sup>2647</sup>. Licensing requirements were adjusted, removing minimum educational qualifications for transport drivers (**Section 9(4)**)<sup>2648</sup>, and reducing the duration of learner's license

<sup>2643</sup> *Who results report 2018-2019 - driving impact in every country* (no date) *World Health Organization*. Available at: <https://www.who.int/about/accountability/results/2018-2019> (Accessed: 18 March 2024).

<sup>2644</sup> Motor Vehicles Act, 1988, No. 59, § 194B, Act of India, 1988, (India).

<sup>2645</sup> Motor Vehicles Act, 1988, No. 59, § 129, Act of India, 1988, (India).

<sup>2646</sup> Motor Vehicles Act, 1988, No. 59, § 110A, Act of India, 1988, (India).

<sup>2647</sup> Motor Vehicles Act, 1988, No. 59, § 25A, Act of India, 1988, (India).

<sup>2648</sup> Motor Vehicles Act, 1988, No. 59, § 9, Act of India, 1988, (India).

<sup>2641</sup> Motor Vehicles (Amendment) Act, 1924, No. 4, Punjab Act, 1924 (India).

<sup>2642</sup> The Road Transport and Safety Bill, 2014

eligibility for transport vehicle drivers (Section 12(5)).

Renewal periods for licenses were extended, and provisions were introduced for driver refresher training courses (**Section 19**)<sup>2649</sup>. Dealer responsibilities in vehicle registration (Section 41) and regional power authority waivers for stage carriage permits (**Section 72**)<sup>2650</sup> were addressed. Prioritizing road user safety in parking zones (**Section 117**)<sup>2651</sup> and electronic monitoring for road safety (Section 136A) were mandated.

Proposed national transportation policies (**Sections 66A and 66B**)<sup>2652</sup> and a national road safety board (**Section 215D**)<sup>2653</sup> aim to enhance road safety measures. New provisions for juvenile offenders (**Section 199A**)<sup>2654</sup> and increased fines for traffic violations aim to deter offences and promote compliance. Fines for various offences, such as driving without insurance or helmets, have been substantially raised, reflecting a stricter enforcement stance.

### **C. Legislative intent and policy considerations underlying the MVA provisions related to tort liability.**

The legislative intent and policy considerations underlying the Motor Vehicles Act (MVA) provisions concerning tort liability reflect a comprehensive approach to road safety and transportation regulation. Initially enacted by the Indian Parliament in 1988, the MVA governs various aspects of traffic regulations, vehicle registration, insurance, and penalties.

#### **1. Compensation in Hit-and-Run Cases:**

- The original 1988 Act provided limited compensation in hit-and-run cases, with ₹12,500 for grievous hurt and ₹25,000 for death.
- The 2019 amendment significantly increased compensation to

₹50,000 for grievous hurt and ₹2 lakhs or more for death.

#### **2. Penalty Multiplier:**

- The 1988 Act lacked provisions for escalating fines or penalties.
- The 2019 amendment empowered State governments to multiply fines up to ten times the specified amount and imposed penalties on enforcing authorities failing to uphold the Act.

#### **3. National Transportation Policy:**

- The original Act did not mandate a unified transportation policy.
- The 2019 amendment authorized the central government to formulate a National Transport Policy in consultation with States.

#### **4. National Road Safety Board:**

- The 1988 Act did not establish a national body focused on road safety.
- The 2019 amendment introduced a National Road Safety Board (**Section 215D**) to advise both central and state governments on road safety matters.

#### **5. Recognition of Transport Aggregators:**

- The original Act did not recognize transport aggregators.
- The 2019 amendment granted statutory recognition to transport aggregators (**Section 93**).<sup>2655</sup>

#### **6. Safety of Pedestrians and Non-Motor Transport Users:**

- The 2019 amendment prioritizes the safety of pedestrians and non-motorized transport users to reduce accidents and enhance road discipline.

<sup>2649</sup> Motor Vehicles Act, 1988, No. 59, § 19, Act of India, 1988, (India).

<sup>2650</sup> Motor Vehicles Act, 1988, No. 59, § 72, Act of India, 1988, (India).

