

Extending Social Security to Gratuitous Passengers and Hit-and-run Victims in India

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Abstract

Road transport in India accounts for the greatest share of passenger and freight traffic, therefore the rising number of road accidents draws the attention of policy scholars towards enlarging the concept of social security, leaving no one behind. Since a large majority of the Indian population works in the informal economy, they remain outside the social security coverage. In addition, the third-party insurance policy for motor vehicles holds the government unaccountable to the victims of road accidents. Insurance companies also are non-liable to victims of hit-and-run drivers and pillion riding. This paper discusses the importance of extending social security to gratuitous passengers and hit-and-run victims in the light of the findings drawn from an illustrative case study that reviewed documents about social security, road accidents, motor vehicle insurance and victim compensations in India.

Keywords

social security, road accidents, gratuitous passengers, victim compensation

Introduction

The legislative process officially assimilated the term social security with the enactment of the Social Security Act by the Roosevelt administration in 1935 in the US (Midgley and Tang, 2008). Later, in his *magnum opus*, de Swaan (1988: 153) elucidated that “social security arrangements are collective remedies against adversity and deficiency,” where the adversity dimension is to meet contingencies and the latter is for income maintenance. However, the concepts and contents of social security vary from country to country in the official definition and amongst academics.

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In the UK, social security is the monetary assistance from the State for people with an inadequate or no income, whereas in the US, it is a federal insurance scheme for pensioners and the unemployed or disabled. In India, although the legal income protection and social assistance programmes extended beyond the public sector in recent years (Dr̄že and Khera, 2017), millions of people live outside the social security coverage.

Road traffic injuries account for the eighth leading cause of death in India (Awasthi, 2020). Although road accidents continue to be one of the main reasons for death, disability and hospitalisation, many victims are denied accident claims under certain circumstances. The plight of victims who are not entitled to claim any compensation calls for an inquiry into the cases of gratuitous passengers and hit-and-run victims to be considered by Indian Courts and the Court rulings in those cases. The illustrative case study underpinning this paper postulated an extension of social security to victims of hit-and-run cases and gratuitous passengers by reviewing documents; laws, court orders, news articles, newsletters and reports on road accidents in India.

An Overview of the Social Security System in India

India initially followed a male breadwinner approach to social security that matched the extended family system and cultural heritage, which changed dramatically to a strategy compatible with demographic realities and constitutional rights. Today, the social security system in India encompasses many schemes and programmes developed through various policies and laws. In general, social security in India includes the following schemes.

Pension

The British introduced the pension system in India in 1857, which was similar to the scheme existing then in Britain, and continued until the passing of the Indian Pension Act of 1871. Several projects were introduced after independence, viz., the Employee's Pension Scheme (EPS), the Provident Fund (PF), the Payment of Gratuity Act, and the National Old Age Pension (NOAP) under the aegis of the National Social Assistance Programme (NSAP). In addition, there are six pension schemes for senior citizens offered by the Government of India, viz., the National Pension Scheme (NPS), the Atal Pension Yojana (APJ), the Pradhan Mantri Vaya Vandana Yojana (PMVVY), the Indira Gandhi National Old Age Pension

Scheme (IGNOAPS), the Employee Pension Scheme (EPS), and the Varishtha Pension Bima Yojana (VPBY). In 2004, the old pension scheme for all government employees, except defence personnel, was replaced with a Contributory Pension System wherein all employees who joined on or after 1 January 2004 have to make a mandatory contribution every month towards their pension (Chakrabarty, 2020).

Employees' Provident Fund

The Employees' Provident Fund came into existence with the promulgation of the Employees' Provident Fund Ordinance on 15 November 1951, which became the Employees' Provident Fund & Miscellaneous Provisions Act 1952 that extends across India. The key benefits of the scheme are long term financial security, retirement benefits, funds in case of emergency, funds in case of unemployment/income loss, resignation or leaving the job, disability of the employee or being laid off. In all these circumstances, the employee is free to withdraw his funds. In case of the death of an employee, their nominee can collect the amount with interest, and it is accessible anywhere in India using the Universal Account Number (UAN). The Employees' Provident Fund Organisation is one of the largest Social Security Organisations concerning clientele and volume of financial transactions undertaken.

