

# PRESENT SCENARIO IN FIXATION OF LIABILITY IN THE ROAD ACCIDENTS IN INDIA UNDER THE MOTOR VEHICLE ACT, 1988

Mr. Amit Nag,

Research Scholar of PhD.,

Department of Law, Deshabandhu Chittaranjan School of Legal Studies, Assam University, Silchar.

Postal Address: Mela Road, Bye Lane-3, House No.12, Malugram, Opp. Malugram Girls High School, Silchar, PIN-788002, District-Cachar, Assam.

Dr. Umesh Kumar,

Assistant Professor,

Department of Law,

Deshabandhu Chittaranjan School of Legal Studies,  
Assam University, Silchar.

## Abstract

The main aim of the paper is to get in-depth learning about the present scenario in fixation of liability in awarding compensation that is paid to the victims of road accidents in India. Had there been no law of crimes, each wrong would have been actionable in damages, that is a monetary recompense for each wrong. In the primitive feeling of revenge, the rule is believed to be head for head, tooth for tooth, eye for eye and so on. Henry Ergson has aptly ascribed this rudimentary justice to this law of retaliatory barter, but he warned that this vendetta for head for head would have continued for ages by succeeding generations, until one of the parties had to agree to measure the injury in terms of money. This explains that criminal justice, though primarily concerned with imparting punishment on the culprit for his proved offence by way of incarceration or fine has, to some extent, given recognition to this compensatory aspect even under the penal law.

**Keywords: Liability, Accident, Victims, Vehicle, Injuries, Justice, Compensation.**

## Introduction

Negligence must be distinguished from neglect. Neglect, unlike negligence does not indicate a specific attitude of mind, but states a matter of fact, which may be the result of either intentional or neglect act. A man, who knows that the brake of his scooter is defective, neglects to set it right, and knocks down a child on the road. The harm to the child is caused not by his negligence, but by his willful neglect or recklessness in not repairing the brake<sup>1</sup>. The principles of liability governing civil actions and criminal prosecutions based on negligence differ. Criminal Law both in England and in India recognizes degree of negligence. The negligence which would justify conviction must be culpable or of gross degree and not negligence founded on a mere error of judgment or defect of intelligence. One of the grey areas of the law is that relating to the legal consequences of accidents and the action to be taken after a victim is injured, particularly in an accident caused by motor vehicles<sup>2</sup>. It is a basic principle of both Anglo-American and European Procedure that in Criminal Cases guilt must be established beyond reasonable doubt. The burden of proof in both the systems rests upon the prosecution. In the common law tradition the jury must be persuaded of the guilt of the accused "beyond reasonable doubt"<sup>3</sup>. The Indian Criminal System is characterized by an accelerated rate of acquittals. Besides the issues of the improper collection of evidence and a lack of witnesses for the trial, the legal system is severely crippled by the issue of burden of proof.

In line with Common Law tradition, the Indian system emphasizes the burden of proof on the prosecution. In this issue that gains prominence in the light of the disquieting situation with respect to acquittals<sup>4</sup>. Lord Atkin observed in *Andrews v. Director of Public*

<sup>1</sup>K.D.Gaur, "Criminal Law: Cases and Materials", (1999) p.29.

<sup>2</sup>P.M.Bakshi, "Accident Victims and the Criminal Law", 3 JILI (1989) 566.

<sup>3</sup>P.M.Bakshi, "Continental System of Criminal Justice", 36 JILI 1994 p. 425.

<sup>4</sup>Priyadarhini Narayana, "The Burden of Proof on the Prosecution: An Excuse for Acquittal", 2001CILQ. Vol. XIV 548.