<sup>2651</sup> Motor Vehicles Act, 1988, No. 59, § 117, Act of India, 1988, (India).

<sup>2652</sup> Motor Vehicles Act, 1988, No. 59, § 66A, Act of India, 1988, (India).

<sup>2653</sup> Motor Vehicles Act, 1988, No. 59, § 215D, Act of India, 1988, (India).

<sup>2654</sup> Motor Vehicles Act, 1988, No. 59, § 199A, Act of India, 1988, (India).

<sup>2655</sup> Motor Vehicles Act, 1988, No. 59, § 93, Act of India, 1988, (India).

### III. TORT LAW PRINCIPLES AND MOTOR VEHICLE ACCIDENTS

#### A. Examination of negligence principles in tort law

It is well-established that Indian tort law draws heavily from English common law principles. Hence, negligence law in India is built upon and adapted from English common law, guided by principles of justice, equity, and good conscience. The term "**negligence**" originates from the Latin word "**negligentia**," meaning 'failing to pick up'. In a broad sense, negligence refers to careless behaviour, while in a legal context, it denotes the failure to meet a standard of care expected of a reasonable person in a given situation. Negligence as a distinct legal concept emerged in English law only in the 18th century. Similarly, Indian law, initially lacking provisions for negligence causing death, introduced **Section 304A<sup>2656</sup> to the Indian Penal Code (IPC) in 1870.**

Definition of Negligence According to legal scholars **Winfield and Jolowicz**, negligence entails breaching a legal duty of care, resulting in undesired harm to the plaintiff. In the landmark case **Blyth v. Birmingham Water Works Co<sup>2657</sup>**, negligence was defined as failing to do what a reasonable person would do or doing what a prudent person would not.

#### B. Characteristics of Negligence

Negligence can be categorized into three forms:

- 1. Nonfeasance:** This refers to failing to fulfill an obligation, such as neglecting to repair a building when necessary.
- 2. Misfeasance:** This involves performing an action improperly, such as using substandard materials for repairs, leading to potential harm.
- 3. Malfeasance:** This encompasses performing an action that should not have been undertaken, such as using prohibited materials for repairs, resulting in hazardous conditions.

**Illustration** For instance, if a dog owner entrusts a friend to care for the dog, and the friend negligently leaves the dog unattended, leading to an attack on a passerby, the friend's negligence is evident.

#### **Differentiation Between Criminal and Civil Negligence**

**Criminal negligence** occurs when an individual's actions deviate significantly from those of a reasonable person in similar circumstances. Civil negligence, on the other hand, involves a failure to exercise ordinary care or due diligence. In civil negligence, the burden of proof is lower, requiring the plaintiff to show it is more likely than not that the defendant was negligent. Conversely, in criminal negligence, the plaintiff must prove "beyond a reasonable doubt" that the defendant was negligent. Punishments for civil negligence are typically limited to compensatory damages, while criminal negligence can result in imprisonment, fines, or probation.

#### C. Essentials of Negligence To establish negligence, six key elements must be satisfied:

- 1. Duty of Care:** Every individual owes a legal duty of care to others while performing an action. This duty is legal in nature and must not be unlawful or morally based.
- 2. Duty Towards the Plaintiff:** A duty arises when the law recognizes a relationship between the defendant and the plaintiff, requiring the defendant to act in a certain manner toward the plaintiff.
- 3. Breach of Duty:** The defendant must breach their duty by failing to exercise reasonable care.
- 4. Actual Cause:** The defendant's breach must be the actual cause of the plaintiff's damages.
- 5. Proximate Cause:** The defendant's actions must be the primary, foreseeable cause of the injury.

<sup>2656</sup> Indian Penal Code, 1860, No. 45, § 304A, Act of India, 1860, (India).

<sup>2657</sup> Blyth v. Birmingham Waterworks Co, (1856) 11 Ex Ch 781.



**6. Consequential Harm:** The plaintiff must suffer damages as a result of the defendant's breach.

**Res Ipsa Loquitur**, Latin for "*the thing speaks for itself*," allows the court to infer negligence from circumstantial evidence. When certain circumstantial facts are presented by the plaintiff, the burden shifts to the defendant to prove they were not negligent.

