
HOW EFFECTIVELY ARE STATES INCORPORATING THE GUIDELINES ESTABLISHED BY THE APEX COURT IN JAI PRAKASH VS. NATIONAL INSURANCE CO. LTD.?¹

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ABSTRACT

The liberalization and Globalization of the Indian economy in the 1990s ensured that more competitors entered the market in almost every industry and a variety of products were made available to the customers to choose from. Various automobile companies entered India for cheap labour and started production, thereby allowing Indian customers to buy cars at a cheaper rate compared to imported ones. Later with the economic growth of Indians, they were also able to afford high-end and other luxury car brands as well. A lot of people could afford to buy and travel in cars. There was an improvement in the financial status of the people but the issue of more road accidents also increased due to different reasons. The need of the hour was to protect people and their family members, especially those who were grievously injured or had passed away in an accident, against uninsured vehicles.

The Motor Vehicle Act of 1988 regulates almost all aspects related to vehicular rules and regulations (including vehicle registration, insurance, different permits etc.), traffic rules and penalties. On April 10, 2017, Motor Vehicle (Amendment) Bill was passed by the Lok Sabha, and the Motor Vehicle (Amendment) Act 2019 was further introduced to amend the 1988 Act. The act is considered to be a welfare law aimed at offering relief and remedies to those who have been harmed.

¹ Jai Prakash v National Insurance Co. Ltd. SC (2010) 2 SSC 607

THE OBJECTIVE OF THE MOTOR VEHICLE ACT 1988

The objective of introducing the act was as follows:

1. Following the procedure for granting licenses to drivers and calculating the validity period for such licenses.
2. To maintain road safety requirements and standards including transportation of dangerous and explosive materials, pollution control etc.
3. To keep a check and control the commercial and personal vehicle quantity.
4. To raise the amount of compensation in hit-and-run cases.
5. To eliminate the time limitation for motor accident victims to file for compensation.

PROBLEMS FACED UNDER MOTOR VEHICLES ACT 1988

In the *Jai Prakash v National Insurance Co. Ltd* case, the Supreme Court of India identified four problems that are faced by victims in motor accident claim cases under the motor vehicles Act 1988. These four issues are as follows:

1. People get involved in the accident and do not get the money due to the vehicle being uninsured. The victims may not get insurance due to the following reasons:
 - a. Hit and run a vehicle that cannot be identified and victims have nobody to get claims from
 - b. Vehicles with third-party insurance, carrying persons who are not covered by insurance
2. Widespread practice of using goods vehicles as passenger vehicles due to the following reasons:
 - a. Non-availability of regular passenger vehicles, especially in rural areas
 - b. Non-availability of contract carriages for group travel during special occasions.

- c. Frequent breakdowns of vehicles due to bad roads or other emergencies that force passengers to hitch-hike in goods vehicle
 - d. The urge of lorry drivers to make quick money and passengers' benefit of reaching the place without spending much money.
- 3. Procedural delays in settlement of motor accident claims tribunals and hardships faced by the victim and the family.
 - 4. Issue of full compensation not reaching the victim and their families, especially those who are ignorant, illiterate or not worldly-wise.

GUIDELINES RETREATED

For the better implementation of motor claims laws, and to provide compensation within 120 days of a crash to the victim, the modified procedure was introduced in *Rajesh Tyagi v Jabir Singh* judgement.² The Supreme Court ordered the states to implement the agreed procedure given by the Claims Tribunal through the case of *Jai Prakash v Insurance Corporation* case. The Supreme Court directed the agreed procedure to be established and executed through the Motor Crash Claims Tribunal along with the Legal Service Authority as well as the Director General of Police of each state. Justice R.V. Raveendran discussed the new and special scheme that was offered by a centralized bank at the request of the Delhi High Court. It included the following:

- 1) Fixed deposit will automatically be renewed for the duration of time as given in the court's order.
- 2) Monthly interest payments for fixed deposits.
- 3) The claimant's savings will be automatically credited with the interest amount each month.
- 4) The bank must keep the original fixed deposit receipt safe.
- 5) The claimant shall receive the original passbook and the photocopy of FDR.