Prosecution<sup>5</sup> as follows: "I don't care". This shows indifference to consequences. It must thus be more "simple lack of care such as will constitute civil liability is not enough. For purposes of criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'reckless' most nearly covers". Due to high death figures, the incidence of road traffic accidents (RTA) is a major concern in India. It is regarded as the major public health concern which is necessary to be sorted out by applying a multi-disciplinary approach.<sup>6</sup> While making a focus on major causes of road traffic accidents in India, the driver's fault is regarded as one of the most prominent reasons. The driver's fault is responsible for 78% of the total accidents that occur on roads in India.<sup>7</sup> Additionally, bad roads account for the high incidence of road accidents in various metropolitan cities, towns or villages. As per Road Accident Report 2014, due to the presence of pothole or killer roads deaths, 75000 have been recorded in India. On the other hand speeding, drunken driving and overloading of vehicles are also responsible for increasing the road accident rates in India. The disobeying of traffic rules, crossing the speed limits on Highways, piling up heavy loads on large vehicles and consuming alcohol while driving cause road accidents.<sup>8</sup> Due to loss of highway hypnosis, sleep or drowsiness 3.9% of road accidents occur which destruct human life adversely.<sup>9</sup> Moreover, other reasons like the mistake of others, mistake of cyclists, walkers, neglecting of civic bodies, poor weather conditions and defect in the vehicle also account for road accidents.<sup>10</sup> While making a focus on preventive actions, road safety measures are necessary to be implemented to avoid road accidents. The strict following of the traffic rules, encouragement to good drivers, learning defensive driving techniques and maintenance of vehicles will also help to reduce the killing on the roads.<sup>11</sup> Furthermore, avoiding rash driving, no consumption of alcohol while or prior to driving, stop using mobile phones while driving, maintaining daily vehicle checklist, and following of speed limit will also help in reducing the cases of road accidents in India.<sup>12</sup> Additionally, due to the actual detailed recording of the accident with the help of CCTV camera, the safety researcher will be able to get detailed information about the whole incident effectively.<sup>13</sup> In order to make focus on the compensation policies of the government for the road accident victims, Motor Accident Claims Tribunal (MACT) has been implemented. It provides RS 50,000 as compensation to the family members of the individuals who died in the fatal accident and Rs 25,000 as compensation to the individuals suffering for permanent disability. Additionally, Schedule-II of the Act has been laid down by considering the age, earning and number of dependents of the victim so that adequate safety will be provided to the road accident survivors.<sup>14</sup> Moreover, the Motor Vehicles Act, 1988, the Delhi Motor Accidents Claims Tribunal Rules, 2008, is also implemented to provide compensation to the accident survivors.

## Review of Literature

Due to mounting figures of high-speed moving automobiles, rise in unskilled and semi-skilled drivers, increase in violation of traffic rules, enlargement of drunken driving and encroachment of roads by daily hawkers, stray animals the cases of road accidents are on a high in India.<sup>15</sup> Due to the highest number of road accidents and long hours of acquiring first aid and medical treatment the road accidents have become threatening in India.<sup>16</sup> Road traffic injuries are responsible for 1.2 million deaths and 20-50 million disabilities around the world.<sup>17</sup> Whereas fatal road accidents have been recorded to have increased by 164% during the years 1920-1930. Due to road accidents, 110,000 deaths have been recorded in the year 2005, in which 2.5 million hospitalizations took place, 8 to 9 million minor injuries were recorded in India. On the other hand in the year 2010, 3 million hospitalization cases, and 150,000 deaths cases have been recorded which increased to 3.5 million hospitalizations cases and 200,000 deaths cases in the year 2015. On the other hand, 10%-30% of cases of hospital registrations were recorded regarding road traffic injuries and disabilities.<sup>18</sup> Whereas, road accident will be liable for half of the deaths occurring in the world by 2020.<sup>19</sup> In the year 2013, due to road accidents 9% pedestrians, and 37% of motorized rides lost their lives in India.<sup>20</sup> Motor vehicle accidents account for the maximum number of deaths and is ranked 9th in the order of disease burden which is expected to reach

<sup>5</sup>Andrews v. Director of Public Prosecution, (1937), 2 All E.R. 552.

<sup>6</sup>Gopalakrishnan, S. "A public health perspective of road traffic accidents." *Journal of family medicine and primary care* 1, no. 2 (2012): 144.

<sup>7</sup>Singh, Sanjay Kumar. "Road traffic accidents in India: issues and challenges." *Transportation research procedia* 25 (2017): 4708-4719.

<sup>8</sup>My India. "Road Accidents in India." Published on: (April 6, 2016).

<sup>9</sup>Sagberg, Fridulv. "Road accidents caused by drivers falling asleep." *Accident Analysis & Prevention* 31, no. 6 (1999): 639-649.

<sup>10</sup>Mishra, Prachee, and Prachi Mishra. *Vital Stats: Overview of Road Accidents in India*. No. id: 11668. 2017.

