

How to claim road accident compensation under Motor Accident Claims Tribunal Guidelines? By Kopal Chaturvedi

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Introduction:

Commuting and travelling through road transport has become a day to day activity of almost every household, so have the accidents. Even recently, the country witnessed a lot of heinous accidents.

In Kolkata two IIT students were killed after the motorbike carrying them collided head-on with a vehicle.[1] At least six people were killed in Uttar Pradesh's Kaushambhi when their car collided with a truck coming from the opposite direction. The family was going to Prayagraj to attend the Kumbh Mela.[2] Also, twenty people, including a minor, were killed in two major in the Kishtwar district of Jammu after three vehicles slipped down a gorge along the highway.[3]

The law does not sit silent on this, and provides for remedies to claim compensation from the accused in case of such accidents through various statutes.

The Motor Vehicles Act 1988 is a comprehensive legislation with the purpose of enhancing road safety. It also serves the purpose of welfare legislation as it provides for compensation in case of loss of life or limb because of accidents by motor vehicles. A claimant may be either victim himself or his legal representative.[4]

Such a victim is entitled to compensation which appears to be just.[5] Compensation is awarded in respect of death, bodily injury and property damage. It is well settled that in case of motor accident claims, an endeavour is made to put the claimants in the pre-accidental position.

The damages to be awarded are to be adequate in terms of money so that the injured / claimants are put in the same position had they not suffered the loss on account of wrong of the respondent, though, no amount of compensation can restore the loss of limb or experience of pain or loss of life. [6]

An application for compensation arising out of an accident of the nature specified above may be made before the Motor Accidents claims Tribunal constituted for that area.[7]

Also, in a very recent amendment of the Motor Vehicles Act, 1988, the parliament has omitted the

particular section as such and there is now no period of limitation prescribed.[8]

Who can claim Compensation?

An application for compensation can be made by the person who has sustained the injury or by the owner of the property or where death had resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased.[9] Where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf or for the benefit of all the legal representatives of the deceased and the legal representatives who have not joined, shall be impleaded as respondents to the application.[10] While comparing with the section 168 of the Act that empowers the tribunal to make an award determining the amount of compensation which appears it to be just and specify the person or persons to whom compensation shall be paid, a distinction is noticed in between the above two sections, that is, section 166 and 168. Section 166 gives the list of persons who can apply for the compensation.

How to show fault liability?

The person who brings the petition must show that the respondent was rash or negligent in his action, which led to the commission of the accident. Also, it is essential to have an evidence for the same. In Rathnashalvan v. State of Karnataka[11], the Supreme Court defined "rashness" as follows :- "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences." In State of Karnataka v. Muralidhar[12], the Supreme Court defined word "negligence" as follows: "Negligence means omission to do some-thing with reasonable and prudent means granted by the consideration which ordinarily regulate human affairs or doing something which prudent and a reasonable means guided by similar considerations would not do.

Accident Information Report and Procedure

The Apex Court has held that the Tribunals should follow the procedure under sections 158 (6) and 166 (4) of the Motor Vehicles Act 1988,

v For complying with Section 166(4) of the Act, the jurisdictional Motor Accidents Claims Tribunals shall initiate the following steps[13]:

ü The Tribunal shall maintain an institution register for recording the AIRs which are received from the Station House Officers of the police stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the register.

ü It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of the victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant(s) appear, the miscellaneous application shall be converted to claim petition.

ü The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident

ü The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.[14]

ü The Tribunal shall categorise the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

ü The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the Claims Tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in a fixed deposit and disbursed as per the directions contained in Kerala SRTC v. Susamma Thomas.[15]

ü As the proceedings initiated in pursuance of Sections 158(6) and 166(4) of the Act are different in nature from an application by the victim(s) under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependants of the deceased victim and in determining the quantum of compensation.

v Recently, in National Insurance Company Limited vs. Meghji Naran Soratiya,[16] the Supreme Court noticed that in the claim petitions, the Insurance companies are made parties, though special notice is required to be issued to the companies under section 149(2). But the Supreme Court also noted that the Insurance company can be allowed to contest the petitions where grounds are made, by passing short orders.

v In injury cases, specially where damages sought are high, doctors must be examined. Doctor must be examined to prove the percentage of disability i.e., whether disability is in relation to entire body or in relation to a particular limb.

v Similarly, in injury Cases, the Petitioner should be directed to produce disability certificate, original bills of medicines and documents relating to accident and treatment before framing issues. Where more than one claim petition arises out of one accident, all claim petitions should as far as possible be tried together

v A proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (claimants)

under section 166(1) or section 163A of the Act or suo moto by the Tribunal, by treating any report of accident (forwarded to the tribunal under section 158(6) of the Act as an application for compensation under section 166 (4) of the Act.

v Normally, the compensation awarded to the claimants should not be released to them immediately. The Supreme Court in various cases has laid guidelines in this regard. In cases of minors, women and illiterate persons, as a matter of abundant precautions, the amount should be invested in long term deposits. Interest should, however, be paid on monthly or quarterly basis to the claimants to meet their day to day expenses. However, in cases of persons who are educated, well established in life and who, the Tribunal feels, can suitably look after their own money, the same may be ordered to be released. This, however, cannot be done in cases of the minor's share unless it is shown that some portion of the money falling to the share of the minor is required for his education, treatment etc., where the Tribunal may be justified in releasing the amounts.

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- [6] Justice Deepak Gupta, Award of compensation under the Motor Vehicles Act 1988, Guiding principles for motor accidents claims tribunals.
- [7] Section 166 (1) and (2) (By the Amendment Act 54 of 1994).
- [8] Amendment Act 54 of 1994 (Section 166(3) of the Act, 1988).
- [9] Section 166 of the Act. 1988 (S. 110 A of the Act.).
- [10] Ibid.
- [11] Rathnashalvan v. State of Karnataka, (2007) 3 SCC 474.
- [12] Muralidhar v. State of Karnataka, (2014) 5 SCC 730.
- [13] Himachal Pradesh Judicial Academy Journal, Page 31 of 36.
- [14] Jai Prakash vs. National Insurance Co. Ltd, (2010) 2 SCC 607.
- [15] Kerala SRTC v. Susamma Thomas, 1994 2 SCC 176.
- [16] National Insurance Company Ltd. v. Meghji Naran Soratiya and others, 2009(2) RCR (Civil) 558.