

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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RAILWAY ACCIDENT CLAIMS AND CALCULAS OF NEGLIGENCE: A CRITICAL STUDY

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ABSTRACT

Authorities as well as public always thought of modernization and world class facilities in Indian Railways, but no one emphasizes on topic of accidents in Indian Railway. Indian Railway network is second largest network in world but fact can't be denied that is also tops in train accidents throughout the world. Having such a large network safety consideration cannot be let go. With massive utilization of assets, safety is of paramount importance for operational efficiency. Safety has to be considered as a top most priority in order to achieve greater height of performance. Indian Railway is the largest network under a single management and it is the cheapest mode of transportation in the country. It is largest and busiest rail network in Asia, carrying over 18 billion passengers and more than 2 million tonnes of freight daily. Indian railway network is spread over the length and breadth of the country and has 63000 route km and 7000 stations. This huge task is achieved through use of 7700 locomotives 3800 passenger's coaches and 2,20,000 freight wagons for which necessary maintenance and manufacturing facilities also exist¹.

Safety fund had been increased in order to ensure the safety of each passenger travelling in train but still there are many flaws in rail system. Railway vacancies for safety related staff are increasing in engineering, mechanical, operating departments who are unable to fill the seats need to be filled up in order to minimize the burden over the existing rail staff and so as to maintain work efficiency of Railway employee in order to maintain smooth operations of railways. Various modern techniques should be inculcated by railway authorities that will ensure safety and minimize the number of rail accidents.

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Indian Railways safety performance by Mr. Naushad Alam and Mrs...Shalima Sharma submitted the full fledged report of rail accidents from 2001-2016 which includes causes of accidents, casualties, damage to rail property, accident compensation, state-wise division of manned and unmanned railway crossing and the safety measures initiated by the Railway authorities. Report concludes that derailment and unmanned railway crossing are found to be the major reasons and safety measures which are been taken and also suggested what needs to be done to overcome the rail accidents in future.

Railway accidents, which lead to serious injuries including death or maiming of innocent and ignorant human beings have become a matter of grave concern². In most of the cases, who are daily involved in the accidents caused by railways are mainly the pedestrians or the cyclists. Since the drivers of such erring vehicles are responsible for the accidents on the track, the law requires them to give compensation to such victims of the Railways accidents. The tragedy is that most of such victims are unaware of their rights to get compensation from the Railways who, due to rash and negligent driving, are legally duty-bound to pay compensation for the injuries inflicted on the innocent victims, who, in most of the cases, belong to weaker sections of society.

INTRODUCTION

The number of people who get killed or maimed in Railways accidents is growing day by day. The main source of succor to such hapless people and their dependents is the compensation that they are entitled to receive under law. But right from 1956, railway accident compensation law has been in a state of flux. It was in that year that the legislature modified the Railways Act, 1939 by inserting several new sections. Over the years, many more amendments followed and in 1988, a new Railways Act replaced the old one. This Act studies various new rights created by the Railways Act, 1988 for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of a Railways.

The entire in India, all types of trains plying on the track, the regulation of the drivers, the rules of the track regulations, track accidents, claims made by the victims of accidents and their wards etc. are all depend upon a single piece of legislation known as the Railways Act.

² UPENDRA RAJ JAI, *RAILWAY ACCIDENT CLAIMS LAW AND PROCEDURE* 112-124 (P & H publishing house, 2002).

Originally enacted in the year 1939, during the British rule in India, the Railways Act has undergone a sea of changes between 1939 and 1988. The act has been amended comprehensively in the year 1988 in tune with the welfare State ideals of India and in order to meet the growing demands of its people. Almost all the states in India have enacted Railways Rules, to regulate the registration of vehicles and the issue of permits to the owners of the vehicles and issue of license to the drivers.

