

ASSESSMENT OF COMPENSATION UNDER MOTOR ACCIDENT POLICY

Motor accident claims

A claim under a motor insurance policy could be because of either of the two injuries:

- Damage to Other, which includes injury or damage to property related to someone else. This person is called the “third party”.
- Damage to Self, which includes damage to a person’s own insured vehicle. This is called “own damage claim” and one is entitled to it if they are holding a package or a comprehensive policy.

Third-party claim

In a third party claim where a person’s vehicle is involved, it is necessary to report the accident immediately to the police authorities as well as the insurance company. However, for a third party who has suffered loss because of someone else’s vehicle, the injured party must obtain the insurance details of the vehicle and make an intimation to the insurer of that vehicle.

Own Damage Claim

In the event of an own damage claim, which is where the person’s own vehicle is damaged due to an accident, the person must immediately inform insurance company and police, wherever required, to enable them to depute a surveyor to assess the loss.

Who can file a claim?

In case of damage to property, the application for compensation must be made by the owner of the damaged property. It is implied that in case of death of the owner of the property, the legal representatives of the deceased owner can competently claim compensation. An application for compensation arising out of an accident under Section 166 of Motor Vehicles Act, 1988 may be made:-

- People, who have been injured in accidents on the road, can themselves file for compensation or route the claims through their advocates.
- But accident victims, under the age of 18, cannot file for compensation themselves. They have to go through their lawyers.

- Legal heirs of people who have died in accidents can also claim compensation. Alternatively, they can route their claims through their advocates.

Jurisdiction of Claims Tribunal

A victim of an accident arising out of use of motor vehicles may file their claim application to the Motor Accident Claims Tribunal (M.A.C.T.) within local limits of whose jurisdiction the claimant resides or carries on business.

What all documents should accompany the petition?

- Copy of the FIR registered in connection with the said accident.
- Copy of the MLC/Post Mortem Report/Death Report as the case may be.
- The documents of the identity of the claimants and of the deceased in a death case.
- Original bills of expenses incurred on the treatment along with treatment record.
- Documents of the educational qualifications of the deceased, if any.
- Disability Certificate, if already obtained, in an injury case.
- The proof of income of the deceased/injured.
- Documents about the age of the victim.
- The cover note of the third party insurance policy, if any.
- An affidavit detailing the relationship of the claimants with the deceased.

Time as an essence while reporting for motor accident claims

Although the established limitation period for the Motor Crash Claim Tribunal to claim a claim for compensation (under the provisions of the Motor Vehicle Act, 1988) is not mentioned, an appellant must approach a court for such a claim within a reasonable time.

No-Fault Liability

Chapter X of the Act deals with such cases. It imposes no-fault liability on the owner of the motor vehicle. Although such liability arises only in the event of accidents leading to the death or permanent incapacity of the victim.

Article 140 of the Act stipulates the principle of no Fault liability. According to this principle, liability for compensation is imposed on the owner of the motor vehicle, even if there is no fault in connection with the accident investigated by the court. Under section 140 (2) The compensation to be paid in the event of no liability is INR 50000 for Death and INR 25000 in case of permanent disablement.

Motor accident claims – Hit and Run cases

The term Hit and Run motor accident has been defined in Section 161(1)(b). Hit and run motor accident are those accidents arising out of the use of a motor vehicle or motor vehicles the identity of whom cannot be ascertained in spite of reasonable efforts for the purpose.

Thus one of the essential of hit and run motor accident is that the vehicle which caused the accident is untraceable. Even though positive efforts have been put in to ascertain the identity of the vehicle.

COMPENSATION UNDER MOTOR VEHICLES ACT – AMENDMENT IN

SECTION 163 A:

Third Party Motor Accident claims can be registered with Motor Accidents Claims Tribunal (MACT) under the following Sections of the Motor Vehicles Act.

Section 140 – This is a No Fault Liability claim under which the compensation payable is as under:

- Rs.50000/- For Death And Rs.25000/- For Permanent Disablement. This Is Fixed Amount. No Need To Prove Wrongful Act/Negligence/Default Of The Owner Of The Vehicle.

Section 166 – This is a Fault Liability claim – Victim/Legal Heirs of victim have to prove in the Court of Law the wrongful act/negligence/default of the owner causing injury/death. Compensation is based on age/income/dependency etc.

