

## **Persons who become disabled consequent to a Motor Accident: Stakeholder Consultation**

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### **Motor Accident**

Accidents arising out of use of motor vehicles are motor accident and may result in death on the spot or in course of treatment, hospitalization, and disability (temporary or permanent) of the driver, owner, passengers including in excess of the authorized carrying capacity of the vehicle and persons on other vehicles or on the road at the site of the accident. They may result in damage to the vehicle, other vehicles involved, property (if carried in the vehicles or shops-hotels nearby when the vehicles plough into it).

All matters pertaining to motor vehicles in India are governed by the Motor Vehicles (MV) Act 1988. Motor Accident Claims Tribunals are constituted under this MV Act. Chapter XI of the MV Act provides for the insurance of Motor Vehicles against third-party risk, is the governing act for compensation in the event of an accident. The MACT Act including certain provisions of chapter X-XI was amended in August 2019. Earlier the Central Motor Vehicles Rules 1989 and Bihar Motor Vehicle Rules 1992 applied in Jharkhand. On Supreme Court's direction, a draft of the Jharkhand Motor Accidents Claims Tribunal Rules<sup>1</sup>, 2019 issued on July 23, 2019. A divisional bench of the Supreme Court in Vimla Devi et al vs National Insurance Company Ltd & Anr CA 11042 of 20182 DOJ 16-11-2018, has explained the intent of the provisions thus:

16...the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which is otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident.

The policyholder and the insurer are parties to the contract. Everyone else other than these two is third-party to the insurance contract – like persons on another vehicle, persons on the road. As per the 2019 amendment “the third-party ” includes the Government, the driver and any other a co-worker on a transport vehicle.

As per sec 146 of MV Act, ensuring third-party insurance cover of a vehicle is mandatory for all users of the vehicle except when only using as a passenger – either as stand-alone (act only) or bundled with comprehensive vehicle cover. Some vehicles like those carrying hazardous material must have Public Liability insurance also. However, vehicles without any insurance cover abounded. Before April 2007, the stand-alone third-party cover was provided only by the four existing public sector general insurers. Private players entered insurance but concentrated on insuring new vehicles. On April 1, 2007 the Indian Motor Third-party Insurance Pool (IMTPIP) was set up by all General Insurers in India as third-party premium was still regulated to make available Third-party Insurance to all commercial vehicle owners at reasonable rates and terms and to distribute the losses on this account to

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<sup>1</sup>[http://jhtransport.gov.in/pdf/588\\_2\\_2019.pdf](http://jhtransport.gov.in/pdf/588_2_2019.pdf) accessed on October 12, 2019

<sup>2</sup>[https://sci.gov.in/supremecourt/2016/16124/16124\\_2016\\_Judgement\\_16-Nov-2018.pdf](https://sci.gov.in/supremecourt/2016/16124/16124_2016_Judgement_16-Nov-2018.pdf) accessed on Oct 12, 2019

all market participants and dismantled in 2012 by insurance regulator and replaced with the Motor Third-party Declined Risk Insurance Pool covering commercial vehicles. This pool provides mandatory third-party cover for commercial vehicles was created in 2012 and dismantled in 2016. Broadly these pools suffered losses. After dismantling the third-party premium went up several folds. The 2019 amendment of the MA provides for a Motor Vehicle Accident Fund that will provide compulsory insurance cover to all road users in India for certain types of accidents.

The victim of an accident or in case of physical incapacity, through the near relative and in case of his death his dependents may file an application for compensation before the Motor Accident Claims Tribunal (MACT) within local limits of whose jurisdiction the claimant resides or carries on business. In case of a minority of any dependant or an injured who is a minor the application is filed through their parents/guardian.

In India, the earlier disability act<sup>3</sup> recognised Blindness, Low-vision, Leprosy-cured, Hearing Impairment (now seen as hearing impairment and hard of hearing), Locomotor Disability, Mental Retardation and Mental Illness as a disability. The current Act – the Rights of Persons with Disabilities Act, 2016 (RPwD)<sup>4</sup> that gives legal expression to the United Nations Convention on the Rights of Persons with Disabilities ratified by India on the 1st day of October, 2007 further added Acid Attack Victim, Autism Spectrum Disorder, Cerebral Palsy, Muscular Dystrophy, Chronic Neurological Conditions, Specific Learning Disabilities Multiple Sclerosis, Speech and Language Disability, Thalassemia, Hemophilia, Sickle Cell Disease, Multiple Disabilities including deaf-blindness to the earlier list of disability. There is thus no dedicated Act for disability due to motor accident.

The term “Disability” encompasses conditions that may be present at birth stemming from development of foetus going amiss on its own or being triggered by any medication or genetic conditions , or be result of amputation done to stop gangrene’s spread following road accident, war-induced injury, or frost-bite or stem from degeneration induced by on the bacterial attack, or hemorrhage or as a consequence of delay in treatment of leprosy, or from ergonomic causes stemming from work etc. This paper focuses on permanent disability stemming from motor accident.