Employees State Insurance Benefit

The Employees' State Insurance (ESI) Act, 1948, creates a fund to provide medical care to employees and their families. Section 46 of the Act envisages the following six social security benefits; (i) Medical Benefit, (ii) Sickness Benefit - extended sickness benefit and enhanced sickness benefit, (iii) Maternity Benefit, (iv) Disablement Benefit - temporary disablement benefit and permanent disablement benefit, (v) Dependent's Benefit, and (vi) Funeral Expenses. In addition, the scheme provides some other need-based benefits to insured workers like Rehabilitation Allowance, Vocational Rehabilitation and Unemployment Allowance.

Disability Benefit

The Employee's Compensation Act, 1923, formerly known as the Workmen's Compensation Act, 1923, requires the employer to pay compensation to employees or their families in cases of employment-related injuries that result in death or disability. A worker contracting an occupational

disease is deemed to have suffered an accident out of and in the course of employment, and the employer is liable to pay compensation for this. The main aim of the Act is to ensure that the workmen have sustainable lives even after sustaining an employment-related injury. This Act does not apply to areas that are covered by the Employees State Insurance Act, 1948.

Maternity Benefit

The Maternity Benefit, 1961 was replaced with Maternity Benefit (Amendment) Act 2017 which came into force on 1 April 2017. The amended law provides women in the organised sector with paid maternity leave from the existing 12 weeks to 26 weeks for the first two children of working women. The Act also provides for 12 weeks of maternity leave for mothers adopting a child below the age of three months as well as biological mothers who opt for surrogacy. The corresponding provision provides 15 days (extendable up to three months) paternity leave to be granted to new fathers. The Paternity Benefit Bill proposes the creation of a fund known as the Parental Benefit Scheme Fund and the employer, employee and the Central Government have to contribute a certain amount towards the Fund.

Gratuity

The Payment of Gratuity Act, 1972 directs the employer to provide a sum of money to the employee for the services rendered to the company/establishment. A gratuity is paid to employees when they leave the job after serving for a minimum period of five years and it is calculated as 15 days salary for every completed year.

However, Indian citizens and their employers in the organised sector, which includes those employed by foreign investors, are exclusively entitled to coverage under the above schemes. Since a large portion of the Indian population is in the unorganised sector, the government-controlled social security system in India covers only a small section of the population (Shira and Associates, 2021). A wider conceptualisation of social security is needed for addressing deficiency and adversity, intertwining basic social security and contingent social security (Kannan, 2007; van Ginneken, 2008). This paper discusses the need for social security coverage for road accident victims as is evident from the increasing number of accidents on Indian roads.

Road Accidents in India

Traffic accidents are a major cause of death and injury worldwide, but

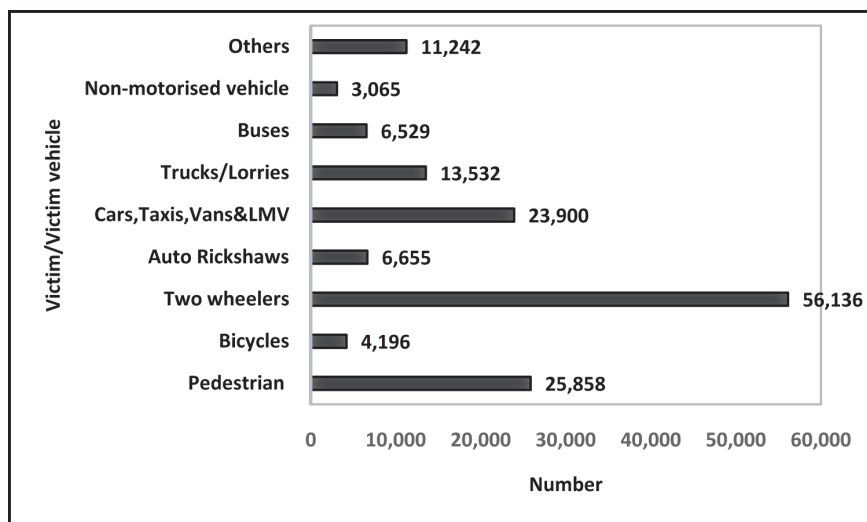
although they are declining in many parts of the developed world, the death toll is still high in many developing countries, including India. India has the highest number of road accident deaths among 199 countries, accounting for 11 per cent of all accident-related deaths worldwide (MORTH, 2019). Table 1 shows the number of road accidents, and the number of people killed and injured over the period 2015-2019. The data reveals that despite a reduction in the number of accidents, fatalities increased over that period. Figure 1 shows the number of persons killed in victim/victim vehicle categories during 2019.