Section 163 A – Amendment was made in the MV Act in 1994 and introduced a new Section 163 A.

- This Also Is On No Fault Liability Basis. However, Payment Is On Structured Formula Basis. While Fixing The Compensation, The Following Parameters Are Taken Into Account

–

- Age And Income Of The Victim.
- For Calculation Of Compensation, The Maximum Annual Income Is Restricted To Rs.40000/-.
- Provision Has Been Made For Compensation For Non Fatal Accidents I.E., Permanent Disablement And Injury Claims On Formula Basis.
- Based On The Formula, The Maximum Compensation For Fatal Accident Claim Is Rs.537000/- And Minimum Is Rs.50000/-.

Victim/Legal Heirs can claim under Section 140 on No Fault Liability basis and then can claim under Section 166 on Fault Liability Basis. If Award is passed under Section 166, compensation will be paid after reducing the amount received under Section 140.

If Victim/Legal Heirs claim under Section 163 A, they cannot make a claim under Section 166.

Amendment in Section 163 A –

Now, vide Gazette Notification dated 22nd May, 2018, modification has been made by the Ministry of Road Transport & Highways in the provisions of Section 163 A. Compensation, on No Fault Liability basis, as per amended provisions, is as under:

- (a) Fatal Accidents – Rs.5 Lacs (Fixed amount, irrespective of income and age)
- (b) Permanent Disablement – Rs.500000/- X percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923). However, minimum liability shall not be less than Rs.50000/-.
- (c) Minor Injury – Fixed compensation of Rs.25000/-.

On and from the date of 1st day of Jan., 2019, the amount of compensation specified in clauses (a) to (c) above shall stand increased by 5% annually.

Net effect of Amendment under Section 163 A, which is beneficial to the victim/legal heirs, is as under:

- Earlier, The Death Compensation Ranged From Rs.50000/- To Rs.537000/-. Now It Is Fixed Rs.5 Lacs.

- For Permanent Disablement, Now The % Calculation Is Based On The Amount Of Rs.500000/- (Fixed). Earlier It Used To Be On The Basis Of Yearly Income (Which Can Be Any Amount Less Than Rs.500000/-).
- For Injuries, The Minimum Amount Of Compensation Was Rs.1000/- And Onwards. Not It Is Fixed Compensation Of Rs.25000/-

Guidelines by The Supreme Court on the fixation of future prospects in cases of motor accidents for victims.

A five-Judge Bench of the Supreme Court while hearing the case '*National Insurance Company Limited v Pranay Sethi*' agrees with the view on the standardization of the addition to revenue against future prospects in accordance with Article 168 of the Motor Vehicle Act 1988. It also noted that the concept of "fair compensation" should be determined on grounds of fairness, reasonableness and on acceptable legal standards, since such a provision "can never be in arithmetical exactitude". The key takeaways from the guidelines are :

- While the income is determined to follow the doctrine of actual income at the time of death and not to add any amount of future prospects to income for the determination of multiplicand, it would be unfair. The determination of income in the calculation of remuneration must include future prospects so that the method will come into the line of just compensation as mentioned in terms of Section 168 of the Act.
- An addition of 50% of actual salary to the deceased's income relative to future prospects, where the deceased had a permanent job and was under 40 years old. The addition should be 30% if the age of the deceased was between 40 and 50 years. If the deceased was between the age of 50 and 60, the addition must be 15%. Actual salary must be read as actual salary less tax.
- If the deceased was self-employed or on a fixed salary, an addition of 40% of the income should be the warrant where the deceased was less than 40 years old. An addition of 25% where the deceased between the ages of 40 to 50 years and 10% where the deceased was between the ages of 50 and 60 should be regarded as the required calculation method. The established income means the income less the tax component.

Deceased with a permanent job (salaried)	Addition Made	Where deceased was self-employed or on a fixed salary	Addition Made
Below 40 years	50%	Below 40 years	40%
40-50 years	30%	40-50 years	25%
50-60 years	15%	50-60 years	10%

The multiplication is normally based on the net annual value of the dependency on the date of death of the deceased. As soon as the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is multiplied by a "multiplier" to compensate for the loss of dependence.