### **Methodology - Stakeholder Consultation**

This paper is based on discussions with stakeholders in motor accidents conducted in the months of September-October 2019. This paper’s approach is to document the process of filing compensation case – merging narrative of claimant side and advocate, doctors, police etc and identify the bottleneck. This is a quick consultation, with a limited number of persons across various stakeholders – four victims or their family who became disabled due to accident across Ranchi and Simdega, two drivers at Ranchi, two police stations in Simdega, welfare/social welfare/ social justice officials at Simdega, doctors and personnel at Sadar hospital Simdega, the advocates of victim and of insurance companies at court, and insurance investigators at Ranchi

### **The Need for such a consultation**

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<sup>3</sup> Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995

<sup>4</sup> <http://disabilityaffair.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf> accessed on October 1, 2019

1. The system finds no opportunity for expression in a cohesive way. Victim's perspective in engagement with it. No exit interview or account of experience is available. There is no review of the advocate or how much he took.
2. An occasional coordination meeting between police and judiciary have been held in districts like Simdega with advocates also in attendance. But this is regular, nor affords an opportunity for those who engage with the system to share their perspective to improve the discourse between some of the stakeholders

### **Limitations of the Methodology**

1. Hit and run cases where the vehicle is unidentified are excluded since instituting MACT cases is often difficult and as per police, the DTO is the final dispenser of no-fault liability claims now. More on this later in the paper
2. Judges speak through their judgment only and operate under direction and authorization of the High Court. Justices are reluctant to speak to researcher not duly authorized by courts
3. Drivers spoken to are not involved in any of the accident whose victims are being profiled. They may not have been part of an accident at all.
3. Some departments like police contend only with certain parts of this cycle – seeing overloaded two-wheeler riders dying, hit and run.
4. For victims, the accident and the aftermath is a traumatizing experience – that some have desired to forget. Some may today appear well and recovered but that does not obliterate the harrowing time they and their families had. For some the capacity to verbalize their thoughts itself was lost as a consequence of the accident.
5. The study consults victims left disabled as a consequence of such an accident. This design itself leaves out those marginalized who may not have even approached a MACT seeking compensation. In their own interest, lawyers track down victims based on news reports of major accidents or through contacts in the police reaching dependants of deceased and through the FIR those grievously wounded. The lawyers do not reach those who may have died later due to consequential complications, due to wrong treatment and such reasons.
6. Certain practices like demanding a fixed percentage of the compensation is against the provisions of the Advocate's Act, 1961 and is difficult to probe though widely reported informally.
7. It is important to remember not all motor accidents result in filing of FIR. Only the cases of death or grievous injury result in FIR. Several times the parties may mutually settle, pay off the injured party to avoid police and court cases. Some may damage property when a truck ploughs into an empty shop or hits some small ruminant and no law and order ensues while the vehicle owner escapes with the vehicles. These exclusions reduce the actual number of motor accidents reported to a police station and may present roads as safer than they really are.
8. It is not representative of the whole of Jharkhand and some findings may not apply pan-Jharkhand. Areas/ district may vary in terms of the spread of highways with heavy traffic, the distance from medical facilities etc.

### **Disability Certificate**

For obtaining a disability certificate the patient has to appear before the Disability certification board for that particular disability (locomotor, eye, ENT (hearing and speech))

being primary, mental) – the same one that motor vehicle accident victims must appear before. In case the disability is 40 per cent or more the person is entitled to certain benefits and concessions.

#### The Process of obtaining Disability Certifications

- A parent of the Indian citizen with disability, or that person himself, directly approaches to the District Sadar Hospital with necessary documents and reports as following - copy of the medical reports stating minimum degree of disability and explaining type of the disability as certified by a medical doctor, two passport photos, copy of the identity of the person with disability and a copy of the proof of residence.
- As per Rule 19 of the Rules framed under the Motor Vehicles Act the Claims Tribunal may in the Form “J” direct doctors in a government or municipal hospital to examine the injured and issue certificate indicating the degree and extent of the disability and it is the duty of such medical officer or board to submit the report within fifteen days of receipt of direction.
- Patients treated by the Sadar Hospital can also be referred to the Disability Board
- Sometimes people without disability certificate but with pronounced disability submit an application to the Anganwadi centre or Panchayat in rural areas, they too are directed to contact the Civil Surgeon in the Sadar Hospital who then advise appearing before the Board on the designated day

There are primarily five types of disability certification - Mental Retardation, Visual Disability, Speech and Hearing Disability, Locomotor Disability where a disability certificate is issued by a Medical Board of the Sadar Hospital. The certificate is issued by Boards for respective disability. Each of these boards has one doctor from the designated specialization and two other doctors. A board of three doctors will sign the recommendation. In case of Multiple Disability after respective boards have assessed, the final disability certificate for multiple disabilities is issued by the Disability Board, which awarded the higher score of disability by combining the score of different disabilities using a combining formula. In case, where two scores of disability are equal, the final certificate of multiple disabilities is issued by anyone of them as decided by Local authority. The examination process will consist of three components, namely, clinical assessment, assessment of adaptive behaviour and intellectual functioning. The certificate is meant to be issued on the same day.