#### IV. DEFENSES IN NEGLIGENCE CASES

Defences available in negligence suits include contributory negligence by the plaintiff, acts of God, and inevitable accidents.

##### A. Application of negligence standards in motor vehicle accident cases

In cases involving motor vehicle accidents, negligence is a critical factor in determining liability.

**1. Duty of Care:** Every driver has a responsibility to exercise care while driving to avoid causing harm to others on the road. This entails driving in a reasonable and prudent manner.

**2. Breach of Duty:** Negligence is established when it is shown that the defendant failed to uphold their duty of care. This could include actions such as disregarding traffic signals, driving above the speed limit, or not yielding to other vehicles.

**3. Causation:** The injured party must prove that the defendant's breach of duty directly led to their injuries. It's crucial to establish a clear connection between the negligent behaviour and the harm suffered.

**4. Contributory Negligence:** In some cases, the injured party may bear some responsibility for the accident. Contributory negligence reduces the compensation awarded based on the victim's own actions. For example, if the victim wasn't wearing a helmet, it doesn't automatically imply contributory negligence; each case is assessed individually.

It's crucial to note that negligence standards vary depending on the circumstances, and courts take various factors into account when determining liability in motor vehicle accidents. Seeking legal advice if you're involved in such a case is essential to understand your rights and obligations.

#### V. COMPARATIVE ANALYSIS OF FAULT-BASED AND STRICT LIABILITY REGIMES IN DETERMINING LIABILITY

##### A. Fault-based Liability

Motor vehicle accidents constitute a significant portion of tort cases in India, and prevailing in such suits typically requires demonstrating that the responsible party breached a duty owed to the victim. When an individual fails to fulfil their legal duty, they are considered "**at fault**" or negligent. **Negligence** is typically characterized by failing to act in a manner that a reasonable person would under the given circumstances.

Under the rule of negligence, coupled with the defence of contributory negligence, the responsible party is held liable only if they were negligent and the victim was not. In India, this rule entails a proportional sharing of liability when both parties are found negligent. Essentially, the compensation awarded to the victim is reduced in proportion to their own negligence. However, the rule of strict liability holds the responsible party liable regardless of the care exercised by either party.

**Before the 1988 amendment to the Motor Vehicles Act**, liability for motor vehicle accidents in India was primarily **fault-based**. However, this amendment introduced an element of strict liability through **Section 140<sup>2658</sup>**, which mandates that the owner of the vehicle, or owners in the case of multiple vehicles, is jointly and severally liable to pay compensation for death or permanent disablement resulting from an accident involving the use of the motor vehicle, regardless of fault.

<sup>2658</sup> Motor Vehicles Act, 1988, No. 59, § 140, Act of India, 1988, (India).



Subsequent amendments, such as the one in 1994, further strengthened the liability of the responsible party. **Section 163-A<sup>2659</sup>** specifies that the owner of the motor vehicle or the authorized insurer is liable to pay compensation in cases of death or permanent disablement due to accidents arising from the use of the motor vehicle, as indicated in the second schedule, to the legal heirs or victims, as applicable.

Importantly, claimants are not required to establish that the death or permanent disablement resulted from any wrongful act or neglect of the vehicle owner or any other party. However, when determining liability payments, courts must consider the entire loss suffered by the victim, and there may be instances of over or under-compensation due to court errors.

While the **Motor Vehicles Act of 1988** recognizes limited "no-fault liability" in cases of death and permanent disablement, compensation exceeding the specified amounts can only be claimed if negligence is proven. This means that compensation up to a certain limit can be claimed without establishing negligence on the part of the vehicle owner or driver, but exceeding this amount requires proof of negligence.

## B. No fault Liability

The case of **Haji Zakaria v. Naoshir Cama<sup>2660</sup>** brought before Acting Chief Justice A. Sambasiva Rao questioned whether compensation liability could be imposed on the owner even in the absence of fault or negligent behaviour on their part. However, the Hon'ble Supreme Court of India ruled that if there is no fault or negligence on the part of the owner, they cannot be held liable.