<sup>11</sup>Desai, Manisha Minesh, and A. K. Patel. "Safety measures for controlling road accident injuries and fatality." In *National Conference on Recent*. 2011.

<sup>12</sup>Deshpande, Pawan. "Road safety and accident prevention in India: a review." *International journal of advanced engineering technology* 5, no. 2 (2014): 64-68.

<sup>13</sup>Conche, F., & Tight, M. (2006). Use of CCTV to determine road accident factors in urban areas. *Accident Analysis & Prevention*, 38(6), 1197-1207.

<sup>14</sup>Dipak K Dash. "The Minimum Compensation Amount For Road Accident Victims To Be Increased By Ten Times", Updated: (May 12, 2018).

<sup>15</sup>Sharma, B. R., Virendar Pal Singh, and Rohit Sharma. "Unnatural deaths in Northern India—a profile." *Journal of Indian academy of forensic medicine* 26, no. 4 (2004): 140-146.

<sup>16</sup>Kumar, Manish. "Compensation in motor accident claims: a study of emerging trends." (2010).

<sup>17</sup>Garcia-Altes, A., and Katherine Perez. "The economic cost of road traffic crashes in an urban setting." *Injury prevention* 13, no. 1 (2007): 65-68.

<sup>18</sup>Gururaj, G. "Road traffic deaths, injuries and disabilities in India: current scenario." *National Medical Journal of India* 21, no. 1 (2008): 14.

<sup>19</sup>Gomes, Mireille, Rehana Begum, Prabha Sati, Rajesh Dikshit, Prakash C. Gupta, Rajesh Kumar, Jay Sheth, Asad Habib, and Prabhat Jha. "Nationwide mortality studies to quantify causes of death: relevant lessons from India's million death study." *Health Affairs* 36, no. 11 (2017): 1887-1895.

<sup>20</sup>Bhalla, Kavi, Nidhi Khurana, Dipan Bose, Kumari Vinodhani Navaratne, Geetam Tiwari, and Dinesh Mohan. "Official government statistics of road traffic deaths in India under-represent pedestrians and motorised two wheeler riders." *Injury prevention* 23, no. 1 (2017): 1-7.

to 3rd rank by the end of the year 2020. Due to the high incidence of road accidents in India, there are a lack of appropriate health infrastructure, provision of trauma care centers, and other health care facilities in rural regions in India.<sup>21</sup>

Compensation proceedings are prolonged and the judgment related to the final settlements is highly impending in nature in India. As a result, most of the sufferers of road accidents suffer from high financial losses and do not prefer to claim or settle early.<sup>22</sup> Due to road crashes more than 80000 deaths, 1.2 million serious injuries and 3,00,000 cases of permanent disability occur in India. Therefore, it is necessary to have knowledge regarding the various compensatory policies undertaken for road accidents. There are three modes governing compensation during road accidents which are Principle of no-fault liability (Section 140), Structured formula basis (Section 163A), and Compensation in the hit and run cases (Section 161). In the first case Principle of no-fault liability, the claim can be availed without providing any proves. In such cases, the compensation amount is fixed up to Rs 50000 in the case of death and Rs 25000 in the case of permanent disability. While taking a structured formula basis in consideration, the owner of the vehicle through which the accident has occurred is liable to make provisions for the compensation of the victim. Whereas in the third case of hit and run, the driver of the vehicle that hit the victim, is identified by the law enforcement officer. However, if no identification takes place the claimant receives Rs 25000 in the case of death and Rs 12500 in the case of serious injuries. Furthermore, as per no time limit law, the filing of the claim is to be done within 6 months of the accident in which the claimant possesses the right to appeal against the claim amount in High Court. On the other hand, the Motor Vehicles Act, 1988 propagates drivers who are over speeding, drunken driving are liable to be imprisoned for 6 months or fined up to Rs 2000 in the case of first time offence and is liable to be imprisoned for 2 years or fined up to 3000 or both if the offense occurs again within 2 years.<sup>23</sup>

### **Offences in relation to use of Motor Vehicles which are punishable under Indian Penal Code**

#### **A) Rash Driving or Riding on Public Way**

Section 279 I.P.C. states that whoever drives any vehicle or rides on any public way in manner so rash and negligent as to endanger human life or to be likely to cause hurt or injury to any other person shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both<sup>24</sup>. Rash driving is, thus, an independent offence irrespective of its consequences, though if consequences of death or bodily injury also follow, the offender shall be tried in relation to such consequences also in addition to the charge under the above section<sup>25</sup>. The offence under section 279 is cognizable and bailable and triable by the Magistrate having territorial jurisdiction over the area wherein such offence has been committed.