The certificate is valid for a period of five years where the disability is temporary or unless the Medical Board specifically mentions re-assessment is required earlier as the condition is progressive/likely to improve. A permanent disability certificate's validity is 'Permanent'.

The certificate is issued under the final confirming certificate of the Civil Surgeon. In Simdega the disability board is convened twice a month on fixed dates – on the 15<sup>th</sup> and 30<sup>th</sup> of each month. If that day happens to be a holiday then the next working day

Disabled persons are not always counselled on need for obtaining certification especially when treated at a private hospital – for example though discharged from hospital in 2007, Prakash Oraon's caregivers learnt of this certificate only in 2011 from a fellow handicapped villager. For examination by the Board, the disabled person has to be carried in a four-wheeler at the expense of the applicant. For a family's whose back was broken trying to sustain and care for an injured family member, additional cash expenses put breaks.

Sometimes patients are hospitalised close to a year and need bed rest thereafter as well. The process of obtaining disability certificate needs to wait when discharge is feasible and the patient is stable enough to be moved. Most apply only when the settlement of the claim is stalled for want of such a certificate and they are free from hospital visits.

### **Swawalamban (UDID) Card**

None of the handicapped persons or their family in Ranchi and Simdega who we talked to had heard of Swawalamban card or Unique Disability Identity (UDID). However, the running scroll on their website indicates that 12000 cards have been issued for the whole of Jharkhand. The self-registration requirement means the rate of application is low and requires certain internet savviness. It does not enjoin different authorities to upload details of disabled persons with them – whether hospitals handling Motor Accident cases, disability board certifying disability, Welfare/social welfare/social security Department. So there are no triggers to persuade people to come and complete the process of registration.

The process requires the applicant to register online and then the Civil Surgeon office will validate the disability certificate mentioned therein and then the UDID will be issued. This thus requires possessing Disability card before one can register or the person applying will be asked to get the examination done and civil surgeon approves. The result of the process is the person gets an identity card. Sharing the idea of registering on the UDID portal is also difficult since the registration provides no benefit and persons who are unlikely to travel beyond the limited range of their home/village are unable to appreciate the need for an added identity card.

Thus, the Swawalamban card, as of now, is more an exercise of identifying numbers of handicapped persons at the national level – a national census. This is borne out by the UDID card website section Card Benefits states "Unique ID for Persons with Disabilities" project is being implemented with a view of creating a National Database for PwDs, and to issue a Unique Disability Identity Card to each person with disabilities". It goes on to state that "The UDID card shall bring a host of benefits to the Persons with Disabilities" but essentially lists the disabled person will not need to make and carry multiple copies of documents the "card will capture all the necessary details which can be decoded with the help of a reader". That in future "the UDID card will be the single document of identification, verification of the disabled for availing various benefits". The card does not undertake to trigger the delivery of benefits to the eligible candidate or inform other nodal departments to bridge the gap. It will "help to streamline the tracking of the physical and financial progress of beneficiary at all levels of the hierarchy of implementation – from village level, block level, District level, State level and National level" but it is only after the person has enlisted for different benefits.

The site itself has no pull factor – it does not even provide any worthwhile information relevant to a person with a disability in Jharkhand. Use of the search link under the section Schemes on the UDID portal yields no information on the scheme of Jharkhand government. The search for schemes in Jharkhand only displays to central ones applicable to all State / UTs regarding travelling allowance for Attendant or Escort for those with Blindness and Cochlear Implant Surgery. None of the PWD the persons talked to or their families were aware of UDID.

### **Motor Accident Compensation**

The claims are filed under Motor Vehicles Act, 1988 under different sections. Third-party claims are dealt in chapter XI.

- i. No-fault claim - Section 140 (chapter X) of the Act stipulates the principle of no-fault liability when death or permanent disablement. Sec 140 (2) specifies the amount of fifty thousand rupees for death, ₹25,000 for permanent disablement. Sec 140(4) states a claim for compensation shall not be defeated by any wrongful act, neglect or default of the person so deceased or who have suffered permanent disablement. The quantum of compensation cannot be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. The compensation paid is reduced from compensation if paid under any other section. In Indra Devi & Ors vs Bagada Ram CA, 1508 of 2004 DOJ 18-08-2010 Supreme Court notes motorcycle dashed against the rear side of a truck and died. An interim compensation of ₹50,000 was paid to claimant successor. After the evidence, it was concluded the accident was caused due to the careless and negligent driving of the deceased motorcyclist and lower tiers directed refund of this amount to the insurer with interest. Supreme Court held when the compensation under section 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death the claim is made, any direction to refund was wrong.
- ii. **Hit and Run motor accident** - section 161(1)(b) (chapter XI) -- where the identity of the motor vehicle cannot be established in spite of reasonable efforts for the purpose. The claims for compensation are considered under Sec 163A of the MV Act. 2019 amendment substituted Second Schedule, compensation will now payable:
  - For accidents resulting in minor injury: fixed compensation of ₹20,000.
  - For permanent disability: compensation payable will be calculated based on the 'disability per cent specified in Schedule I of the Employee's Compensation Act 1923, within minimum ₹50,000 and the maximum compensation payable ₹5 lacs.
  - For fatal accidents: fixed compensation of ₹5 lacs.