The principle of No-Fault liability was developed to offer relief to victims in cases such as hit-and-run incidents. Denying compensation based on contributory negligence or lack of established negligence by the driver goes

against the principles of social justice. Hence, the provision was made to hold the driver or owner accountable without considering contributory negligence.

Differentiating No-fault liability from Strict liability, the former involves fixed compensation, whereas the latter's liability is determined at the court's discretion. No-fault liability deviates from the common law principle requiring claimants to prove negligent or reckless driving by the owner or driver. However, **Sections 140 to 144 of the Motor Vehicle Act, 1988** provide exceptions to this rule.

In the case of **Minu B. Mehta v. Balkrishna<sup>2661</sup>** the Supreme Court ruled that neither the owner of the vehicle nor the insurer company can be held liable without negligence on their part. Similarly, in *Shridhar v. United India Insurance Company*, the court held that negligence lies with the driver in accidents caused by oil spills, absolving the owner or others of liability.

In **Ishwarappa v. C.S. Gurusthantappa**, the court emphasized that Section 140 of the act aims to provide immediate relief to accident victims or their legal representatives without the need to establish negligence.

**Section 140 of The Motor Vehicle Act, 1988** provides for compensation in case of death or permanent disability resulting from a vehicle accident. Compensation amounts are fixed at Rs. 50,000 for death and Rs. 25,000 for permanent disability.

Regarding the retrospective application of Section 140, compensation is determined based on the date of the accident. Amendments to increase compensation are not retrospective, meaning accidents occurring before the amendment date are compensated according to the earlier provisions.

In the case of **The Oriental Insurance Co. Ltd. v. Seela Ratnan and Ors.<sup>2662</sup>** the court ruled that Section 140 of the Motor Vehicles Act cannot be

<sup>2659</sup> Motor Vehicles Act, 1988, No. 59, § 163A, Act of India, 1988, (India).

<sup>2660</sup> Haji Zakaria v. Naoshir Cama, AIR 1976 AP 171.

<sup>2661</sup> Minu B. Mehta v. Balkrishna, 1977 SCR (2) 886.

<sup>2662</sup> The Oriental Insurance Co. Ltd. v. Seela Ratnan and Ors., AIR 1997 KER 109.

applied retrospectively. Any claims made before the amendment came into force will be governed by the earlier provisions.

The Motor Vehicles Act of 1988 introduced comprehensive regulations for road transport, including vehicle registration, permits, traffic control, insurance, and penalties. The 2019 amendment aimed to increase fines to deter negligent driving and reduce road accidents. No-fault liability ensures compensation for victims without the need to establish fault or negligence, while fault liability arises when negligence is proven.

### C. Strict Liability

**Definition:** Strict liability imposes liability without requiring proof of fault or negligence. It holds the injurer accountable regardless of their conduct.

**Scope:** Strict liability typically encompasses situations where risks emanate from the defendant's sphere, such as certain objects or dangerous human activities.

**No-Fault Liability:** In the context of the Motor Vehicle Act, strict liability includes no-fault liability for damage caused by risks associated with the defendant's actions.

**Vicarious Liability:** However, it does not cover vicarious liability, which is addressed separately in legal principles.

### D. Gray Areas:

**Challenges:** The boundary between fault-based and strict liability can be ambiguous.

**Art 4:201 PETL:** The **European Group on Tort Law (EGTL)**<sup>2663</sup> introduced a rule (art 4:201) in the Principles of European Tort Law (PETL) to address these grey areas. It deals with the reversal of the burden of proving fault, bridging the gap between fault liability and strict liability.

**Limitations:** While such provisions can help, expecting them to bridge the area between fault liability and strict liability for abnormally dangerous activities may be a stretch.

## VI. COMPENSATION MECHANISMS UNDER THE MOTOR VEHICLES ACT

### A. Analysis of compensation provisions for victims of motor vehicle accidents

Section 140 of the Motor Vehicles Act mandates compensation to be provided by the owner or driver of the vehicle in case of death or permanent disability resulting from an accident, regardless of fault. Additionally, this section establishes a no-fault claim process, relieving the aggrieved party of the burden of proving negligence or wrongful conduct. Compensation amounts to Rs. 50,000 for death and Rs. 25,000 for permanent injury. Moreover, a Rs. 10 stamp is required for the application.