#### **B) Causing Death by Negligence**

Section 304A I.P.C. dealing with causing death by negligence, “whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both<sup>26</sup>”. The offence under this section is cognizable and bailable and triable by the Magistrate of the first class. This section has been couched in general terms, based on the main ingredients of ‘rash and negligent act’ which would, naturally, include the act of ‘rash and negligent driving<sup>27</sup>’.

#### **C) Act Endangering Life or Personal Safety of Others**

Section 336 I.P.C. deals with Act Endangering Life or Personal Safety of Others. It is provided in the act that whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to Rs. 250.00 (Rupees Two Hundred and Fifty) only, or with both<sup>28</sup>. The offence under this section, as under section 279, is an offence independent of its consequences, and if consequences also follow, the offence would become aggravated and taken account of under section 336 and 337. The offence under section 336 is cognizable and bailable and triable by the Magistrate having territorial jurisdiction over the area wherein such offence has been committed.

<sup>21</sup>Joshiyura, M. K. "Trauma care in India: current scenario." *World journal of surgery*32, no. 8 (2008): 1613.

<sup>22</sup>Bryant, Bridget, Richard Mayou, and Sally Lloyd-Bostock. "Compensation claims following road accidents: a six-year follow-up study." *Medicine, Science and the Law* 37, no. 4 (1997): 326-336.

<sup>23</sup>Srija Choudhury. "All you need to know about Road Accidents" (2016).

<sup>24</sup>Dr. R.G.Chaturvedi, "Law of Motor Accident Claims and Compensation" (2010) p.1116.

<sup>25</sup>Ibid.

<sup>26</sup>Ibid.

<sup>27</sup>Ibid.

<sup>28</sup>Ibid.

#### D) Causing Hurt by Act Endangering Life or Personal Safety of Others

Section 337 I.P.C. deals with cases causing hurt act endangering life or personal safety of others. It is as stated below: “whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both<sup>29</sup>”. The offence under section 337 is cognizable and bailable and triable by the Magistrate having territorial jurisdiction over the area wherein such offence has been committed.

#### E) Causing Grievous Hurt by Act Endangering Life or Personal Safety of Others

Section 338 deals with cases causing grievous hurt by acts endangering life or personal safety of others and it states that whoever causes grievous hurt to any person by doing any act so rashly or negligence as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both<sup>30</sup>. The offence under section 338 is cognizable and bailable and triable by the Magistrate having territorial jurisdiction over the area wherein such offence has been committed.

The above sections 336, 337, and 338, like that under section 304A, do not specifically refer to rash and negligent driving but the general connotation of the word “act” shall naturally include the act of rash and negligent driving in such manner as to endanger human life, and thereby causing hurt or grievous hurt, as the case may be, to others.

In English Law the only negligence amounting to crime is one (a) Characterised by “recklessness” (b) directly leading to the death of the victim and (c) preceded by some degree of some mens rea. Whether particular act of negligence amounts to crime or not falls the purview of juries. The nearest approximation of this English Law is to be found in Section 304A of Indian Penal Code<sup>31</sup>.