Table 1: Road accidents in India, 2015-2019

Year	Number of road accidents	Number of persons killed	Number of persons injured
2015	501,423	146,133	500,279
2016	480,652	150,785	494,627
2017	464,910	147,913	470,975
2018	467,044	151,417	469,418
2019	449,002	151,113	451,361

Source: www.morth.nic.in

Figure 1: Death in road accidents by victim/victim category in 2019



Source: www.morth.nic.in

Furthermore, statistics show that nearly 85 per cent of the road accident victims constitute the age group 18-60 (MORTH, 2019). It underscores the devastating effects of road accidents on bereaved families, in terms of both financial and emotional impacts.

Compensation to Road Accident Victims

One of the ways that accident victims in India can be compensated is through motor vehicle insurance which can be categorised under two headings, viz., own damage that covers any physical damage to the vehicle, and third-party liability that provides for injury or death of others involved in the accident. After a gap of 24 years, the Government of India has revised the compensation paid to the victims of road accidents or to their kin in case of the death of the victim. The Motor Vehicles (Amendment) Act, 2019, provides for a higher compensation of Rs. 0.5 million in cases of death and for permanent disability, it would range between Rs. 50,000 and Rs. 500,000 depending on the nature and extent of the disability. Previously the interim relief was Rs. 50,000 in the case of death and Rs. 25,000 for permanent disability. To claim the compensation, the victims or their legal heirs have to file claim petitions before the Motor Accident Claims Tribunal (MACT) (We Capable, n.d.).

Hit-and-Run Cases in India

Hit-and-run accidents can be described as cases where the victim is killed or injured in a road traffic accident where the vehicle involved remains unmarked or cannot be identified. The main reason for hit-and-run cases is the lack of attention paid to the safety of others along with driving too fast. More than 30 per cent of all road accidents in India are hit-and-run cases, but only 10 per cent of drivers are booked (Sundaram, n.d.). In 2019, 19.4 per cent of road accident deaths were hit-and-run cases, compared to 18.9 per cent in 2018 (MORTH, 2019).

The Motor Vehicles Act, 1988, includes legislation which imposes severe punishment on an individual involved in a hit-and-run accident. According to the Act, hit-and-run is defined as “an accident arising out of the use of a motor vehicle(s) the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose” (Motor Vehicles Act, 1988: Sec.145(d)).

In 2018, the Supreme Court ruled that compensation for those who die in hit-and-run accidents is inadequate (Nisar, 2018). Nevertheless, the

Motor Vehicles (Amendment) Act 2019 has been passed by the Parliament and received the assent of the President. The amended regulations and fines came into force from the 1 September 2019 (Sundaram, n.d.). Table 2 shows the increase in interim compensation for hit-and-run victims as per Section 161 of the Motor Vehicles Act.

Table 2: Compensation for hit-and-run victims

Circumstances	Old Compensation	New Compensation
Death of the victim	Rs. 25,000	Rs. 200,000
Bodily Injury of the victim	Rs. 12,500	Rs. 50,000

Source: Sundaram (n.d.).

Table 2 shows that in the hit-and-run cases, the relatives of the deceased will receive a compensation of Rs. 200,000, which is very inadequate. Therefore extending social security to victims of hit-and-run cases is imperative.

Claiming Compensations

The Supreme Court of India in *Jai Prakash V. National Insurance Co. Ltd. & Others* (2009) considered the frequently faced problems in motor accident claim cases.