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.

- iii. **For Fault liability - Section 166** (chapter XI) – claims under this have to prove the fault of the identified vehicle's owner (including mainly for maintenance even if not driving) or its driver at the time of the accident. A multiplier table ranging from 5(65 and above) and 18 (age 15-18 years) is also provided for applying to Claim Cases under Section 166. The lawyers are most interested in filing claims under this section.

Amit Xess's sec 166 case is awaiting the filing of fees as of September 29, 2019. As per Rule 227(2) (vi) of Bihar Motor Vehicles Rule 1992, the maximum court fee is ₹15,000. Hence the case is pending for admission. Earlier this was the cause of major delay as advocate did not deposit this fee even in case of confirmed death cases. In Ranchi MACT applications it is common to see a line the fee shall be paid on decision of sec 140 case. Now the rule 9 of the draft rules on Jharkhand MACT states every application under "Section 8 of this Act", for payment of compensation, "shall be accompanied by a fee of

rupees ten in the form of Court-fee stamps”. The phrasing is confusing as section 8 of the parent act refers to licence while the rule issued by a department in exercise of its executive authority is not referred to as an Act. That the draft Jharkhand Rules, 2019 will override the Bihar Motor Vehicles Accident Claims Tribunals Rule (applicable to Jharkhand vide notification No. 272/ Ranchi dated-23/01/2002) is one very good thing as it will address one significant cause of delay in the inception of the case.

There was once a six months time limit set once for filing of applications under this section which was removed vide amendment. Then in 1994 it was removed vide statutory amendment. In *New India Assurance Co. Ltd. vs C Padma* (2003) 7 SCC 713, the accident occurred on February 18, 1989 when the 1939 Act was in force and the claim application was filed on November 2, 1995, when the 1988 Act had come into operation and sub-section (3) of Section 166 deleted ref November 14, 1994, the Supreme Court allowed the claim application under new amended provision holding:

An Act like the Motor Vehicles Act is beneficial legislation aimed at providing relief to the victims or their families if otherwise the claim is found genuine... The Parliament, in its wisdom, realised the grave injustice and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions at the threshold on the ground of limitation, and purposely deleted sub-section (3) of Section 166, which provided the period of limitation for filing the claim petitions and this being the intendment of the Legislature to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the Legislature

Our stakeholder consultation with victim shows more than six months delay from the date of the accident is there in the filing of even the case under section 140 (sec 166 often follows after its decision):

- Case by Prakash Oraon of Dodeya mode shows he was injured in 2007, and the case was instituted in 2012 when an advocate from neighbouring town came scouting for filing MACT case.
- Case by Amit Xess met with an accident on and the sec 166 case filed on

<b><i>PWD MACT Claimant name</i></b>	<b><i>Date of Accident</i></b>	<b><i>Date of Disability Certificate</i></b>	<b><i>Year of Instituting MACT Sec 166</i></b>	<b><i>S-166 MACT filed after how much time after the accident date</i></b>
Prakash Oraon, Dodeya Mode, Tamar, NH, Ranchi A wage labourer, bedridden	2007	2011 100% permanent	Mid 2012	60 months
Nil Kumar Singh, Biru Simdega Student of class XII now	03-02-2016	2017 55% permanent	Sec-140 allowed on 28- 02-2017 Sec-166 filed after 10-03-	12 months later

			2017	
Udit Ram, of Role Ranchi Educated, a former contractor	3-5-2014	140 in 2014 166 not known	2014	5-6 months later
Jerome Dungdung, Salgaposh Simdega	05-05-2016	15-03-2017 (75% permanent)	13-03-2019	34 months later
Sunil Toppo Educated till +2, vegetable vendor now	8-4-2013	16-3-2015 for 15% permanent	2013	5-6 months later
Amit Xess	30-01-2018	Not filed	09-05-2019	~14 months later

Vide 2019 amendment this bar of six months removed in 1994, has been reintroduced with the insertion of sub-section (3) in section 166 of the principal Act now stating from date of notification “No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident”. What is worse not only will case to be filed future will be time-barred, but even cases filed earlier but decided after the amendment.