² *Rajesh Tyagi v Jaibir & Ors* (2009) SCC 4289

- 6) The claimant at the end of the fixed deposit period will get the original fixed deposit receipt.
- 7) The claimant must be given an original photo identity card and the bank must carefully verify the claimant before allowing him/her to withdraw money.
- 8) Without the court's authorization, the claimant shall not be given a chequebook, or be allowed to withdraw money, take loans or advances etc.
- 9) The claimant can visit a UCO Branch nearest to them and access the savings bank account. The bank can help the claimant then avail of the above-mentioned facilities.

Apart from the above-stated guidelines, the judgement also mentioned that Appropriate governments may consider including rule 6 of the Delhi Motors Accidents Claims Tribunal Rules, 2008 which deals with the Restriction on the release of Motor Vehicles involved in an accident.

Section 6(2) of the same rules says that if the Motor Vehicle has not been insured against 3rd party risk, it will be sold off in a public auction by the magistrate who has jurisdiction of the area wherein the accident occurred, on expiry of 3 months of possession period of the vehicle, by the police officer.

In a different instance, the Supreme Court of India had firmly directed that rules must be formulated by all the states as per rules followed in Delhi within the period of 12 weeks. A bench comprising of Justice Deepak Misra and Justice D Y Chandrachud further added that the Magistrate who has jurisdiction of the area where the accident took place will not release/ give the uninsured vehicle to the owner, but will auction it and deposit the money with the Motor Vehicle Claims Tribunal (MACT) within 15 days of such happenings. The money received from the auction shall be released as compensation to the victims.

SOME IMPORTANT SECTIONS OF THE MOTOR VEHICLE ACT 1988

On 9th September 2009, Mr Gopal Subramaniam in the Jai Prakash case assisted the court as amicus curiae to find solutions to the above-stated problems. Certain suggestions to police were also made that included the instruction to conform with the provision of **section 158(6)** of the act, i.e. "*As soon as any information regarding any accident involving death or bodily injury*

to any person is recorded or report under this section is completed by the police officer, the officer in charge of the police station shall forward the copy of the same within 30 days from recording the information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and a copy is made available to the owner, he shall also within 30 days of receipt of such report, forward the same to such Claims Tribunal and Insurer.”

In form 54 of the Central Motor Vehicle Rules 1989, the police will make the Accidental Information Report (AIR) which will be submitted to the Judicial Claim Tribunal. The police will also gather information like:

1. Age of the victim when the accident took place.
2. The victim's earnings.
3. Dependent family members' names and ages.
4. Important attested documents like site sketch, driving license, insurance policy, post-mortem report etc. must be attached with the AIR.
5. The concerned insurance company must get a copy of AIR with all attested documents in order to handle the claim.
6. The driver, insurer and owner must be made aware of the first hearing along with the relatives of the victim. They may secure a presence if required.

Section 196 of the rules is important as it prosecutes drivers who drive uninsured vehicles. A person driving the motor vehicle in contravention to **Section 146 (Necessity for insurance against third party risk)** shall be punished with imprisonment that can be extended up to three months or a fine of Rs. One thousand or with both. The act was amended in 2019 and the punishment was increased to for imprisonment up to three months or with a fine or both.

As per **Section 166 (4)** every report of an accident sent to the tribunal under this section shall be treated as a request for claim of compensation.

MOTOR ACCIDENT CLAIMS IN OTHER COUNTRIES

As per the World Health Organization, around 1.3 billion people die every year because of road accidents and 93% of deaths usually occur in middle to low-income level countries.

In case of an accident in the European Union wherein the insurer of the vehicle is not known, the victims of the road accident can contact the Consortium of Insurance Compensation (CCS) to get relevant details. Moreover, the CCS sends daily updated details Directorate General of Traffic of insured vehicle registrations and de-registrations to check and identify the non-compliers of legal obligation of being insured.