The Railways Act, 1988, can be hailed as welfare legislation since it deals with comprehensively about the track accidents involving Railways and also enabling the victims to claim compensation³. The Railways Act, 1988, between sections 165⁴ and 176⁵ comprehensively provides for the establishment of claims tribunals by the state governments, the procedure for applying compensation by the victims, procedure and powers of the claim tribunals in making the awards, liability of the insurance companies, enabling the state government to make rules, awarding interest on the compensation amount, providing for appeals etc. The Railways Act, 1988 has also done away with the provisions of limitation period of six months to file a claim application for a victim⁶. Taking into account the difficulties of a victim or his legal heirs in procuring the documents pertaining to an accident, the limitation provision has been deleted, which is definitely a step forward in the right direction.

1.1 WHO CAN FILE A CLAIM:

In case of damage to property, the application for compensation has to be made by the owner of the property damaged. It is implied that in case of death of owner of the property, the legal representatives of deceased owner can competently claim compensation³³.

1. People, who have been injured in accidents on the road, can themselves file for compensation or route the claims through their advocates.
2. But accident victims, who are below 18 years of age, cannot file for compensation themselves; they have to go through their advocates.
3. Legal heirs of people who have died in accidents can also claim compensation; alternatively, they can route their claims through their advocates.

³ Section 110 (3) (b), The Railways Act, 1988, indiantailways.gov.in.

⁴ Section 165, The Railways Act, 1988, indiantailways.gov.in.

⁵ Section 176, The Railways Act, 1988, indiantailways.gov.in.

⁶ Section 3(2), The Railways Act, 1988, indiantailways.gov.in.

Victim himself or through Advocate, in the case of personal injury. Through advocate in case of minor applicant below the age of 18 years. Legal heirs themselves or through advocate in the case of death. The owner of the vehicle in the case of property damage.

1.2 ESSENTIAL DOCUMENTS REQUIRED TO FILE CLAIM:

Following documents are required along with application for compensation claim:

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 identity of the claimants and of the deceased in a death case.
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.

1.3 JURISDICTION OF CLAIMS TRIBUNAL:

The jurisdiction of Claims Tribunal for adjudication of claims relating to the motor vehicles accidents can be invoked if the accident has arisen out of the use of the motor vehicle and the accident has resulted in bodily injury to the person who is making the claim or the death of the person whose legal representatives are making the claim. Thus the Claims Tribunal has the jurisdiction to entertain claims relating to accident which occurred in the course of user of the bus for carriage of the passengers, irrespective of the fact whether vehicle was mobile or stationary³⁶.

In *Sanno Devi v. Balram*³⁷ it was held that jurisdiction of tribunal depends essentially on the fact whether there had been any use of motor vehicle and once it has been established,

tribunal's jurisdiction cannot be held ousted on findings that it is negligence of other joint tortfeasor and not of the motor vehicle in question. A victim of an accident arising out of use of motor vehicles may file their claim application to the Claims Tribunal within local limits of whose jurisdiction the claimant resides or carries on business.

Pecuniary Jurisdiction

The pecuniary jurisdiction of the Claims Tribunal has a double implication i.e. compensation in case of death or bodily injury and in respect of damage caused to any property. Section 165 of the Act empowers the tribunal to award compensation not only for death and bodily injury but also for damage to property. As regards the former, there are three different provisions in the Motor Vehicles Act, 1988, namely:

1. Compensation in certain cases on the principle of no fault, as provided in section 140 of the Act.
2. Compensation on structured formula basis, under section 163-A of the Act, and
3. Compensation which appears to the Claims Tribunal to be just, under section 168 of the Act.

In the category of claims under 1. Above, i.e. compensation on principle of no fault, compensation can be awarded either in cases of death or in cases of permanent disablement of any person, and in either case, the fixed and different amounts have been fixed respectively for death and permanent disablement. The relevant provisions are sub-sections (1) and (2) of section 140³⁸.