When grievously injured poor survivors are applying several years later, this re-insertion is totally against the long history of enabling interpretation of the third-party claims provision of the Motor Vehicles Act. This insertion is not only anti-poor, it is also against the grievous injury whose treatment following accident spans two years (Nil Kumar Singh spent 10 months in hospital, and two years hence still needs another operation to remove two steel rods and plates and Udit Ram spent 18 months in hospital and in bed several months at home)

The same Supreme Court’s decision in New India Assurance Co Ltd vs C Padma (cited above) can also be used to bar claims since it states MV Act “is a self-contained Act which prescribes the mode of filing the application, the procedure to be followed and award to be made”

as discussed by the Supreme Court in Dhannalal vs DP Vijayvargiya (1996) 4 SCC 652 when case was after a delay of mere 4 days from bar, “the claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when sub-section (3) of Section 166 was in force”. It held that law as it stands on date of judgement shall apply.

What is worse this amendment itself does not add any proviso or give other power for condoning on the MACT though it is vested with powers of civil court vide the same amendment to enforce its decree. In claims provisions pegged proving the fault of vehicle owner/driver, the police charge sheet is critical to establishing fault. It is worth recalling that police have a 90-day window of time to file charge sheet/final form closure report and remains untouched. This period too is not excluded from the six months limitation thus imposed. The hullabaloo around the hugely increased penalty on vehicle owner/ driver for failure to produce requisite papers meant a change with a far-reaching consequence on the

poorest, who often may be doubly impoverished by the death of able-bodied earning member

The focus and noise have been too much on the hike in the penalty on vehicle owners and drivers that the issue that will impact perhaps the poorest right to seek compensation has got glossed over. It appears the only party consulted prior to re-introducing of this amendment were insurer companies who obviously will like to change the long-tailed (claims that are made or settled a long time after the insurance policy has expired) character of the MACT claims.

The idea of changing the long-tailed character got a fillip from Supreme Court itself in M/s Purohit and Company vs Khatoonbee (CA 2555 of 2017 decided on Feb 9, 2017, held that a claim for compensation before a Motor Accident Claims Tribunal filed after 28 years from the date of death of daughter in a motor accident was not accepted. It was held that the MACT Claim should be filed within a reasonable time. While it held that the question of reasonability would be with respect to the facts and circumstances of each case. The justification that the petitioners are poor and they have no knowledge about the law or entitlement was not accepted as a valid plea.

It is imperative a trend analysis should be done on the pace of changes in the filing of cases, delay in filing cases since the date of the accident. Ignorance of the law is not an excuse is a plea oft raised but is it a valid basis to use it to dismiss rights under beneficial legislation needs humane consideration by the State.

#### **Process of filing MACT Application**

- i. An application can be filed by the injured (if living) or by his dependents either directly or through a lawyer.
- ii. Obtaining the copy of an FIR is a necessity to trigger this claim process. A certified copy has to be filed of FIR and final charge sheet
- iii. If self, the identity documents of the applicant are needed
- iv. If dependant identity documents are needed to be supported by an affidavit on the relationship with the deceased
- v. Photocopies of vehicle papers are also filed from the criminal case instituted as a result of the motor accident. Certified copy of Motor Vehicle Inspector's report
- vi. The cover note of the third-party insurance policy (if the vehicle has been identified and it has one)
- vii. Age proof of deceased/ injured person – the benefits vary with the age of the victim
- viii. Original Medical bills of expenses incurred on the treatment along with treatment record in every case
- ix. In case of death claim
  - a. death certificate of the deceased is needed
  - b. family certificate
  - c. To prove skilled persons – proof of educational qualifications of the deceased, if any
  - d. Proof of income
- x. For disability claim of survivor

- a. Disability certificate – it need not be filed at the start, but to claim disability benefits this has to be produced before the settlement of the claim
- b. Proof of income prior to injury – it helps to estimate the loss of income capacity consequent to injury

The Jharkhand rules require an affidavit, proof of identity of the applicant, passport size photograph, medical certificate of injuries. It empowers MACT to refuse to take on record documents produced in future unless sufficient cause, he/she was prevented from filing such document or affidavit.

### **Problems with the filing of Motor Accidents Claim**

#### **i. Validation of identity**

The poor especially tribal often have various names in different documents. Accident victim Prakash Oraon is Prakash Kachhap (the Oraon sub-group title) in some identity documents. Till the time papers were needed independent of each other there is little issue. He will have Aadhaar, but the name in it does not tally with the name as spelt in the Disability certificate. Since there is no Aadhaar-PAN mandated for the poor, the bank account may have a different spelling. Earlier MACT accepted applications as Prakash Kachhap @ Prakash Oraon supported by affidavit to explain the variations or lead evidence when needed. It appears complicated if the papers have to be validated first and then the case filed. With a disabled person to look after this exercise may be near impossible since no doorstep service is provided even to 75-100 per cent disabled.