#### Protection Mechanism under the Motor Vehicle Act, 1988

The compensation of road accident victims is covered under two segments, one is related to own damage (OD) and the other is a third-party liability (TP). Additionally, the Motor Vehicles Act, 1988 has been passed to provide third party insurance in which a sum of Rs 5 lakh to Rs 10 lakh is provided to the victim. On the other hand, Solatium Scheme provides hit and run road victims with a compensation of Rs 12,500 in case of serious injuries and Rs 25,000 in case of death to the victim’s family.<sup>32</sup> Section 163A ensures that the victim files a case for claims under road accident which is received from Motor Accidents Claims Tribunal in a prescribed application format. It is to be filed against the driver of the vehicle that hit the victim, owner of the vehicle and the insurance company that is providing insurance to the vehicle.<sup>33</sup> Fatal Accidents Act, 1885 has been enacted in India to safeguard the rights of the people injured or expired in road accidents in India. Under this Act, the claimant name for the availing of compensation is decided. Whereas, Motor Vehicle Act by amending Act No.110 of 1956, by which Section 93 to 109 provides compulsory third-party compensation and Section 110(A) to 110(F) with reference to the creation of Motor Accident Claims Tribunal provides adjudication of the claim. Additionally, Section 92(A) to 92(E) of the No-Fault basis provides compensation to the victims in the case of hit and run case. Furthermore, Chapter 11 (Section 145 to 164) of the Motor Vehicle Act is liable for providing obligatory third party insurance which is undertaken into consideration by the owner of the vehicle. On the other hand, Section 146(1) of the Motor Vehicle Act, no individual is liable to use a vehicle without making it insured and Section 147 of the Motor Vehicle Act propagates that it is compulsory for every vehicle owner to take a policy and limit liability so that liability incurred at the time of any road accident is fulfilled in an appropriate way. Section 149 of the Motor Vehicle Act states that the insurer is liable to satisfy and pay for the compensation that is required to be paid to the third party bearing the risk. Hence, it can be said that such regulations provided by the India Governing bodies will help to revive claims by the victims in an appropriate way.<sup>34</sup>

#### Approach of the Higher Judiciary in Awarding Compensation to the Victims of Motor Accident

In United India Insurance Co. Ltd v. Kashi Ram<sup>35</sup> case, where the driver the truck was murdered by another driver, and the truck was taken away and the goods therein stolen. All these events cannot be said to be unrelated. When there was no evidence to

<sup>29</sup>Section 337 IPC.

<sup>30</sup>Section 338 IPC.

<sup>31</sup>N.Kumar, “The Concept of Criminality in the Tort of Negligence” 1998 Cri.L.J.136.

<sup>32</sup>Satarupa Sen Bhattacharya “A guide to compensation available for accident victims”, (March 30, 2017).

<sup>33</sup>Bentley, Tim A., and Stephen J. Page. “Scoping the extent of adventure tourism accidents.” *Annals of Tourism Research* 28, no. 3 (2001): 705-726.

<sup>34</sup>Singh, Preeti. “Insurance Of Motor Vehicles Against Third Party Risks”. *International Journal of Management, Law & Science Studies* 2, no. 5 (2018).

<sup>35</sup>United India Insurance Co. Ltd v. Kashi Ram, 2004 (1) ACC 527 (Delhi).

suggest that the dominant purpose of accused was to kill the deceased and not to commit theft, murder of deceased during course of his employment was held to amount to death in accident arising out of use of motor vehicle.

However, where a person on motorcycle was shot at due to personal animosity resulting in his death, murder cannot be said to have arisen out of use of motor vehicle since dominant intention of accused was to commit murder which was not accidental murder but murder simpliciter<sup>36</sup>.

It may incidentally be stated, with reference to the decision of the High Court of Kerla, in *Varkeychem v. Thomman*<sup>37</sup>, that the term accident for the purpose of law relating to compensation includes any injury not designed by the injured himself, and it is of no consequence that the injury was designed and intended by the person inflicting the same.

The question before the Supreme Court in *Rita Devi v. New India Assurance Co. Ltd*<sup>38</sup>, was: can a murder be an accident in a given case? The facts were that the deceased was the driver of an auto-rickshaw. Some unknown persons hired the above rickshaw from the rickshaw stand. The stand auto-rickshaw was reported stolen and the dead body of the driver was recovered by the police on the next day, though the auto-rickshaw was never recovered and the claim of the owner for the loss of auto-rickshaw was satisfied by the insurance company. The tribunal had allowed the claim but the High Court held that there was no motor accident as contemplated under the Motor Vehicles Act.

In appeal to the Supreme Court, the appellant relied on the decision in *Shankarayya v. United India Insurance Co. Ltd.*<sup>39</sup>, to which the respondent contended that the meaning ascribed to the word accident in the Workmen's Compensation Act by the judicial pronouncements cannot be applied to the word accident as contemplated under the Motor Vehicles Act.

The Supreme Court relied upon two passes, respectively from *Challis v. London & South Western Railway Company*<sup>40</sup> and *Nishet v. Rayne and Burn*<sup>41</sup>.