I. Exclusion of Civil Court's Jurisdiction not readily Inferred

The civil courts under section 9 of the Civil Procedure Code have general and overall jurisdiction to try all suits of a civil nature and a suit wherein the right to property or to an office is contested is a suit of a civil nature. The bar of jurisdiction of the civil court cannot thus, readily inferred, and the Supreme Court in a classic decision in *Dhulabhai v. State of Madhya Pradesh*³⁹ has covered out as many as seven exceptions to a statutory bar created on jurisdiction of the civil court, seven exceptions are as under:

1. Where the statute gives finality to the order of the special tribunal, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have been complied with or the statutory tribunal has not acted in conformity with the fundamental

principles of judicial procedure.

2. Where there is an express bar of jurisdiction of the courts, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment become necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions provides the said right and liability shall be determined by the tribunal so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.
3. Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunal constituted under that Act. Even the High Court cannot go into the question on a revision or reference from the decision of the tribunal.
4. When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.
5. Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.
6. Question of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant inquiry. An exclusion of the jurisdiction of the Civil Court is not to be readily inferred unless the conditions above set down apply.

II. Jurisdiction in Respect of Cases Where Accidents Occurred Prior to Establishment of Tribunal

The existence of a claims tribunal on the date of accident is not a condition precedent for entertaining a claim for compensation. A claim for compensation can be entertained by a Tribunal even in respect of an accident which occurred at a time when there was no claims tribunal for that area. In *New India Assurance Co. v. Rukiyabai*⁴⁰ a motor accident took

place within the jurisdiction of the civil court at Nasik. There was no claims tribunal on the date when the accident had occurred or on the date when the suit for compensation was instituted in the Nasik. After the institution of the suit, the claims tribunal came to be established, but even then the tribunal set up at Nasik had no jurisdiction to entertain claim for compensation in respect of accidents which occurred at a place within the territorial jurisdiction of the Nasik court. It was, therefore, held that the notification establishing a tribunal at Indore could not come in the way of the civil court at Nasik to proceed with the claim instituted therein when no tribunal for that area was then in existence⁴¹.

III. Bar on jurisdiction of Civil Courts

Section 175 bars the jurisdiction of Civil Courts where any Claims Tribunal has been constituted. Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court⁴². In *Vatticherukuru Village Panchayat v. Nori Venkataraman Deehsithulu*⁴³ it was held by the apex court that the procedure before the tribunal is simple and not hidebound by intricate procedure of pleadings and trial, admissibility of the evidence and proof of facts according to law.

Therefore, there is abundant flexibility in the discharge of the functions with greater expedition and in expensiveness. In *Gurbax Singh v. Financial Commissioner*⁴⁴ it was held by the Supreme Court that despite the bar on civil courts jurisdiction under a statute, if the special tribunal or authority acts ultra vires or illegally, the civil court has power by virtue of **section 9 of the C.P.C.** to interfere and set matters right. If the provisions of the statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the civil courts have jurisdiction to examine such cases.

IV. Bar on Jurisdiction of Consumer Dispute Redressal Forum

In *Chairman Thiruvallur Transport Corporation v. Consumer Protection Council*⁴⁵ the deceased was travelling in an omni bus which met with an accident while trying to avert a bullock – cart. It appears that when the bus driver was in process of overtaking the bullock cart, the bullock got panicky whereupon the driver swerved the bus to left and ran in to branches of a tree on the roadside resulting in damage to the vehicle, the window panes having

been smashed. As the vehicle suddenly swerved and the driver applied the brakes the deceased who was sitting in the centre of the rear seat was thrown in the front and hit against the iron side bar, sustaining a serious head injury. Subsequently he succumbed to the injury. The Consumer Protection Council, Tamil Nadu on behalf of the legal representative of the deceased, lodged a complaint before the National Commission under the 1986 Act claiming compensation. The appellant contested the claim contending that the claimant i.e. the Council, had no locus standi to maintain the action and in any case the National Commission had no jurisdiction to entertain a petition since exclusive jurisdiction was conferred by the 1988 Act on the Claims Tribunal constituted there under. The National Commission contended the appellant, side stepped the question regarding jurisdiction and without answering the same awarded Rs. 5.10 Lacs by way of compensation with interest at 18% per annum with costs of Rs. 10,000/-. An appeal against the judgement was preferred to the Supreme Court. The question that arose for consideration was whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving death of the deceased caused by the use of Motor Vehicle.