#### **ii. Many legitimate claims are not filed and now are time-barred even before people learn their rights**

Despite the fact that sec 158(6) (added by way of amendment in 1994 to Motor Vehicle Act) casts a duty on the officer in-charge of the police station to forward a copy of the FIR/report of accident involving death or bodily injury within 30 days from the date of information to the Claim Tribunal having jurisdiction and also send one copy to the concerned insurer. Sec 166(4) The Claims Tribunal shall treat any report of accidents forwarded to it under section 158(6) as an application for compensation under this Act.

This author has read a few hundred case files and FIRs pertaining to motor accident claims for compensation and has never seen any case note indicating the case was instituted on intimation by police. In every case, an advocate presented the application.

The Motor Vehicles Rules of Delhi mandate police offices to send such copies and also provide a copy to the injured/dependents of the deceased. This was not the practice in other states. It took Supreme Court intervention in a case filed by an Advocate left 40 per cent disabled in an accident to bring a change when it directed all states to formulate motor vehicle rules in sync with provisions of the Motor Vehicle Rules of Delhi. In that case, Supreme Court opined “the object of Section 158(6) read with Sec 166(4) of the MV Act is essential to reduce pendency of claim case and quicken the process of determination of compensation<sup>5</sup>”.

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<sup>5</sup> [https://sci.gov.in/supremecourt/2016/16124/16124\\_2016\\_Judgement\\_16-Nov-2018.pdf](https://sci.gov.in/supremecourt/2016/16124/16124_2016_Judgement_16-Nov-2018.pdf)

In compliance with the directive, the Jharkhand government formulated and issued new draft rules in July 2019. The police in Jharkhand as learnt in Simdega are submitting such report of the accident to MACT when the vehicle has been identified and to the District Transport Office when it is a hit and run case with no offending vehicle identified.

But no copy of intimation to MACT is statutorily required to be provided to the victim or his family. The Jharkhand rules also do not require sharing even a photocopy. They are not provided. Hence the victim or his dependant are not benefitted by this provision in law and rules in terms of learning the provisions for compensation.

Consider Jerome Dungdung's MACC application based on details in the application:

- It could not have been instituted on police FIR or on the compensation report sent now by police to CJM. Not because this practice has started since the issuance in July 2019 of the Jharkhand MAC rules, but because a copy is not provided to the applicant even now.
- Judging from Medical record and discharge details, no medico-legal advice on the potential for filing claim following amputation (Jerome's amputation was done on 09-06-2016 at Ranchi even though it advises the use of crutches by a private facility) was provided
- In an interaction at the District Hospital Simdega, it appears there is no process to advise even those issued permanent disability certificate on their rights. The process commences and ends with the issuance of the Disability Certificate.

There is no system for informing victims/ caregivers at any stage from accident, treatment, discharge, issuance of disability certificate. Nearly always the MACT cases are instituted only when the Advocate tracks down victims in their own interest. With the capping of the period of application to six months, more are likely to be deprived despite third-party being long-tailed claim by its nature.

### iii. **Advocates are part of the problem though have played an enabling role**

The number of claims has increased in the past 15 years since advocates discovered this as a source of revenue. An advocate (Shagir Ahmad) who appears for nearly 10 private and Public Sector insurers in Simdega shared his estimates:

- About 20 per cent of the cases are managed by the vehicle owner by paying the other vehicle for damages and minor injuries – the victims accept cash down and leave or paying police to ignore the incidence
- A further 15-20 per cent is claimed under own insurance cases with no other vehicle involved and hit and run cases
- A further 15-20 per cent of the victims/ their family do not file for any compensation case since no advocate tried to reach them – advocates are often the sole source of information of MACT rights.

This author has found victims/family living in the same district as the place of the accident has a higher chance of being contacted by an advocate. This may not be the lawyer's home district as they have contact persons existing. The lawyer only incurs about ₹3000 expense in obtaining copies of FIR/Chargesheet and photocopies of vehicle papers and initiates the case based on record obtained from GR (criminal). Hence claims of seasonal migrants who meet with an accident in transit or in another place or those who die later through complications after some days often fail to get instituted. Even cases where it is not fatal, also are not reached unless they

are part of a larger fatal accident where some died and drew the attention of advocates who are seeking to augment returns for the same effort

- Some 20 per cent of claims cases mainly stemming from death are being filed in other MACT courts in Rourkela/Ranchi by the lawyers having reached claimant.
- Barely 10 per cent claims cases are filed in Simdega. In reaction to police submission that about 140 serious accidents occurred in 2018 alone in the court premises a court staff looked up and volunteered the information that 48 MACC cases were filed in 2018 in Simdega – most are yet to be admitted. But MACT matter being long-tailed, the underlying accident may not have occurred in 2018.