In the case of *Challis*<sup>42</sup>, the engine driver of a tram under a bridge was killed by a stone wilfully dropped on the tram by a boy from the bridge. Rejecting the argument that the said accident cannot be treated as accident, it was held: "The accident which befell the deceased was, as it appears..., one which was incidental to his employment as an engine driver, in other words, it arose out of his employment. The argument for the respondents really involves the reading in to the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously<sup>43</sup>".

In the other case of *Nishet v. Rayne and Burn*<sup>44</sup>, a cashier while travelling in a railway to a colliery with a large sum of money for the payment of his employer's workmen, was robbed and murdered. The court of appeal held: "That the murder was an accident from the standpoint of the person who suffered from it and that it arose out of an employment which involved more than the ordinary risk, and, consequently, that the widow was entitled to compensation under the Workmen's Compensation Act, 1906<sup>45</sup>".

Motor Vehicles Act, 1988 deals with the third party risks and claims.<sup>46</sup> Whereas, in the case of the minor, Section 2(30) of the Motor Vehicle Act 1988 will be applicable. In such a case, the ownership of the vehicle is defined and compensation is provided as per the evaluation of the loss of life or limb because of an accident. The minor is also liable to file a case against the driver or owner under Sections 166 and 140 of the Motor Vehicles Act, 1988 to avail the compensation amount. The victim (minor) is provided with the future loss of income compensation depending upon the national income contribution of the appellant.<sup>47</sup> Whereas, third party insurance is mandatory for the vehicle owner under the Motor Vehicles Act. As per section, 145(g) of Motor Vehicle Act, 1988, the third party is referred as every individual traveling on road either on another vehicle, walking or moving on the road. It covers the claims related to the injury caused to the individual by using a vehicle and does not cover the damages

<sup>36</sup>*Ranju Rani v. Branch Manager New India Assurance Co. Ltd.*, 2003 ACJ 1588 (Patna).

<sup>37</sup>*Varkeychem v. Thomman*, 1979 ACJ 319 (Kerala).

<sup>38</sup>*Rita Devi v. New India Assurance Co. Ltd.*, 2000 ACJ 801 (SC).

<sup>39</sup>*Shankarayya v. United India Insurance Co. Ltd.*, 1998 ACJ 513 (SC).

<sup>40</sup>*Challis v. London & South Western Railway Company*, (1905) 2 KB 154.

<sup>41</sup>*Nishet v. Rayne and Burn*, (1910) 1 KB 689.

<sup>42</sup>*Supra* Note 32.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Supra* n.33.

<sup>45</sup> *Ibid.*

<sup>46</sup> Yousuf, Mohd Abdul. "Offences and Penalties under Motor Vehicle Act 1988—An Analysis." *SRM MANAGEMENT DIGEST* 6, no. 1 (2018).

<sup>47</sup> Guest Post. "How And When To File Claims With Motor Accidents Claim Tribunal?", (2015).

incurred to the vehicle. In the case of third-party liability in case of car accidents and insurance requirement, Workers' compensation (WC) Court or Motor Accident Claims Tribunal (MACT) is responsible for deciding the compensation to be paid to the victim in the case of the accident. On the other hand, The Insurance Regulatory and Development Authority of India (IRDAI) are responsible for deciding the rate of tariffs and ascertain the premium to be paid on the third party cover. Additionally, Motor third-party insurance under the Motor Vehicles Act is responsible for covering third-party beneficiary that is set up between the two parties that are insured and the insurance company.<sup>48</sup> Hence, in this case, the due to the damage caused to the property the insurer liability is paid a maximum amount of Rs.7.5 lakh and unlimited compensation in the case of bodily injury or loss of life. In the case when the road accident occurs when both driver and the victim were negligent the principle of no-fault liability will be applicable. In such cases, the compensation is to be paid as per the Section 163A which states that the driver of the vehicle is innocent and not a rash driver. The compensation amount will be paid by the owner or the authorized insurer after identifying the victim.<sup>49</sup> Whereas, in the case of the road accident in which the death or permanent disability has occurred, the offender is liable to pay Rs 5 lakh under Motor Accident Claims Tribunal (MACT). On the other hand, Rs 5 lakh to Rs 50000 is to be paid to the victim depending upon the severity of disability under Motor Accident Claims Tribunal (MACT). The amount of compensation will get increased by 5% every year.<sup>50</sup>