In countries like Ireland, wherein a person drives his/her car without motor insurance is liable to pay a fine of 5000 euros, 5 penalty points and at the discretion of the court, imprisonment not exceeding 6 months. A person may also be disqualified from driving instead of earning penalty points. In such a case, you will be disqualified from driving for 2 years or more for 1st offence or for 4 years or more if the offence is committed within 3 years of the first offence.

South Africa and various African countries have created Road Accident Funds that are brought about and established by Road Accident Fund Commissions that ultimately relinquish the necessity of third-party insurance. The victims without any exceptions are awarded compensation from the said funds.

In the UK, motor accident claims are very low compared to India. One of the many reasons is the insurer making its own enquiry and satisfying itself about liability and assessing the claim that must be paid to the victim.

IMPLEMENTATION OF JAI PRAKASH V NATIONAL INSURANCE CO. LTD. GUIDELINES AND THE IMPACT IT HAS CREATED

The implementation of the guidelines in the above-mentioned case has been debatable. A survey was conducted by Save Life Foundation wherein the respondents were inquired about if they knew about MACT and if they filed the case, their understanding of the process and their experience.

The Supreme Court noted on 05th March 2019 in its judgement in *M R Krishna Murthi v The*

*New India Assurance Co. Ltd.*³ Said, “There was no proper implementation of the Claims Tribunal Agreed Procedure by the Claims Tribunal at all India Level in terms of directions of the Supreme Court in *Jai Prakash v National Insurance Co. Ltd.*”

Supreme Court ordered that:

- NALSA should take the matter and monitor and coordinate about same with the help and guidance of the High Courts.
- The state judiciary academies should brief insurance companies, presiding officer of claims tribunal, Senior Police Officers etc. for implementation of the claim tribunal procedure as well as sensitize them about the entire process.
- All the claim tribunals should implement the MACAD (Motor Accident Claims Annuity Deposit) scheme directing 21 banks to implement the same.

a) As per income level.

More than half of the respondents (56%) said that they did not file a case under MACT after a crash. Almost 6 out of 10 respondents from LIH (low-income household) category did not file a case under MACT except in the state of Tamil Nadu where the proportion was 40%.

It is interesting to note that the cases filed under MACT were significantly higher in cases of death of the victim rather than just injuries (3 times higher). Around 31% of the people said that did not file a case under MACT to avoid legal hassles while 8% of the people could not afford to pay legal fees while 11% of the people said that they had a lack of knowledge about FIR and the Legal Process. These are the statistics of the LIH category. In the HHI (high-income household) category, 6% said that they had settled the matter outside the court while many of them said that they did not want to go through the legal process. In general, insurance coverage in the HHI category was more than LIH category which included motor vehicle, medical and life insurance.

In the Urban area, only 21% of people in the LIH category availed of third-party insurance while those statics was 31.7% for the HHI category. The proportion was still higher compared

³ M R Krishna Murthi v The New India Assurance Co. Ltd (2020) 15 SCC 493

to rural areas which was only 11% for LIH and 25% for HIH category.

The insurance coverage for truck drivers was equally low as the victims. Only 40% of drivers were covered under life insurance and 18% had medical insurance at the time of the crash. Moreover, 2/3rd of the truck drivers were not aware of third-party insurance.