These MACT specialists are advocates who mostly do not practice in anything else and collect 20 per cent to 50 per cent of the final claim value in direct violation of the provision of practice rules framed under the Advocate's Act which bans result based fees or fee as a per cent of the claim value. The advocates appoint opportunity through real-time news channel to know of accidents, arrangements with personnel in police stations who call and inform of accidents. Armed with the information they reach victims and families of deceased same day or the next morning. Stakeholders share that advocates have touts in different areas who represent them to the claimant and give local feel – eg Rourkela Lawyers would engage persons on a fee-sharing basis in Simdega to talk with persons in the local language. The lawyers not only obtain a signature on the vakalatnama but try to obtain originals of any documents that will prevent another lawyer from taking him away. Their grip is so total that most insist the investigator deputed by the insurer meet the claimant in the presence of the advocate. If this is done, independent validation of aspects like – how many eligible claimants like child by an earlier marriage or mother of the deceased who may have not been included. Or whether the claimant is masking an earlier wife who was not formally divorced - though now courts do validate relationship through papers.

Very few hits and run cases are filed that too usually by new advocates. The practised ones avoid such cases as when the vehicle has not been identified hence fault of the vehicle is not proved, the applicant only gets a paltry ₹50,000 (now increased to 2 lac) for the death of the victim, ₹25,000 (now increased to ₹50,000) for permanent disability. No medical expenses are reimbursed. Experienced MACT lawyers also avoid cases where at least one of the vehicles involved does not have insurance and potential for recovery requires obtaining executing suit for auction of the owners' property.

#### **iv. Alternative Method of Approaching MACT is not facilitated**

Representation by a lawyer is at the discretion of the presiding officer of MACT but such representation is the norm so much so questions to stakeholders in court on self-representation or representation through a friend is viewed uncomfortably. Even Judicial Officers and court officials are perturbed – the chief concern being how will the genuineness of applicant be established when payment cheque is handed over. This after all papers of injured/ deceased and applicant is being obtained and Aadhaar is mandatorily sought.

When shared with SUpervisor of Police Simdega, he said police can help identify the person since in many cases they identify the injured, contact family, admit. Besides this author felt even in a Habeas Corpus petition it is the police which is charged with identifying and bringing forth the persons. Hence the identity of the applicant cannot be the reason to deny alternative approach. Also, such concern does not appear to plague self litigants in say the Consumer Forum where non-lawyers are known to represent.

Prakash Oraon is bed-ridden without speech today – following 100 per cent disability inflicted by accident. The poor often do not have anyone capable in the family for representing the case of the injured. But in his family author met a cousin who regularly liaising with courts and lawyers in land matters. A MACT application forms a set pattern – there is a specific content where ‘find-replace’ changes eminently suffice and also requisite enclosures are needed. The claims paid is also fixed in some section or governed by multipliers stated in the Act or as per formula laid out in Supreme Court decision like Sarla Verma vs Delhi Transport Corporation CA 3483 of 2008 DOJ 15 April 2009. The option is also there to petition for grant of a lawyer for specific dates from the legal aid cell of the Court for women and tribal poor should it be warranted. But this approach is not the norm anywhere. This may not always work, sometimes a student, despite being otherwise capable, may not be able to attend each date due to classes but not facilitating this approach and thus condemning indigent litigant to share ₹1.5 lac out of ₹5 lac compensation for lifetime disability with the lawyer is grossly wrong.

**v. Validation of all necessary applicants being joined**

A necessary process of validating the names of family members and potential applicants is needed. This role is played by the Insurance Investigator who go to Applicant’s home and profile their economic condition. This also helps to advise the family on what proof of income can be furnished or what documents like medical bills to collect. The investigator is the sole disinterested person the applicant family meets right in their homes after the accident and see them as confirmation of compensation claim that lawyers would have told when getting consent. Udit Ram remembers a kindly elderly person visiting him in his home as he lay in bed, who went around his bed documenting his condition, validating papers, encouraging that he would improve and assuring that there was a process of the State. Often much later in future stages, they turn to these investigators for advice. Nil Kumar Singh called up two years later to validate how long sec 166 claims cases take. But as the insurance companies do not cover their cost – manpower cost for spending a day and a half time to reach interior villages, often fording unmotorable roads, in obtaining copies of papers from the court, meeting lawyers, fuel cost, most quality investigators have exited this work nearly 8-10 years back. Either the new entrants or the genuinely concerned and with alternate income still do it. Today reports are still filed, but by lawyers practising in the court who do the requisite in the court itself.

**vi. The state undertakes no accountability for its failure**

From Jerome Dungdung MACC application the tempo appears not to be insured as no insurance company is impleaded. Nine dates have passed allowing time to vehicle owner/driver to appear. The FIR does not report any vehicle number. Final Report, however, mentions both vehicle number and owner. But this identification does not appear to have helped in compelling appearance after the owner is likely to have been given bail in the criminal case. Jerome may get No-Fault liability claim against the second vehicle. But that will not cover his over one-month hospital treatment in Ranchi or cost of obtaining prosthetics.