The bench consisting of Justice R.V. Ravindran, Justice Mukundakam Sharma and Justice Paniker Radhakrishnan identified four problems, viz.,

1. The victims of motor accidents who are not able to get compensation.
 2. The widespread practice of using goods vehicles for passenger traffic.
 3. The procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals
 4. The full compensation amount does not reach and benefit the victims and their families, particularly those who are uneducated and ignorant.
1. The first problem relates to a section of motor accident victims who are doubly unfortunate, first by being involved in an accident and second by not getting any compensation. Thus there are two categories of victims in motor accidents—those who will be able to get compensation and those who will not. Victims of motor accidents involving insured vehicles, who are assured of getting compensation from the insurer, fall

into the first category. In the second category, those who do not receive any compensation are:

- (i) Hit-and-run vehicles which remain unidentified;
- (ii) Vehicles which do not have any insurance cover;
- (iii) Vehicles with third party insurance, but carrying persons who are not covered by the insurance such as gratuitous passengers in a goods vehicle or a car and pillion riders on two wheelers.

In regard to vehicles which do not have any insurance or insurance covering the risk of gratuitous passengers/riders, even if the driver/owner may be made liable under an award of the Tribunal, there is little or no chance for the recovery of any compensation. This is because normally drivers and owners of uninsured vehicles do not have the capacity to pay the compensation or might have transferred their assets to escape paying the compensation. It is estimated that around 20 per cent of the victims of motor accidents fall under the unfortunate categories who do not get any compensation, except some who may get a token amount under Section 161 or 140 of the Act. A person hit by an uninsured vehicle feels frustrated, cheated and discriminated against when he does not get any compensation, but sees another person hit by an insured vehicle being compensated. The victim does not choose the vehicle which hits him, nor any role in causing the accident. A victim is denied compensation if the vehicle disappears without trace, or if the vehicle is without insurance, while a similar victim hit by an insured vehicle gets compensation. Should the State, which by law provided for compulsory third party insurance to protect motor accident victims, ignore these 20 per cent victims who do not get compensation or provide them with some effective remedy? Should the State do something to reduce the incidence of non-insurance?

2. The second problem relates to the widespread practice of using goods vehicles for passenger traffic. Such use is primarily due to the following four reasons:
 - (a) The non-availability of regular modes of passenger transport in several parts of the country, particularly in rural areas, compelling people to use lorries and other goods vehicles as modes of transport to reach their destinations.
 - (b) The non-availability of contract carriages for group travel during special occasions. Consequently, large groups of people, again mostly in rural areas, use goods vehicles such as lorries and tractor-trailers for

group travel on occasions like marriages, festivals, functions and political rallies.

(c) The frequent break-down of buses/cars/other vehicles on roads with sparse traffic due to bad maintenance of roads or the vehicles, or other emergencies, forcing the stranded passengers to use goods vehicles to reach the nearest city or town from which they can get access to regular recognised modes of transport.

(d) The temptation of lorry drivers to make extra money by carrying passengers for a fare, with or without the knowledge of the owner, coupled with the attraction of low fares for the poor and needy. These passengers, although termed as gratuitous passengers, except in a few cases, are fare paying illegal passengers.

Where persons travel in a goods vehicle either knowing or not knowing that such travel is illegal, and the vehicle is involved in an accident resulting in injuries to the passengers, various legal and moral questions arise. Are the victims entitled to compensation? Is the insurer liable? Can the owner, who may be unaware of such illegal carriage by the driver, be made liable? Should the owner and driver of goods vehicles be made liable to pay compensation, even where they were carrying passengers stranded on the road, gratuitously only out of sympathy? Should 'illegal' passengers be denied compensation as a deterrent to discourage unauthorised travel? Should we ignore the harsh reality that as long as the causes necessitating or forcing people to resort to such illegal travel in goods vehicles continue to exist, people will continue to travel this way, unmindful of the risk, whether legal or illegal?