### B. Who can claim compensation and procedure: an analysis of section 1662664 of the Motor Vehicles Act 1988

Compensation claims must be submitted to the Motor Accident Claim Tribunal. Eligible claimants include the injured party, the owner of the damaged property, legal representatives of the deceased, or their authorized agents. Claims must be filed within six months of the accident.

### C. Structure of compensation amount with reference to landmark cases

Compensation calculation for death considers factors like the age and income of the deceased and the number of dependents. Additional considerations include deductions for living expenses and multipliers based on age groups. Various deductions and additions are made based on the deceased's employment status and dependents.

### D. Motor accident claim tribunal

Established under the Motor Vehicles Act, the Motor Accident Claims Tribunal resolves motor accident compensation claims, aiming for speedy justice. Appeals against tribunal decisions can be filed within 90 days, with jurisdiction lying with the High Courts.

<sup>2663</sup> European Group on Tort Law (EGTL).

<sup>2664</sup> Motor Vehicles Act, 1988, No. 59, § 166, Act of India, 1988, (India).

### **E. Role of insurance and third-party liability coverage.**

In the case of *National Insurance Co. Ltd v. Fakir Chand*,<sup>2665</sup> the court clarified that the term "third party" encompasses a broad spectrum of individuals, including passengers in a vehicle or pedestrians, who are covered under insurance contracts. It's crucial to note that third-party insurance doesn't aim to protect the insured themselves but rather indemnifies against liabilities arising from the insured's actions, making the insured the ultimate beneficiary.

During the payout process, the insured amount is directly disbursed to the injured third party without involving the insured. Since the exact liability amount cannot be predetermined, only the legal liability is insured, resulting in a fixed premium payment. As third-party insurance is fault-based, the insurer must prove the insured's fault and that the injury resulted from their actions.

Due to the uncertainty in determining the final payout and the requirement to establish the insured's fault, insurance companies often find this policy unpopular. However, insurers cannot evade their liability to third parties unless specific exceptions outlined in **Section 149(2)** of the Act apply.

Even if the insurer successfully proves its defence, it remains partially liable, and any unpaid amount can be recovered from the insured or the vehicle owner. Thus, insurers bear the burden of demonstrating that the accident falls within the Act's exceptions and that the insured breached clauses knowingly. Failure to prove the latter still holds the insurer liable for the insurance payout.

This article aims to elucidate the significance of third-party insurance under the Motor Vehicles Act, 1988, supported by relevant case laws.

### **F. Understanding the Importance of Insurance**

Every asset carries economic value and faces the risk of destruction due to unforeseen events. Insurance provides a sense of security by compensating for losses incurred. It operates on the principle of risk-sharing among a large group of individuals, where premiums are paid to cover contingent events.

Insurance encompasses various risks, from property damage to loss of life, and offers financial protection against these uncertainties. It serves as a social service, benefiting individuals across different income brackets by safeguarding their investments and savings.

### **G. Third-Party Insurance under Legal Framework**

Under the Motor Vehicles Act, third-party insurance is mandated by law. It protects third parties, not the insured or the insurer, from liabilities arising from vehicle-related accidents. This insurance cover is compulsory and must be obtained at the time of vehicle registration, alongside comprehensive coverage.

Legal provisions, including **Section 146** of the Act, outline the requirements for third-party insurance plans. Insurers must cover damages to third-party vehicles caused by the insured vehicle and issue a certificate containing specified details to the insured.

### **H. Rights and Obligations of Third Parties**

Third parties have certain rights under the law, including the right to remain unaffected by settlements between the insured and insurer and the right to receive relevant information regarding insurance coverage. In case of insolvency or default by the insured, the third party retains the right to claim damages from the insurer directly.

