

Towards legal reforms for railway claims

Traffic accidents resulting in death or injuries yield to different financial results depending on the mode of transport that caused the accident. The Carriage by Air Act and Merchant Shipping Act follow the prescriptions of International Conventions and in the former it is the maximum of Rs.15 lacs for death or injuries and in the latter, it depends on the tonnage of the vessel. They are independent of any personal accident insurance cover that a passenger may carry. Aviation accidents or maritime disasters are less frequent and the bulk of the claims arise under the Motor Vehicles Act caused by motor vehicles plying in public places and to a relatively lesser degree are the claims arising from railway accidents. The claims are adjudicated through tribunals exclusively set up for that purpose.

IT initiatives necessary:

- Make printing of name in every train ticket in unreserved compartment compulsory;
- Establish network connection among all Benches of RCTs with video conferencing facilities;
- Digitisation of all records and establishment of paperless Tribunals through e-filing and uploading of orders with digital signatures

Motor Vehicles Amendment Bill 2016 has been introduced in the Lok Sabha on August 9, 2016 by the Minister for Roadways and Transport. The existing law under the Motor Vehicles Act provides for multiple formulations for compensation: *absolute liability* for a minimum of Rs.50,000 for death and Rs.25,000 for grievous injuries for victim by the use of a motor vehicle, the benefit extending to even a hit and run case where the vehicle involved could not be traced; a structured compensation table applying *strict liability* norm that relieves the victim or his or her representative the need to prove negligence of the driver of the motor vehicle whose use caused the accident in a limited class of victims whose annual incomes are less than Rs.40,000 and a *just compensation* commensurate with the actual economic and emotional loss caused to a victim or his family of an accident in a public place. The proposed amendment seeks to enhance the absolute liability to Rs.2 lacs; provides for a compensation of Rs. 10 lacs for death and Rs. 5 lacs for personal injuries under strict liability by the owner of a motor vehicle through

insurer who is mandated to take an insurance policy on payment of a basic premium; and just compensation worked on a projection of what the deceased would have contributed to the family, if he had not died, on contest. The amendment seeks to introduce a healthier practice of promoting settlements without contest by the insurer, within a time frame, taking cue from the directions contained in a judgment of the Delhi High Court in *Mayur Arora (2011)* and enforced through rules framed by the NCT Delhi. The new provisions include providing a remiss against punishment for a person who provides prompt medical care to the accident victim during the “golden hour”, that is, an hour during which there is highest likelihood of preventing death and exempts such a person to be compelled to be called as a witness in any judicial proceeding. The reforms sought to be initiated by providing for compensation through a process of settlement and medical care under the Motor Vehicles Act ought to be replicated by amendments in the Railways Act also.

Under the Railways Act, to a victim of an “untoward incident” resulting in death or injury, such as a fall of a passenger from a train, or a victim of violence in or out of train or at the railway platform, the maximum compensation payable is Rs. 4 lacs. The **excepted class** is a ticketless traveller or a trespasser in the railway premises such as person crossing the railway tracks, even if the incident

The suggested changes are to align the law of damages for death and injuries arising out of railway accidents to more equitable and less time consuming processes.

The Railways Act shall be amended:

- (i) To specifically provide that the negligence of the victim shall be no defence in the action for damages for death or injuries;
- (ii) To delete the clause in the proviso contained in s 124A exempting 'self inflicted injury' as redundant where the exemption already includes attempt to suicide;
- (iii) To introduce an additional class of claim for death or injury in an unmanned level crossing and
- (iv) To render inapplicable s 306 of the Indian Succession Act and allow for survival of cause of action for claims for personal injuries.

The Railways Claims Tribunal Act shall be amended:

- (i) To provide for a higher compensation for death and injuries enhancing the limit to Rs.10 lacs for death, upto a maximum of Rs.10 lacs for injuries and 2 lacs to a victim at an unmanned level crossing and
- (ii) To provide for settlement as one of the features of disposal of case.

The administrative and financial powers vested with RCT through Rules shall

- (i) Restore to the administrative head of the RCT to fill up all the vacancies within the sanctioned cadre;
- (ii) Enable incurring of expenses for civil works and repairs of RCT buildings

takes place within railway premises. **Exceptions** operate and no compensation is payable when the injury or death is due to suicide or attempted suicide, self inflicted, by commission of a criminal act, an act committed in an a state of intoxication or insanity or natural cause or medical treatment not connected to the injury sustained in a train accident. The Act that relieves a person from proving any wrongful, neglect or default on the part of the railway administration for pursuing a successful claim anchors strict liability to the railway administration acknowledging that the trains that run on rails are a potentially dangerous activity. The constitution of Claims Tribunals through an independent enactment has not done too well in securing to victims or their families an effective regime for quick and efficacious system of payment of compensation. There are several reasons for the unsatisfactory condition.