The Supreme Court without going in to depth of awarding of compensation by National Commission to the victim, only answer the question of law as to whether National Commission can entertain such case held that National Commission has no jurisdiction whatsoever and was entirely wrong in exercising jurisdiction and awarding compensation. However, in the facts and circumstances of this case, the judgment pronounced by National Commission was reversed and appellant were not entitled to recover the compensation money already paid to the victim under the order's of National Commission. Hence, claims for compensation arising out of use of motor vehicles cannot be adjudicated by any of the Consumer Disputes Redressal Forums contemplated and created under Consumer Protection Act, 1986. The complaint in the case of motor accident cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer has nothing to do with the service provided or availed of by him if the injury is the direct result of the accident.

V. Jurisdiction of Tribunal, Where Collision between Trains and Motor Vehicle Occurred

In *Union of India v. Satish Kumar Patel*⁴⁶ where there is negligence only of the driver of the motor vehicle or where there is negligence both of the driver of the motor vehicle and of the railway, a claim is entertainable by the motor accidents claims tribunal. In *Amritlal v. Union*

of India⁴⁷ where the truck driver was warned by inmates of truck about approaching railway engine and there was consequent collision between truck and the engine on unmanned railway level crossing and resultant death of some of the passengers in the truck and injuries to other inmates of truck, award of compensation by the tribunal was held justified and the railways was held not liable since it is no duty of railways to man all level crossings.

In *Union of India v. Bhagwati Prasad*⁴⁸ there was collision between a passenger train and a taxi. The track was lying open even at time of passing of the train. Some of the inmates of the taxi died and others sustained injury. It was held that once it is established that the accident arose out of use of motor vehicle, the tribunal's jurisdiction cannot be said to be ousted on a finding that it was negligence of the other joint tortfeasor and not negligence of the motor driver.

VI. Claimant to Choose Place of Jurisdiction

A plain reading of section 166(2) shows legislative intent to insert sub-section

(1) that making of claim application under section 166

(2) has been left totally at the option of the claimant, either to the claims tribunal having jurisdiction over the area where the accident took place, or to such tribunal within local limits of whose jurisdiction the claimant resides or carries on business or within local limits of whose jurisdiction the defendant resides. In other words, obviously the claimant can file an application within the jurisdiction of claims tribunal (1) where the accident occurred, or (2) before the tribunal within local limits of whose jurisdiction, claimant resides or carries on his business, or (3) within local limits of whose jurisdiction, the defendant resides or carries on his business. In *Kusum Devi v. Dungaram*⁴⁹ it was held that in view of the word "or" which separates three clauses, the claimant can choose either of the three options and as per legislative intent, there are three options implied, whereby he has been given a right to pick one of three places for exercising his option.

VII. Jurisdiction of Tribunal in India, where Accident occurred in Foreign Country

A suit or proceeding can be filed in a court or tribunal having jurisdiction in relation with the place where the cause of action or part thereof had arisen⁵⁰ and where a bus was booked at Delhi, part of cause action had arisen in India and the claimants can file a claim in the tribunal having jurisdiction over place or residence of claimant under section 166(2) of the Act⁵¹.

In the above case, a bus for pilgrimage from Delhi to Kathmandu was booked at Delhi and vehicle was registered in India. The bus fell into a river in the territory of Nepal. It was held

that a claim under section 163A of the Act was maintainable in a tribunal within the State of Punjab. It was further held that the Motor Vehicles Operations and Contiguous Counties Rules, 1963 had no application, since the rules could operate only if the claim was filed in Nepal. Eventually, the insurer was held liable. In *Savara Pydi Raju v. T. Venkata Rao*,⁵² it was held that as per amended provisions of section 166(2) victims are entitled to make their claims in any court having jurisdiction over place where accident occurred or over place where they are residing.