### **I. Insurer's Liability towards Third Parties**

Insurers are liable for third-party damages as per Section 147(2) of the MV Act, covering accidents irrespective of liability amount, with a cap of Rs. 6000. Additionally, hit-and-run

<sup>2665</sup> National Insurance Co. Ltd v. Fakir Chand, AIR 1995 J&K 91.



accidents require insurers to compensate victims, with fixed amounts for grievous hurt and death.

## VII. CASE LAWS AND CONCLUSION

Various court rulings, such as *National Insurance Co. Ltd v. Swaran Singh*<sup>2666</sup> and *National Insurance Co. Ltd v. Laxmi Narain Dutt*<sup>2667</sup>, emphasize the insurer's statutory obligation towards third parties and the invalidity of clauses attempting to exclude third-party claims.

In conclusion, third-party insurance is integral to protect road users and ensure their financial security in case of accidents. Despite challenges in determining payouts and establishing liability, it remains a vital component of the legal framework governing motor vehicles.

## VIII. CHALLENGES AND SHORTCOMINGS IN THE COMPENSATION FRAMEWORK VIS-À-VIS TORT LAW PRINCIPLES

The compensation system for motor vehicle accidents (MVAs) presents several challenges and deficiencies compared to the principles of tort law:

### A. The goal of Compensation:

While tort law aims to provide compensation to victims for various losses such as pain, medical expenses, and lost income, the MVA framework often focuses primarily on monetary compensation without adequately addressing the broader impact on victims' lives.

### B. Thresholds and Deductibles:

In certain jurisdictions, victims of MVAs must meet specific criteria, such as a "**permanent serious impairment**," before being eligible for damages. Even if victims meet these criteria, they may encounter deductibles that diminish their compensation. These thresholds and deductibles can impede access to justice for victims who suffer significant harm but do not meet the stringent criteria.

### C. No-Fault Systems vs. Tort Litigation:

MVAs often operate under no-fault systems, where compensation is provided irrespective of fault. While this simplifies the process, it may not fully meet the needs of victims. Conversely, tort litigation allows victims to pursue compensation through civil courts, but this approach can be protracted and adversarial.

### D. Asymmetric Conflicts and Civilian Compensation:

In situations of asymmetric conflicts involving military forces and civilians, addressing harm to non-combatants (collateral damage) is crucial. Different approaches are taken by various countries; for instance, the U.S. military runs a program to compensate civilians injured in conflicts, while Israel permits non-citizen Palestinians to file tort lawsuits in its civil courts. Striking a balance between government accountability and meeting victims' needs remains a significant challenge.

### E. Shortcomings in Compensation Formulas:

Compensation formulas based on factors such as victim age and income may contain flaws and inconsistencies. For example, the compensation model outlined in the Motor Vehicles Act in India has faced criticism. Rectifying these issues requires ensuring that compensation aligns more closely with the principles of tort law.

### F. Developing Effective Victim Compensation Programs:

To bridge the gap between MVA frameworks and tort law principles, it is essential to:

Evaluate existing compensation models, such as those employed by the U.S. and Israel, and learn from their strengths and weaknesses.

Prioritize victims' needs while also holding the government accountable.

Consider insights from social psychology and socio-legal studies to devise more effective compensation programs.

<sup>2666</sup> National Insurance Co. Ltd v. Swaran Singh, AIR 2004 SC 1531.

<sup>2667</sup> National Insurance Co. Ltd v. Laxmi Narain Dutt, AIR 2007 SC 1563.



In conclusion, aligning MVA compensation systems with tort law principles necessitates careful planning, with an emphasis on balancing accountability and prioritizing the well-being of victims.

## IX. JUDICIAL INTERPRETATIONS AND CASE STUDIES

### A. Review of landmark court decisions interpreting the MVA in tort law contexts

The case of *Oriental Insurance Co. Ltd v. Hansrajbhai V. Kodala & Ors (2001)*<sup>2668</sup> centered on whether compensation claims under Section 163A of the MVA were supplementary or alternative to those under Section 140. The court clarified that compensation awarded under Section 163A is final, not interim, and does not overlap with fault-based compensation under Section 140.