3. The third problem relates to the procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals and consequent hardship for the victims and their families. Most of the accident victims who are injured are not able to access quality medical treatment for want of funds, as their earning capacity is either permanently lost or is put on hold on account of the injuries. They receive the compensation only after the treatment and a contested trial. Many times the lack of treatment or inadequate treatment for want of funds converts what could have been a temporary disability into permanent disability for the victim, thereby increasing the compensation payable. The insurance companies know full well that prompt payment of compensation or immediate treatment of the victims can ultimately

reduce the amount of compensation payable by them. They also know that they will have to ultimately reimburse the cost of medical treatment for the accident victim with interest, but they still fail to extend timely aid to the injured victims. They wait for the injured person to file a claim petition, after completing the treatment at his own cost.

4. The fourth problem is that the full compensation amount does not reach and benefit the victims and their families, particularly those who are uneducated, ignorant, or not worldly-wise. Unless there are built-in safeguards, they may be deprived of the benefit of compensation which may be the sole source of their future sustenance. The Supreme Court has time and again insisted upon measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation.

In order to protect the interest of the victims, the Supreme Court has given some directions to Police authorities, Insurance Companies and for the Legislative/Executive intervention. The Court also directed the registry to send copies of the said order to Chief Secretaries and Director Generals of Police of all States and Registrar Generals of all High Courts, for compliance with the directions.

In *Usha Devi and Another v. Pawan Kumar and Others* (2018), the Supreme Court once again considered the above issue when the appellate counsel submitted that it is very difficult on the part of the tribunals to pass the executive award in the event of multiple accidents and the absence of insurance or valid insurance. The counsel argued that there are owners who cannot pay, so there must be some arrangement where the State can take responsibility. It was submitted that the Delhi Government framed a rule –the Delhi Motor Accident Claims Tribunal Rules, 2008. Rule 6 reads as Prohibition against the release of motor vehicles involved in an accident. Therefore the Supreme Court once again directed that a copy of the said order passed be communicated to the Chief Secretaries and the Director Generals of Police of all the States and the Registrar Generals of all the High Courts to see that such rules are introduced, if not already in place, so that the victims of accidents are awarded compensation, and the compensation in hit-and-run cases will also apply to such cases.

Accordingly, the Government of Kerala amended the Kerala Motor Vehicles (First Amendment) Rules, 2018, which was published in the Kerala Gazette as G. O. (P) No.42/2018/Tran dated 24 November 2018. After rule

391, the following was inserted.

391A. Prohibition against release of motor vehicle involved in accident.

(1). No Court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of owner or when the owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in a claim case arising out of such accident.

(2). Where the motor vehicle is not covered by a policy of insurance against third party risks, or when the owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule (1), or the owner fails to furnish sufficient security as provided in sub-rule (1), the motor vehicle shall be sold off in public auction by the Magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims tribunal having jurisdiction over the area in question, within fifteen days for the purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

In short, the amended rules provide for selling the vehicle involved in an accident in a public auction by the respective Magistrate having jurisdiction, if there is no valid third-party insurance or when the registered owner fails to furnish a copy of the insurance policy. The problem arises when the vehicle involved is either very old, damaged or obsolete, resulting in no buyers for that vehicle. In such cases, it would not be possible for the Magistrate to raise a sufficient amount to pay the compensation. The question here is how to provide adequate compensation to the victim who is suffering due to someone's fault?

Gratuitous Passengers

Gratuitous passengers are people who travel free of charge or take free lifts in a goods vehicle, a tractor, lorry or on a scooter or motorcycle as pillion riders.

In *United India Insurance Co. Ltd. v. Tilak Singh and Others* (2006), the core issue involved was whether a statutory insurance policy under the Motor Vehicles Act, 1988 which was intended to cover the risk to life or

damage to properties of third parties, would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle? In this case, Respondent No.5 Bal Krishan had insured his scooter with the appellant-insurance company for the period 7 March 1989 to 6 March 1990. For covering liability to pillion passengers, endorsement of the India Motor Tariff (IMT)-70 pertaining to an accident to unnamed hirer/driver/pillion passenger is required on the insurance policy, which may be obtained by the payment of an additional premium. The insurance policy covering the scooter of respondent No.5 did not contain an endorsement of IMT-70. On 23 March 1989, the scooter was admittedly sold by respondent No.5 to respondent No.1, Tilak Raj. It was also admitted that the registration certificate of the scooter was transferred in the name of Tilak Raj but no notice was given by the transferor to the appellant insurance company for the transfer of the insurance policy and the insurance certificate in the name of the transferee, i.e., respondent No.1.