VIII. Jurisdiction to Entertain Claim by Indigent Person

The tribunal has trapping of civil court for the purpose of taking evidence on oath and of enforcing attendance of witnesses and compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed, as section 169(2) of the Motor vehicle Act, 1988 has stated. There is no direct reference of Order 33 of Civil Procedure Code which deals with suits by or on behalf of indigent persons. In *State of Haryana v. Darshana Devi*⁵³ the Supreme Court of India observed that the poor shall not be forced out of the justice market by instance on court fee and refusal to apply the exemptive provisions of Order XXXIII, Civil Procedure Code. So we are distressed that the State of Haryana, mindless of the mandate of equal justice to the indigent under the magna carta of our Republic, expressed in article 14 and stressed in article 39A of the Constitution, has sought of leave to appeal against the order of the High Court which has rightly extended the pauper provisions to the auto accident claims. The reasoning of the High Court in holding trial under Order XXXIII will apply to tribunals which have the trappings of the civil court finds our approval and hence upheld the decision of the High Court.

In *Gulab Singh Meruji v. Jayantilal Shankarlal Brahmin*⁵⁴ where a prayer was made for filling the appeal as indigent person. The appellant was permitted to file the claim before the tribunal as indigent person, but the claim was dismissed. Permitting the appeal to be filed as indigent person the court observed that in the legal aid programmes, whatever amount is paid as legal assistance to the litigant....that is not repayable by the litigant. In the case where a person comes up with a prayer that he may be permitted to file appeal as an indigent person...by permitting him to file appeal as indigent person, payment of court fee is only being deferred. So this court, while dealing with such applications, should be more liberal which will advance the cause of justice to poor persons. The court was of the view that in such matter, even notice to the opposite party is unnecessary, since the other side can challenge the same later on with necessary, cogent and justifiable evidence.⁵⁵

IX. Death Occurred Due To Heart Attack: No Jurisdiction

In *National Insurance Co. Ltd v. Chandra Prava Barman*⁵⁶ where the insurer argued that admittedly the father of the claimant died on account of heart attack and not due to vehicular accident, and that Motor Accidents Claims Tribunal can award compensation only in connection with the liability of the insurer on the insured which arises out of vehicular accident and not for any remote cause. Holding this statement as well merited the High Court held that the claim for death of the father might or could have been taken up under Law of Torts and not by Motor Accidents Claims Tribunal, which has got limited jurisdiction to deal with claims arising out of accident. Such a claim which has been allowed by the tribunal could only be within the competence of the civil court and not within the competence of the Motor Accidents Claims Tribunal.

X. Claims Tribunal- Its retrospective jurisdiction

The effect of Sections 110 to 110-F of the Act, is merely to provide for change of forum and its procedure, thereby substituting a cheap remedy to the victims of all motor accidents, and from the date of constitution of the Claims Tribunal, the jurisdiction of the civil court is totally ousted in respect of such claims. Therefore, it is wrong to say that the claims before the Claims Tribunal can be lodged only in respect of inevitable accident and the remaining accidents, which result from any negligence or rashness, are outside the jurisdiction of Claims Tribunal.⁵⁷ Provisions of Section 110-F of Motor Vehicles Act, 1939 are not retrospective debarring jurisdiction of Civil Court in pending suits.⁵⁸

1.4 TRANSFER OF CLAIMS FROM ONE TRIBUNAL TO ANOTHER TRIBUNAL:

In *Siddarmappa Patil v. President, Bhartiya Vidya Vardhaka Sangha*⁵⁹ the tribunal entertaining the claim was situated at a distance of 1000 kilometers from the claimant's residence. Subsequent to the amendment of the section, giving option to the claimants to file claim at the place of residence, transfer of claim petition was allowed in conformity with the spirit of law as amended. In *Padminbai Ashok Yadle v. Mannan Ismail Shaikh*⁶⁰ the claim was pending before the claims tribunal at Latur, whereas the claimant was residing at Mumbai, the claim petition was transferred from tribunal at Latur to the tribunal at Polghar. The benefit of Section 166(2), which had been inserted by way of an amendment in 1994, can be extended even in respect of a claim instituted prior to such amendment.