Similarly, in *National Insurance Co.Ltd v. Sinitha & Ors (2011)*<sup>2669</sup> the court examined whether Section 163A claims adhered to fault or no-fault principles. It reasoned that Section 163A allows for defence against claims, indicating a fault-based system. Despite being a shortcut, the structured formula basis under Section 163A does not preclude substantial claims and retains a fault-based approach.

Insurance against third-party risks extends coverage to individuals other than the insured or insurer, including the government. The insurer bears responsibility for liabilities arising from injuries, deaths, or property damage resulting from vehicle use in public places, subject to limitations outlined in Section 147 of the Act.

*United India Insurance Co. Ltd. v. Karam Chand & Ors. (2011)*<sup>2670</sup> established that third parties affected by vehicle use in public places are entitled to compensation, regardless of whether they were occupants of the vehicle or pedestrians. Compensation is to be provided by the insurer of the vehicle involved.

In *Smt. Tulasi Sahukar v. New India Assurance Company (2010)*<sup>2671</sup> the court affirmed that insurance policy transfer to the deceased's spouse occurs automatically upon the vehicle's ownership transfer, maintaining the insurer's liability for compensating third-party victims.

Regarding motor vehicle insurance policies, *Divisional Manager, Oriental Insurance Company Ltd. v. Tushar Ranjan Dash & Ors. (2010)*<sup>2672</sup> addressed the issue of insurance policy cancellation before an accident. The court ruled that despite cancellation due to a dishonoured check, the insurer remains liable to compensate third parties.

*National Insurance Co.Ltd v. Parvathaneni & Anr (2009)*<sup>2673</sup> clarified that dishonoured premium checks do not absolve insurers of liability to third parties. The insurer's obligation to compensate third parties is not contingent on premium payment.

The doctrine of 'pay and recover,' outlined in Section 149 of the MVA, emphasizes swift third-party compensation, allowing insurers to recover payments from policyholders later. In *National Insurance Co. Ltd v. Swaran Singh & Ors. (2004)*, the court outlined defenses available to insurers to contest liability, emphasizing proof of the insured's negligence.

*Parminder Singh v. New India Assurance Company Ltd. (2019)*<sup>2674</sup> dealt with permanent disability compensation and insurer liability, concluding that insurers are absolved from compensation if the driver lacks a valid license, but must still pay and recover from the driver later.

The loss of consortium and affection issue, addressed in *The New India Assurance Company vs. Somwati (2020)*<sup>2675</sup>, affirmed compensation eligibility for spouses, parents, and children of deceased victims. However,

<sup>2668</sup> Oriental Insurance Co. Ltd v. Hansrajbhai V. Kodala & Ors (2001), AIR 2001 SC 1832.

<sup>2669</sup> National Insurance Co. Ltd v. Sinitha & Ors, AIR 2012 SC 797.

<sup>2670</sup> United India Insurance Co. Ltd. v. Karam Chand & Ors.

<sup>2671</sup> Smt. Tulasi Sahukar v. New India Assurance Company, 2011 AAC 2300 (OR).

<sup>2672</sup> Divisional Manager, Oriental Insurance Company Ltd. v. Tushar Ranjan Dash & Ors., AIR 2018 SC 3726.

<sup>2673</sup> National Insurance Co. Ltd v. Parvathaneni & Anr.

<sup>2674</sup> Parminder Singh v. New India Assurance Company Ltd., AIR 2019 SC 3128.

<sup>2675</sup> The New India Assurance Company v. Somwati, AIR 2020 SC 717.

standalone compensation for 'loss of love and affection' was not granted, as it fell under the broader category of consortium loss.

In conclusion, the Motor Vehicles (Amendment) Act, 2019, introduced stricter penalties and additional compensation measures, aiming to enhance road safety and victim support. It also established bodies like the National Road Safety Board and facilitated online licensing and improved insurance policies.

## X. LEGISLATIVE REFORMS AND FUTURE DIRECTIONS

### A. Assessment of recent legislative reforms and policy initiatives affecting motor vehicle laws and tort liability

The amended law was anticipated to bring about a sobering effect on reckless drivers, alleviate nightmarish traffic situations in urban areas, and promote safer conditions on highways. However, many states, under the guise of concern for the poor, are advocating for reduced penalty rates, undermining the effectiveness of the Act and jeopardizing lives. This pandering to vote banks could lead to detrimental consequences, prompting a debate on whether our democracy solely revolves around distributing handouts to the public.