There are 21 Benches of Tribunals set up in 19 locations across India, each of them having minimum of a Bench consisting of a judicial member drawn from the community of lawyers and judges not below the rank of a district judge and a technical member drawn from the railway administration in their twilight years of service. The Benches operate at 40% vacancy with no sure deadlines for filling up the posts. The National Crimes Bureau Statistics for 2014 put deaths due to train accidents at a figure of over 24,000 of which about 2,400 cases relate to deaths due to railway track crossings which in many instances shall not come within the eligible genre of claims. However, in almost in every case before the tribunals, there is a contest that the accident was not an untoward incident, i.e., that the deceased/injured was not a passenger with a ticket or that he did not accidentally fall down from a train or that the death or injury was either self-inflicted or suicide or an attempt to suicide. In an enactment that requires no proof of negligence on any side, some courts have also taken unrealistic interpretations to exclude claims arising out of deaths by 'criminal negligence' of passengers themselves. By a convoluted reasoning, a passenger who had been grossly negligent has been excluded from making a successful claim, without minding the fact that even under criminal law, the expression criminal negligence is used only for actions that cause harm to some *other* person and not to himself. A negligence of a claimant would be relevant in a common law remedy under torts when contributory negligence could abate fully or in proportion to the component of negligence by the claimant himself. In a law such as the Railways Act, the statute steps in to create a bundle of entitlements and makes irrelevant the proof of negligence on the part of railways, but many a decision have thrown out claims by victims or their representatives by so called criminal negligence of passengers themselves. These judicial approaches have made a serious dent in the law to the detriment of victims of railway accidents and their families. In this class of dismissed claims fall accidents occurring when the passenger falls down while attempting to board or de-board a running train, passenger falling while attempting to get down from 'off side' which is other side of abutting plat form for the train or a person hit by a pole by alleged

act of reckless 'swinging out' of the train. All these wrong decisions are in spite of two sound pronouncements of the Supreme Court in *Union of India v Prabhakar and others* (2008) and *Jamela and others v Union of India* (2010) that have underscored the need to construe the provisions of the Act liberally to support the claimants cases most of whom belong to the poor strata of the society and accommodating even the claims arising out of reckless acts of passengers who have paid price already by suffering privation of limbs or losing lives.

The bulk of the claims arise from a community of migrant labour of Bihar and UP in the north and among the busy commuting Mumbai sector. There is never an endeavour to close the cases after a police report and moving for settling the claims in proven untoward incidents. There are over 38000 cases pending in various Benches, 50% of which have a life span of over 3 years in various tribunals. We have not optimised the use of IT to make a seamless transfer of compensation money to the victims or their families but engage in long drawn contests, made acute by serious shortages of staff and presiding officers at the Benches. The provision of insurance at the time of electronic booking of tickets will not address even 1% of all the beneficiaries.

The plight for victims of railway accidents draws a poorer comparison to victims of road accidents and there is no better moment to usher legislative reforms the same way as the MV Act is poised to take off. The minimum compensation for a train accident victim shall likewise be raised to Rs.10 lacs from Rs.4 lacs, death at an unmanned level crossing provide for disbursement of 2 lacs as compensation, the same way as a hit and run accident yields in a motor accident. There ought to be offers of compensation by railway administration in every case where the statutory investigation by General Railway Police (GRP) and the Railways Protection Force (RPF) is complete and the report admits to the nature of accident that may exclude the existing exceptions contained in existing law. The Railways Act shall expressly state that the negligence of a passenger shall be irrelevant for pursuing a claim for death or injuries, the same way as the Employees Compensation Act expressly provides that death by result of even a breach of express safety instruction by the employer in a work place shall abate the claim by a representative of a deceased employee.

Policy guidelines shall include:

- ❖ Time lines for filling up vacancies both for presiding officers in the Bench as well as supporting staff;
- ❖ Giving up the practice of contract employees for filling up regular vacancies and apply strictly the law of SC in *State of Punjab v Jagjit Singh*(2016) relating to equal pay equal work for contract employees at par with regular employees for the same post.
- ❖ Providing for financial incentives by promotion by one grade and/or providing for deputation allowance to subordinate staff at RCT;
- ❖ Introducing teaching modules for DRMs and other staff connected with claims in Railways Training Academy
- ❖ Menial staff at residence for members of the Bench.