Claimant can Withdraw Applications and file it at Appropriate Place

Where the claim was filed in a tribunal having Jurisdiction over the area in which the accident occurred or defendant resides, but the claimant having become totally crippled and unable to prosecute his claim there, he may be allowed to withdraw his claim and file it afresh at a place where he usually resides. In *B.K. Singh v. Union of India*⁶¹ where the claim was filed in a tribunal in Assam having Jurisdiction over the area in which the accident occurred, but the claimant having become totally crippled and unable to prosecute his claim, he was allowed to withdraw his claim and file it afresh at Pune as desired by him.

Tribunal Cannot Entertain Application for Claim in Case of Hit and Run Accident

A plain reading of Rule 20 of the Solatium Scheme, 1989, makes it clear that an application seeking compensation under the Scheme in case of hit and run accidents is to be filed in Form 1 before the Claims Enquiry Officer of the Sub- Division in which the accident had taken place. Thus, under the scheme, a particular forum has been provided for claiming compensation in case of hit and run motor accidents. This being the position, claimants claiming compensation in cases of death or grievous hurt arising under the hit and run motor accidents cannot file application before the Claims Tribunal, and the Claims Tribunal having no jurisdiction in the matter, the order of the Claims Tribunal rejecting the objection taken by the insurer as regards the maintainability of the application cannot be allowed to stand⁶².

Option Regarding Claims for Compensation in Certain Cases

Section 167 of the Act lays down that when claim arises under this Act and under the compensation only under either of these Acts and not under both the Act. Notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both⁶³.

In *New India Assurance Co. Ltd. v. Mehebanbibi*⁶⁴ the decision in the case may be taken as an exception to the provision of section 167, wherein the facts (at the cost of repetition) were that the deceased had been deputed by his employer to carry a damaged transformer in a tractor, had fallen into a ditch. The deceased, pressed under the damaged transformer in the ditch succumbed to his injuries in the hospital. Death of the deceased had arisen out of and in the course of employment since the deceased was employee of the electricity board and died

while on duty. Since the accident had occurred because of negligence of the driver of the tractor, which belonged to a different person, it was held by the Division Bench that the claimants, in the peculiar circumstance of the case, were entitled to claim compensation under the Motor Vehicles Act, 1988, as well as under the Workmen's Compensation Act, 1923.

The Tribunal has no jurisdiction to grant consequential loss arising out of damage to the property⁶⁵. Only those provisions of CPC which are specifically mentioned, will apply to proceedings under Motor Vehicles Act, 1988,⁶⁶. Delay in filing FIR is not a ground to dismiss claim petition⁶⁷. Claimants are not required to prove the case in motor accident compensation claims as it is required to be done in a criminal case.⁶⁸

1.5 AWARD OF THE CLAIMS TRIBUNAL:

The expression „award“ must be given wider and proper meaning. An award would comprehend every decision of the Tribunal, whether for or against the claimant or the opposite parties⁶⁹. The meaning of the word 'Award' as given in Webster's New World Dictionary is "a decision, as by Judges".

Section 168 of the Act provides that the Claims Tribunal shall deliver the copies of the award to the parties within fifteen days of the award and that the person against whom the award is made shall deposit the amount awarded within thirty days of announcement of the award. On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be⁷⁰. Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X. The Claims tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award⁷¹. When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit

the entire amount awarded in such manner as the Claims Tribunal may direct⁷².

In *Ranu Bala Paul v. Bani Chakraborty*⁷³ it was held that an award under Motor Vehicles Act, 1988 cannot be equated either with a civil or a criminal case, and the tribunal while awarding compensation is not expected to go into niceties or technicalities but must adopt a broad and a liberal approach. In *New India Assurance Co. Ltd. v. G. Lakshmi*⁷⁴ it was held that the tribunal is expected to award a compensation which appears to be just, it follows that in deserving cases, the tribunal may not be bound by the figure stated in the claim petition and can award an amount even more than what has been claimed.

