

# **The Role of Accident Compensation Law in Sri Lanka and its Way Forward: An Assessment**

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## **Background**

Compensating road accident victims adequately and satisfactorily in Sri Lanka is a critical problem due to several factors.<sup>1</sup> Primarily, ‘accidents’ do not involve the mental element of the doer as it is a sudden and unintended occurrence. Therefore, holding defendants liable for unintended acts requires a justifiable policy ground. Secondly, it is also noted that the major statute in this regard does not guide the courts with sufficient clarity.<sup>2</sup> Thirdly, it is questioned whether collisions which occur on roads negligently can be considered as ‘accidents’. If so, can it be considered under the same policy or should it be considered on a different policy ground? This is interesting to research on as collisions on the road are always referred to as ‘accidents’.

Further, smooth function of compensating accident victims may be badly affected by the strict legal procedure that has been laid down for accident compensation in the Sri Lankan legal system. This involves the requirement of proof of fault, inaccessibility to the court, the difficulty in calling of evidence, lack of awareness of the proceedings, lack of money and the like. However, the most significant factor that follows is a ‘vulnerable empty handed accident victim’ at the end. Therefore, it is questioned whether the system that has been adopted to redress the accident victim in this country is inherently unfair. It does not seem to stand for an assured remedy for accident victims based on policy considerations despite all the above deficiencies. The issue raises serious concern of the welfare and responsibility of victims of road accidents who are vulnerable to various physical, physiological, economic and social problems subsequently.

Alternatively, it is much interesting to see insurance policies that are marketed in the market place in different facets in light of claims of accident. These are promoted with highest attractive benefits for the policy holders in the context of motor vehicles insurance particularly. Also, third party insurance is a statutory requirement for all vehicle owners in Sri Lanka.<sup>3</sup> However, the victims who wish to seek remedy through third party insurance have to undergo court proceedings.<sup>4</sup> Indeed, this is similar to suing the defendant in a normal civil case. Therefore it is clear that the victims are not protected through both alternatives of accident compensation. As a result, many of the cases have opted to

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<sup>1</sup> Please note that this study limits its scope only to the area of motor accidents as otherwise it unnecessarily expands the intended discussion.

<sup>2</sup> See, section 240 for the definition of ‘accident’, No 8 of 2009 Motor Traffic (Amendment) Act

<sup>3</sup> Section 218 No 8 of 2009 Motor Traffic (Amendment) Act

<sup>4</sup> Section 106, No 8 of 2009 Motor Traffic (Amendment) Act

settlements between parties out of court. However, it is noted that this settlement does not include real assessment of damages as seen in courts.

This research is significant in the current context as Sri Lanka is moving ahead with developing infrastructure facilities including highways and other roads. The rapid increase of the importation of vehicles into the country, unplanned traffic direction and underdeveloped road facilities are also noticeable. These new challenges are emerging in the light of road accidents.

In this background, it is clear that the present law on accident compensation has failed in the objective of promoting the well-being of accident victims without imposing a huge social cost. This approach necessarily discourages litigants of accident victims on the one hand and makes them feel vulnerable even under the statutory regime on the other.

### **Methodology**

This research adopts a comparative study with other selected jurisdictions which are New Zealand and South Africa. The rationale for selecting these jurisdictions is the similarity of the salient features of these legal systems and Sri Lanka and the significant development that has been taken place in the law of accident compensation in these countries for the welfare of the accident victims and smooth administration of the system. For this purpose comparative case law, relevant statutes, law journals and e-based legal documents will be used.

### **Outcome**

When analyzing other jurisdictions, the scheme established in New Zealand for accident compensation is very significant as it has replaced the entire tort system for personal injuries. It is clear that the law reformists in a welfare society wanted the principled norms of tort liability to impart to a novel system and create new social contact among the society other than personalization of liability for accidents.<sup>5</sup> However, the significance that can be observed in this regard in South Africa is that although they have opted to create a statutory based Fund called Road Accident Fund, it needs to be proved on the part of the defendant. Considering the drawbacks of the standards of liability in this system, law reformists have been convinced of the need to establish a non-fault based system of benefits operated by the Road Accident Benefit Scheme (RABS) as part of the Comprehensive Social Security system in the South Africa.<sup>6</sup>

### **Conclusion**

It is clear that major jurisdictions in this regard have adopted norms of social contact for redressing road accident victims rather than an individualistic approach based on proof of fault. For the operation of the system, they have opted to statute based social security schemes which are more accessible and guarantee a quick remedy. It is recommended that Sri Lanka too should establish this kind of a general social security scheme for road accident victims without taxing them with complicated legal procedure.

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<sup>5</sup> Richard Gaskins, *Tort Reform in the Welfare State: the New Zealand*, Osgoode Hall Law Journal, Vol.18, No.2, 1980, P 239

<sup>6</sup> For information Visit , [www.pmg.org.za/files/docs/100203dot.ppt](http://www.pmg.org.za/files/docs/100203dot.ppt), visited on 18.06.2012, See further, *Road Accident Fund Commission Report 2002* <http://www.raf.co.za/MediaCentre/Documents/s9-19.pdf> visited on 18.06.2012