TABLE 8.1: INSURANCE AND COMPENSATION OVERVIEW: CLAIMS FILED AND COMPENSATION RECEIVED

	Category (State, habitation, gender)	LIH			HIH		
		Availed [N=1647]	Received eligible compensation [N=229]	Avg. time taken (months) [N=148]	Availed [N=432]	Received eligible compensation [N=132]	Avg. time taken (months) [N=79]
MOTOR VEHICLE INSURANCE COMPENSATION	Overall	13.9%	64.6%	7	30.6%	59.8%	7.3
	Bihar	10.7%	59.1%	12.6	21.7%	48%	17.6
	Maharashtra	9.2%	55.3%	10.5	38.1%	76.7%	3.1
	Tamil Nadu	28.5%	75.9%	3.9	32%	66.7%	6.4
	Uttar Pradesh	7.5%	41.9%	11.1	30.7%	38.7%	10.3
	Habitation Type	13.9%	64.6%	7	30.6%	59.8%	7.3
	Urban	21%	64.4%	7.1	31.7%	54.9%	6.9
	Rural	11%	64.8%	6.9	25%	89.5%	8.9
	Victim Gender	13.9%	64.6%	7	30.6%	59.8%	7.3
	Male	13.5%	63%	7.6	32.6%	58.6%	8.1
	Female	16.3%	73%	4.2	22.8%	66.7%	3.4
	Category (State, habitation, gender)	LIH			HIH		
		Availed [N=1647]	Received eligible compensation [N=229]	Avg. time taken (months) [N=148]	Availed [N=432]	Received eligible compensation [N=132]	Avg. time taken (months) [N=79]
MEDICAL INSURANCE COMPENSATION	Overall	7.5%	79%	2.5	16.9%	74%	2.7
	Bihar	8.7%	69.4%	2.8	20.9%	45.8%	2.6
	Maharashtra	2.4%	70%	3.4	19.5%	81.8%	2.4
	Tamil Nadu	17.4%	88.7%	2.2	16.5%	94.1%	2.4
	Uttar Pradesh	1.7%	42.9%	3.7	9.9%	90%	4
	Habitation Type	7.5%	79%	2.5	16.9%	74%	2.7
	Urban	11%	83%	2.8	14.9%	66%	2.8
	Rural	6.1%	76.1%	2.2	26.3%	95%	2.5
	Victim Gender	7.5%	79%	2.5	16.9%	74%	2.7
	Male	7.7%	78.2%	2.5	19.4%	72.7%	2.8
	Female	6.2%	85.7%	2.4	7.6%	85.7%	2

a) State-wise implementation of the guidelines.

The Madras High Court in its judgement *Manager vs Shanmugam & Anr*⁴ delivered on 23rd September said that “The MCTAP directed to be implemented by the Hon’ble Supreme Court ...has not taken off in Tamil Nadu. No systemic change appears to have been brought about by the online platform by the establishment of any specific procedure... There is no pre-litigation exercise by making use of the online facility initiated by the concerned authorities/parties. As observed by this Hon’ble Court in the order dated 16.03.2020, the Insurance Companies still

⁴ Manager vs Shanmugam & Anr (2020) SCC 4153

await the filing of claims before the Tribunal and the trial and adjudication still takes considerable length of time.”

TABLE 8.2: STATE-WISE SPLIT: VICTIM/NOMINEE FACED DIFFICULTIES IN ACCESSING COMPENSATION



TABLE 8.3: FILED CASE IN MACT AFTER THE ROAD CRASH



In the State of Maharashtra, as per the instructions issued by the High Court to all the chairmen of the Motor Accident Claim Tribunals in the letter by the High Court dated 01.07.2016, the work of framing the necessary and relevant rules.

CONCLUSION

Still, a lot of work needs to be done when it comes to ensuring that people who get involved in motor vehicle accidents specially against vehicles that do not have insurance get compensation that is fair and full. A more inclusive scheme for compensation payment is needed. For example, in the scheme implemented in South Africa and some African countries, the defaults and drawbacks it has received must be worked upon and then implemented as per Indian standards. Another measure that can be adopted is collecting (lifetime) third-party insurance premiums only once by the chief authority for every vehicle sold (like lifetime road tax). It can further be complemented by road-suitable road accident cess/surcharge on fuel prices across country. Such a system is more appropriate for a huge and heterogeneous country like India.

The Union Government can even deliberate upon amendment of Schedule II of the Motor Vehicle Act to rectify the several mistakes therein and rationalize the compensation payable thereunder which was repeatedly pointed out by the court in the *UP State Road Transportation Corporation v Trilok Chandra case*⁵ and *Sarla Verma v Delhi Transportation Corporation case*⁶.

⁵ UP State Road Transportation Corporation v Trilok Chandra 1996 (4) SCC 362

⁶ Sarla Verma vs Delhi Transportation Corporation 6 SCC 121 (2009) ACJ 1298

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