On 31 October 1989, Rajinder Singh died in an accident while riding as a pillion rider on the scooter driven by respondent No.1. Respondent Nos.2 to 4, the wife and minor daughters of the deceased Rajinder Singh who were the legal heirs, moved an application for compensation. This petition was opposed by the insurance company on two grounds, that (a) the deceased was a pillion rider and the insurance policy does not cover the liability towards a pillion rider, and (b) although the original insurer, respondent No.5, had sold the scooter to respondent No.1 before the accident, neither was the sale notified nor the insurance policy transferred in favour of respondent No.1. Respondent No.5 denied his liability on the grounds that he had ceased to be the owner of the scooter prior to the accident. The Motor Accidents Claims Tribunal held that the accident had taken place due to rash and negligent driving on the part of respondent No.1 and also held that the claimants (wife and children of the deceased) were entitled to a compensation of Rs. 389,000.

The Tribunal absolved the appellant insurance company from liability on the grounds that they were not notified of the transfer of the insured vehicle, and held respondent No. 1 solely liable for the payment of the compensation together with interest and costs. Respondent No.1 appealed against this order and the claimants also appealed seeking an increase in the compensation awarded. The High Court upheld the tribunal's finding regarding the amount of compensation but held that the insurance company was jointly and severally liable with the appellant to pay the compensation.

The aggrieved insurance company approached the Supreme Court which upheld the contention of the insurance company that it owed no liability towards the injuries suffered by the deceased who was a pillion rider as the Insurance Policy was a statutory policy and hence it did not cover the risk of death or bodily injury to gratuitous passengers.

In this case, the Court relied on *New India Assurance Company v. Asha Rani and Others* (2003), wherein it was observed that unless a vehicle is a vehicle meant for carrying passengers for hire or reward or the said vehicle by reason of or in pursuance of a contract of employment is required to cover the liability in respect of the death of or bodily injury to persons being carried in or upon, the insurer will not be liable to pay compensation. The Supreme Court bench consisting of Justice B.N. Sri Krishna and Justice Lokeshwar Singh Panta held that although the observation made in *Asha Rani's* case was in connection with carrying passengers in a goods vehicle, the same would also apply with equal force to gratuitous passengers in any other vehicle. Thus the insurance company is not liable to pay compensation to the claimants.

In *National Insurance Company Limited v. Bommithi Subbhayamma and Others* (2005), Mr Bommithi Kondala Rao was killed in an accident while travelling in a lorry. On a claim application filed by the heirs of Mr Rao, the Additional District Judge of East Godavari District awarded compensation of Rs. 130,000 with interest at 12 per cent per annum. This award was questioned before the High Court and was reversed. When challenged before the Supreme Court, the question was about the liability of the insurance company to indemnify the owner of the vehicle in respect of the death of passengers travelling in a goods carriage. In this case, the Supreme Court reiterated that the owner, but not the insurance company, would be liable for the death of a gratuitous passenger in a goods vehicle, and the claimant can recover compensation from the owner.

In another case, *United India Company v. T.N. Balakrishnan Unni* (2008), in an appeal filed against the order of the Motor Accidents Claims Tribunal, Tirur, the High Court of Kerala considered the liability of the insurance company to pay compensation to a pillion rider who sustained injuries in a road accident. The court awarded compensation worth Rs. 15,000 with six per cent interest to the claimant. The insurance company challenged the correctness of the award in the light of the Supreme Court judgement in *United India Insurance Co. Ltd. v. Tilak Singh and Others* (2006) on the grounds that the claimant was a pillion rider who remained

outside the coverage of the policy so was not liable to pay. The Court observed that the conditions of the policy clarify the liability of the insurance company to indemnify the insured against all sums which the insured shall be legally liable to pay in respect of bodily injury to any person, including the occupant carried in the insured vehicle. Hence it held that when a condition of the policy specifically covers the person carried in a motor vehicle, the insurance company is liable to compensate a pillion rider who sustained injuries in a road accident. To arrive at this conclusion, the Kerala High Court relied on the judgment in *New India Assurance Company v. Hydrose (2008)* wherein it was held that “Conditions of the Policy will govern the field.”