1.6 Procedure and powers of Claims Tribunal:

Section 169 of the Act lays down the procedure to be followed by the Claims Tribunal in setting claims compensation and the powers of the Claims tribunal. In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedures as it thinks fit⁷⁵. The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973⁷⁶. Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry⁷⁷. The procedure to be followed at the Claims Tribunal is as under:

I. Application for Compensation

First step at claims tribunal is application for compensation by either the victim of motor vehicle accident or his legal heirs or legal representative. Application for Compensation has been studied in detail earlier in this chapter with heading - Application for Compensation.

II. Amendment of Pleadings: Amendment for Enhancement of Claim Amount

In *Madan Lal v. Chimman Singh*⁷⁸ Case, it was held by the High Court that amendment in pleadings cannot be refused on ground of doubt about truth of averments in pleadings. Truth or otherwise of averments in pleadings has to be ascertained on basis of evidence. In a claim

by widow for her and her minor son, the widow died during pendency of proceedings and the son having become major southsome amendment in claim petition. It was wrong on part of Tribunal to have disallowed amendment holding that there is no provision for amendment and doubting bonafides or argument made in application for amendment. In appeal, the amendment was allowed on costs.⁷⁹

In *United India Insurance Co. v. Shaik Saibaqtualla*⁸⁰ it was held by the High Court that there is no provision in law for amendment after decision of claim. Subsequent events can be no basis for seeking amendment in original claim after its decision. An amendment in claim petition for enhancement of amount of compensation can be sought before the Tribunal but not before the appellate court⁸¹.

CONCLUSION AND SUGGESTION

This chapter covers who can file claim, who can report to claim tribunal in case of accident, essential documents required to file claim, court fees to be deposited at the time of filling claim. While fixing the amount of damages the Tribunal should ascertain separately and determine under different heads pecuniary and non-pecuniary damages awarded. The Indian Railways has issued a Consumer's Charter on passenger services which promises to ensure adequate passenger amenities at trains and railway stations. Therefore, the Socio- Legal perspective of the consumer's amenities of the Indian Railways which is as a social policy and as social obligations. In this chapter focuses recommended updating, simplification and rationalization of **this law**. Some of the important modifications related to taking care of the fast-increasing number of both commercial vehicles and personal vehicles in the country, the need for encouraging adoption of higher technology in automotive sector, simplification of procedure and policy liberalizations for operations in the track transport field and need for effective ways of tracking down traffic offenders. They have recommended updating, simplification and rationalization of this law. Some of the important modifications related to taking care of the fast increasing number of both commercial vehicles and personal vehicles in the country, the need for encouraging adoption of higher technology in automotive sector, the greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances, concern for track safety standards, and pollution control measures, standards for transportation of hazardous and explosive materials, simplification of procedure and policy liberalizations for private sector operations in the track transport field and need for effective ways of tracking down traffic offenders

RECOMMENDATIONS AND SUGGESTIONS

1. Strengthening Legal Awareness

- Conduct awareness programs for passengers regarding:
- Rights to compensation
- Claim procedures
- Display legal rights in railway stations and tickets.

2. Simplification of Claim Procedures

- Introduce online filing systems for Railway Claims Tribunal.
- Reduce documentation burden for victims and legal heirs.

3. Time-bound Disposal of Cases

- Fix statutory deadlines for claim settlement.
- Ensure strict monitoring of tribunal efficiency.

4. Uniform Compensation Guidelines

- Develop standardized criteria for:
- Quantum of compensation
- Assessment of pecuniary and non-pecuniary damages

5. Infrastructure and Safety Improvements

- Eliminate unmanned level crossings.
- Install automatic warning systems and surveillance.
- Regular maintenance of tracks and rolling stock.