### Conclusion & Suggestions

The principles of liability governing civil actions and criminal prosecutions based on negligence differ. Criminal Law both in England and in India recognizes degree of negligence. The negligence which would justify conviction must be culpable or of gross degree and not negligence founded on a mere error of judgment or defect of intelligence. One of the grey areas of the law is that relating to the legal consequences of accidents and the action to be taken after a victim is injured, particularly in an accident caused by motor vehicles<sup>51</sup>. It is a basic principle of both Anglo-American and European Procedure that in Criminal Cases guilt must be established beyond reasonable doubt. The burden of proof in both the systems rests upon the prosecution. In the common law tradition the jury must be persuaded of the guilt of the accused "beyond reasonable doubt"<sup>52</sup>. The Indian Criminal System is characterized by an accelerated rate of acquittals. Besides the issues of the improper collection of evidence and a lack of witnesses for the trial, the legal system is severely crippled by the issue of burden of proof. In line with Common Law tradition, the Indian system emphasizes the burden of proof on the prosecution. In this issue that gains prominence in the light of the disquieting situation with respect to acquittals<sup>53</sup>. Lord Atkin observed in *Andrews v. Director of Public Prosecution*<sup>54</sup> as follows: "I don't care". This shows indifference to consequences. It must thus be more "simple lack of care such as will constitute civil liability is not enough. For purposes of criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'reckless' most nearly covers".

While analyzing the facts related to the current scenario of road accidents and policies related to the payment of compensation to the victims of road accidents in India, the researcher analyzed that the issue of road accidents is very severe in India and needs to be addressed properly. The death toll due to road accident is rising in India which is increasing the issues related to health and maintenance. It is also impacting the normal public life of the population in a negative way. Therefore, it is necessary to introduce certain corrective measures so that the incidence of road accidents will be reduced in India. The Government of India has made provisions and introduced various laws and regulations like Solatium Scheme, Motor Accidents Claims Tribunal, Fatal Accidents Act, 1885 and others so that the road accident victims will be provided adequate care and justice.<sup>55</sup> In respect to this, the people of India have been provided with rights to claim for the destruction caused to them.<sup>56</sup> Additionally, it is also important that people must follow traffic rules and road safety measures properly to ensure that no loss of human life occurs while driving on roads. The research is necessary to be carried out so that constructive steps will be taken to reduce the occurrence of road accidents and make people aware of the different laws, rules or regulations initiated by the government regarding the payment of compensation to the road accident victims. The study will also help other researcher and scholars to carry out their research study by taking reference from the current study in an effective way. While analyzing the facts related to the current scenario of road accidents in India, the researcher analyzed that, due to the high rise in the cases of road accidents, many people are losing their lives<sup>57</sup>. It was also found that the due to high speeding of vehicles, the presence of potholes, not following of traffic rules, drinking and driving many road

<sup>48</sup> Shriram General Insurance, Third Party Insurance, Third Party Premium. "WHAT IS THIRD PARTY LIABILITY IN MOTOR INSURANCE?", (2018).

<sup>49</sup> Rayomand Engineer. "Car or Bike Accidents Are Traumatic: Here's What to Do After The Crash", (August 7, 2018).

<sup>50</sup> Dipak K Dash. "Damages for Road accident victims to increase 10-fold" (2018).

<sup>51</sup> P.M.Bakshi, Accident Victims and the Criminal Law, 3 JILI (1989) 566.

<sup>52</sup> P.M.Bakshi, Continental System of Criminal Justice, 36 JILI 1994 p. 425.

<sup>53</sup> Priyadarhini Narayana, The Burden of Proof on the Prosecution: An Excuse for Acquittal, 2001CILQ. Vol. XIV 548.

<sup>54</sup> *Andrews v. Director of Public Prosecution*, (1937), 2 All E.R. 552.

<sup>55</sup> Fry, Margery. "Justice for victims." J. Pub. L. 8 (1959): 191.

<sup>56</sup> Pelly, Grace, ed. State Terrorism: Torture, Extra-judicial Killings, and Forced Disappearances in India: Report of the Independent People's Tribunal, 9-10 February 2008. Socio Legal Information Cent, 2009.