In another case, *Manuara Khatun and Others v. Rajesh Kumar Singh and Others (2017)*, the Supreme Court considered the issue of compensation for gratuitous passengers. The case was based on the death of two passengers in a Tata Sumo accident. The Tata Sumo collided head-on with a truck coming from the opposite direction, killing two passengers on the spot and injuring others. Only the insurance companies, but not the vehicle owners, contested the claim petition. The Tribunal partly allowed both the claim petitions and awarded a sum of Rs. 2,489,500 to the wife of deceased 1 and Rs. 2,409,500 to the wife of deceased 2, with 7.5 per cent annual interest.

The tribunal attributed the accident to the excessive speed and careless driving of the Tata Sumo driver. It ruled that all passengers, including the two dead, were travelling in a hired Tata Sumo and therefore considered gratuitous passengers. The ruling exempted the insurance company from liability and passed the award only against the owner of the Tata Sumo in both the claim cases. Both the owner and insurer of the truck were held not liable as the truck driver was not found guilty of negligent driving. Dissatisfied with the award, the claimants filed appeals before the High Court for enhancement of the compensation. By the impugned judgment, the High Court dismissed the appeals and held that the insurer was not liable because the passengers or occupants were travelling in a private vehicle as gratuitous passengers.

It was held on facts that since the victims were travelling in the offending vehicle as gratuitous passengers the insurance company cannot be held liable for of an accident on the strength of the insurance policy. However, the Supreme Court, keeping in view the objectives of the Motor Vehicle Act, 1988 and other relevant factors arising in the case, issued the directives against the insurance company to pay the awarded sum to the claimants

and then to recover the said sum from the insured in the same proceedings by applying the principle of pay and recover.

In an appeal before the Chhattisgarh High Court, *United India Insurance Company v. Kimani Devi* (2020), in the case of Karan who died in an accident while travelling with other labourers on a Dumper, an offending vehicle, on 18 May 2011, a claim application under the Motor Vehicle Act was filed and the insurance company was found liable for paying the compensation. In the appeal, it was submitted that since the deceased was travelling as a gratuitous passenger in a goods carriage vehicle and the driver of the offending vehicle did not hold a valid driving licence, claimants are not entitled to any amount of compensation. The Chhattisgarh High Court observed that i) the deceased was travelling in a goods carriage vehicle, ii) he was not an employee of the owner of the offending vehicle, iii) the policy issued was a 'Liability Only Policy', and iv) no premium was paid for any gratuitous passenger travelling in that vehicle, hence the insurance company cannot be held liable to satisfy the amount of compensation against the death of a gratuitous passenger.

From the judgments cited above, it is evident that gratuitous passengers are not entitled to claim compensation from the insurance company unless there is a specific premium payment for the coverage. In almost all cases, vehicle owners will not pay the extra premium, not expecting that gratuitous passengers travel in their vehicles, which makes the insurance company not liable to compensate the injured gratuitous passenger. At most, the claimant can turn against the vehicle owner who is liable to pay. Even if the insurance company made any payment, they would retrieve it from the vehicle owner. Ultimately, the question is that who will compensate the victim or his family members when the vehicle owner is penniless?

Conclusion

India's rising road accident rate stipulates the need for a better social security scheme. Currently, compulsory third party motor insurance provides compensation to victims of road accidents, which does not include gratuitous passengers unless there is an additional premium payment. However, due to inadequate transport facilities, people in Indian villages travel in goods vehicles, tractors and lorries, unaware that they are not eligible for compensation in the event of an accident. In urban areas, people travelling by taking free lifts are not rare.

Although an amendment to the Motor Vehicle Act provides better

compensation to road accident victims, the victims of hit-and-run cases remain deprived of any benefit until the identification of the vehicle involved. When a productive family member loses their life or sustains injury in an accident, the family is more likely to experience a lower standard of living or poverty without adequate compensation. This paper drew conclusions on the necessity for extending social security to gratuitous passengers and victims of hit-and-run cases in India.

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