Nevertheless, the question remains unanswered: can strict legislation alone curb road fatalities? While increased penalties may induce fear of traffic regulations, they may not address the root causes of accidents. In fact, they could potentially hinder enforcement efforts.

Several critical issues must be addressed to mitigate the accident-prone nature of Indian roads. Firstly, the enforcement of the new law primarily targets metro cities, leaving out numerous other urban centres where accidents are prevalent due to inadequate infrastructure and resources for traffic management and law enforcement. Without significant upgrades in infrastructure, including road widening and traffic regulation measures, effective enforcement will be challenging.

Secondly, national highways continue to witness a significant number of accidents and fatalities due to various factors such as faulty road design, inadequate signage, and poor maintenance. Targeted enforcement efforts and infrastructure improvements are needed, including regular highway patrols, enhanced road safety measures, and investments in highway maintenance.

Thirdly, the impact of the Motor Vehicles (Amendment) Act, 2019, in rural areas remains limited without tailored schemes for traffic education and enforcement. Rural regions account for a substantial portion of accidents and deaths, necessitating the involvement of local governance bodies to implement effective road safety measures.

Fourthly, awareness campaigns and road safety education must be prioritized to address behavioural factors contributing to accidents. Initiatives should target schools, colleges, and the general public, emphasizing the importance of road safety practices.

Fifthly, inadequate manpower and coordination among law enforcement agencies hamper the effective enforcement of traffic laws. Investments in additional personnel and improved coordination between police and municipal authorities are essential.

Lastly, uniform implementation of the Act is crucial to its success. VIP exemptions and corruption undermine the law's effectiveness, emphasizing the need for consistent enforcement across all levels.

In conclusion, reducing road fatalities requires a comprehensive approach involving infrastructure improvements, awareness campaigns, enhanced enforcement, and political commitment. Upholding the Motor Vehicles (Amendment) Act, 2019, with unwavering political will is imperative to achieve the goal of safer roads and fewer accidents.

## XI. CONCLUSION

In conclusion, the extensive analysis of negligence law, compensation mechanisms, insurance frameworks, judicial interpretations, legislative reforms, and future directions regarding motor vehicle laws and tort liability in India highlights several crucial aspects.

Firstly, it underscores the evolution of negligence law in India, which draws heavily from English common law principles, with a focus on duty of care, breach of duty, causation, and harm. The differentiation between civil and criminal negligence, along with illustrations and essential elements of negligence, provides a comprehensive understanding of the legal framework.

Secondly, the examination of fault-based and strict liability regimes in determining liability, particularly in motor vehicle accidents, illuminates the shift from fault-based liability to the introduction of strict liability elements in Indian law, as evidenced by amendments to the Motor Vehicles Act.

Thirdly, the analysis of compensation provisions under the Motor Vehicles Act, including Section 140 and Section 163A, elucidates the no-fault claim process, eligibility criteria, and the role of the Motor Accident Claims Tribunal in adjudicating compensation claims. Additionally, the discussion on insurance coverage, third-party liability, and insurer's obligations provides insights into the legal framework governing motor vehicle accidents.

Fourthly, the review of landmark court decisions interpreting the Motor Vehicles Act in tort law contexts demonstrates judicial interpretations of compensation, liability, insurance coverage, and the rights of third parties, contributing to the evolution of legal precedents.

Lastly, the assessment of recent legislative reforms and policy initiatives underscores the challenges and shortcomings in addressing road fatalities and accidents in India. While legislative amendments aim to enhance road safety and victim support, effective

enforcement, infrastructure improvements, awareness campaigns, and political commitment are crucial to achieving the goal of safer roads and fewer accidents.

Overall, the comprehensive analysis underscores the multifaceted nature of motor vehicle laws and tort liability in India, emphasizing the need for a holistic approach involving legal, judicial, legislative, and societal efforts to mitigate road fatalities and ensure justice for victims of motor vehicle accidents.

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