Multiplier Table in Claim Cases under Section 166

Age of the Victim	Multiplier to be adopted for accidents

Up to 15 years	15
15 to 20 years	16
21 to 25	17
26 to 30	18
31 to 35	17
36 to 40	16
41 to 45	15
46 to 50	13
51 to 55	11
56 to 60	8
61 to 65	5
Above 65	5

In some cases, the Supreme Court said that the determination of multiplier is determined by the age of the deceased, the age of plaintiff's, marital status, education and employment of the plaintiffs and loss of financial benefits.

- The income of the deceased per year must be determined. From the income mentioned, a deduction must be made in respect of the amount that the deceased would have spent on his / her personal and living expenses. The balance which is to be considered to be the contribution to the dependant family constitutes the multiplicand.
- A reasonable amount on conventional heads, i.e., Rs. 15,000/- for loss of estate, Rs. 40,000/- for loss of consortium and Rs. 15,000/- for funeral expenses should be awarded to the victim. The aforesaid amounts are to be enhanced at the rate of 10% in every three years.

Few things to keep in mind

- According to Section 163-B, where a person is entitled to claim compensation under section 140 and Article 163-A, he must lodge the claim under one of the aforesaid sections and not under both.
- When a road accident compensation is granted, the person paying the amount must pay it within 30 days of the announcement of orders.
- Even simple interest is applied to the amount from the date of making claims. When the person paying the road accident compensation is willing or otherwise not paying the amount, the tribunal may order the collector to recover the money as it happens in cases of unpaid land revenue.

How much compensation one can expect?

If a driver is involved in an accident in India and if it caused victim's death then, a minimum of INR 50,000/- and if permanent disablement is caused then, a minimum of INR 25,000/- must be paid as compensation.

A claims tribunal can pay even more after considering the case. The owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of a motor vehicle under section 163A.

It is pertinent to note that additional compensation for various conventional heads, such as funeral expenses, loss of estate and consortium are no longer expressly provided for in the amended Second Schedule. It is unclear if these amounts will now be considered to be encompassed within the compensation amounts prescribed.

While the amendment reflects a much required update of the structured formula system that had been in existence since 1994, the actual impact of this notification is yet to be tested, particularly in the case of larger claims.

Higher Compensation for Third Party Accidents claims under the Motor Vehicles (amendment) Act 2019

On 22 May 2018, the Central Government issued a notification by which the scale of compensation for third party fatal accidents and injury claims under the Second Schedule of the Motor Vehicles Act 1988 (MV Act) was amended. These claims for compensation are considered on a 'no-fault liability' basis as envisaged under §163A of the MV Act. In other words, the claimant is not required to prove or plead that death or permanent disablement was due to '*any wrongful act or neglect or default of the owner of the vehicle.*'

The *erstwhile* Second Schedule of the MV Act provided for compensation on a '*structured formula basis*' which was indicated in a tabular form. Broadly, compensation was formulated on the basis of the victim's age and income and suffered from several defects and inconsistencies as observed by the Supreme Court in *Sarla Verma v Delhi Transport Corporation* [(2009) 6 SCC 121]. Further, the Court noted in *Sarla Verma* that different tribunals were utilising different calculation mechanisms on similar factual scenarios which was leading to a lack of uniformity and consistency in awarding compensation under such claims.

In addition, the Supreme Court in *Puttamma v KL Narayan Reddy* [(2013) 15 SCC 45] observed that the Second Schedule of the MV Act was in need of an urgent amendment, as it was based on the prevailing cost index of 1994.

The notification of May 2018 has now amended the Second Schedule and removes the formula system that had existed without amendment since 1994.

As per the substituted Second Schedule, compensation will now payable be as follows:

- **For accidents resulting in minor injury:** fixed compensation of ₹20,000.
- **For accidents resulting in permanent disability:** compensation payable will be calculated based on the '*disability percentage*' specified in Schedule I of the Employee's Compensation Act 1923, where the minimum compensation payable shall be not less than ₹50,000 and the maximum compensation payable shall be ₹5 lakhs.
- **For fatal accidents:** fixed compensation of ₹5 lakhs.

The notification further provides that the amounts payable in case of death, permanent disability and minor injury will be increased at the rate of 5% annually, effective from 1 January 2019.