<sup>57</sup> Singh, Sanjay Kumar, and Ashish Misra. "Road accident analysis: A case study of Patna City." Urban Transport Journal 2, no. 2 (2004): 60-75

accidents occur. As a result, many people suffer from permanent disabilities for life and serious injuries. It highly degrades the living and earning propensities of the victims and is forced to live a rippled life. Therefore, safety and security must be maintained while driving on the roads. The individuals must follow the traffic rules, do not consume alcohol prior to driving and must not over speed on roads. While analyzing the facts related to the compensatory policies undertaken for road accident victims the researcher analyzed that, the governing bodies in India has formularized certain laws, rules and regulation regarding the compensation to provided to the victims of the road accident. In respect to this, Workers' compensation (WC) Court or Motor Accident Claims Tribunal (MACT) has been introduced that decide upon the compensation amount to be paid to the road accident victims.<sup>58</sup> However, the compensation amount differs from case to case. In the case of death Rs, 5 lakh is to be paid whereas in the case permanent disability the amount may vary between Rs 5 lakh to Rs 50000. Additionally, the research will also fill the gap that existed in the literary world regarding the study of compensation of road accident victims in India.

## References

- Bakshi, P.M, "Accident Victims and the Criminal Law" 30 JILI, 1988, pp-566.
- Bakshi, Continental System of Criminal Justice, 36 JILI 1994, pp 425-439.
- Bryant, Bridget, Richard Mayou, and Sally Lloyd-Bostock. "Compensation claims following road accidents: a six-year follow-up study." *Medicine, Science and the Law* 37, no. 4 (1997): 326-336. <http://maint.journals.sagepub.com/>
- Calabresi, G (1961); 'Some Thoughts on Risk Distribution and the Law of Torts', *Yale Law Journal*, 70, pp 499–553.
- Desai, Manisha Minesh, and A. K. Patel. "Safety measures for controlling road accident injuries and fatality." In *National Conference on Recent*. 2011. <http://www.bvmengineering.ac.in/misc/docs/published-20papers/civilstruct/Civil/101026.pdf>
- Dipak K Dash. "Damages for Road accident victims to increase 10-fold" (2018). <https://timesofindia.indiatimes.com/india/damages-for-road-accident-victims-to-increase-10-fold/articleshow/64130148.cms>
- Gomes, Mireille, Rehana Begum, Prabha Sati, Rajesh Dikshit, Prakash C. Gupta, Rajesh Kumar, Jay Sheth, Asad Habib, and Prabhat Jha. "Nationwide mortality studies to quantify causes of death: relevant lessons from India's million death study." *Health Affairs* 36, no. 11 (2017): 1887-1895. <https://www.ncbi.nlm.nih.gov/pubmed/29137507>
- Gopalakrishnan, S. "A public health perspective of road traffic accidents." *Journal of family medicine and primary care* 1, no. 2 (2012): 144. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3893966/>
- Mishra, Prachee, and Prachi Mishra. *Vital Stats: Overview of Road Accidents in India*. No. id: 11668. 2017. <https://ideas.repec.org/p/ess/wpaper/id11668.html>
- Rayomand Engineer. "Car or Bike Accidents Are Traumatic: Here's What to Do After The Crash", (August 7, 2018). <https://www.thebetterindia.com/155159/vehicle-road-accident-awareness-news/>
- Sagberg, Fridulv. "Road accidents caused by drivers falling asleep." *Accident Analysis & Prevention* 31, no. 6 (1999): 639-649. <https://www.sciencedirect.com/science/article/abs/pii/S0001457599000238>
- Satarupa Sen Bhattacharya. "A guide to compensation available for accident victims", (March 30, 2017). <http://citizenmatters.in/a-guide-to-claiming-compensation-under-solatium-scheme-for-accident-victims-3919>
- Singh, Sanjay Kumar, and Ashish Misra. "Road accident analysis: A case study of Patna City." *Urban Transport Journal* 2, no. 2 (2004): 60-75. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=570441](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=570441)
- Singh, Sanjay Kumar. "Road traffic accidents in India: issues and challenges." *Transportation research procedia* 25 (2017): 4708-4719. <https://www.sciencedirect.com/science/article/pii/S2352146517307913>
- Srija Choudhury. "All you need to know about Road Accidents" (2016). <https://www.lawfarm.in/blogs/all-you-need-to-know-about-road-accidents>

<sup>58</sup>TAX, COMMISSIONER OF INCOME, D. E. L. H. I. Appellant, and DELHI-XVII Appellant. "IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 1169 OF 2006.