As per Sec-146 of MV Act, the State has formulated the law for mandatory insurance of vehicle, except when using as a passenger carrier, then responsibility for failure to enforce

this law should also be on the State. The State is also responsible for maintaining roads in motorable condition – or auctions outright to toll for a private party maintaining it, thus if the road Kolebira to Rourkela via Simdega and Thetaitangar is in bad shape increasing chances of an accident it is State failure as emphasized by Advocates at Simdega. But the cost of state failure in both is on the victim. MV Act requires the state to identify accident areas with fatalities as “accident-prone” areas. But the earlier less serious accidents do not get flagged.

In Motor Accident matters the state is not impleaded as a party in any case even when it is known during the criminal case itself that the vehicle has no proper third-party insurance. Advocate Ahmad said the only remedy is file tort cases impleading state as a party and make it liable to compensate the victim for its failure.

**vii. Social Security**

The Social Security departments exist at the district level in Jharkhand. It is the nodal agency today for pensions. But at the ground level, there is no manpower. They depend on the Anganwadi sevika under the Social Welfare department for profiling handicapped persons. But the Anganwadi Sevika work is centred on the infant, children, lactating and expectant mothers. If this profile of a woman is not there in the family the chances of visiting Anganwadi centre is unlikely. It is also likely that the Sevika is so overburdened with the main ICDS work that additional initiative may be tough. None of the four persons received support or advice from Anganwadi Sevika for obtaining disability card or applying for pension or applying for MACT claim.

**viii. Support to the victim in real terms during the golden hour is missing**

Golden hour provisions will protect good Samaritans who ferry a victim to the patient and not be harassed. However, beyond this little benefit is likely even though the Transport Department of Jharkhand government has issued a 2-3 page pictographic Standard Operating Procedure<sup>6</sup> in the case of a motor accident– what police and hospital have to do to ensure maximum support during the golden hour. The SOP also advises personnel of various Project Implementation Units operating in the State to aid ambulance staff for aiding the victim. But in practical terms, it means little as basic medical aid is far away.

Accident victim Udit Ram has 55 per cent disability following a motor accident. Both his legs had broken into two separate pieces and his hip were broken and one index finger had nearly separated. His right calf had broken and a 4” piece had fallen at the site of the accident. While lifting him no one remembered to take the bone piece along. The doctor said finding and bringing the piece later would not help and hence bone would have to be inserted. Bone was removed from his hip for filling the gap in the bone in that leg. The steel plate has been fixed in the calf of both the legs. Another has been fixed in his hips. The steel plates cannot be removed ever. A former government works contractor nor survives on a disability pension and the small commission he earns on banking correspondent work of his wife.

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<sup>6</sup> [www.jhtransport.gov.in/pdf/SOP\\_FOR\\_ROAD\\_ACCIDENT.pdf](http://www.jhtransport.gov.in/pdf/SOP_FOR_ROAD_ACCIDENT.pdf) accessed on October 12, 2019

Superintendent of Police Simdega informed that if its police team reached first on their Safari they too may pick up the victim and start transporting. If they meet ambulance midway they may transfer the victim. But it appears this transfer does not really help care standards. The Ambulance provided by Sadar hospital or privately owned ambulances do not have a doctor in it – only the cardiac ambulance has a doctor inside it. Hence, during movement to another hospital in an ambulance no further service is feasible other than transportation.

Personnel met in the Civil Surgeon office in Simdega said for advanced medical care it is imperative to refer to Ranchi. There are grades of government hospitals. Simdega Sadar Hospital is a referral hospital for the district. There are hospitals that are colleges and some that are Institutes. Institute like RIMS is best equipped to handle severe trauma cases due to accident improves little will improve for the poor patient. Simdega hospital does not have a trauma care unit with super-specialized competencies like microsurgery. At best, it can do homeostasis – i.e. stop bleeding and stabilize the patient for further travel for admission. It cannot also handle severe head injuries due to a lack of appropriate neurosurgeons. Even when there is a doctor of requisite specialization, when it is apparent advanced care by a team of doctors of appropriate specialization is needed. The families with better-paying capacity are able to rush their patients to private facilities in Rourkela 90 km away or Ranchi 170 km away. Also at times attendants are very violent so to pre-empt a crisis escalating beyond management, and needlessly increasing the death rate of the hospital, some hospitals may consider it prudent to refer to Ranchi for better care.

**ix. Tribunals transmuting into Courts and operating as one**

One court's personnel informed there are five MACT created under MV Act in Jharkhand – including at Ranchi, Dhanbad. A Tribunal has specified thrust and defined work area and are not bounds by rules of evidence, limitation and procedure in the same way as the court. But given their limited reach, more tribunals were not created for the ease of applicant. In every district, an existing court was vested with comparable power but they are not MACT, and Simdega numbers cases as MACC to underline the distinction. It is for supervising judge to ensure the Tribunal character of is preserved.

**x. MV Act does not mandate proactively providing documents needed for filing case**

FIR is a critical supporting document to initiate MACT case under sec 140; further charge sheet is also needed to file for a claim under section 166. The poor in Jharkhand migrate far and wide across India. Accidents have occurred in widely flung areas – outside of Jharkhand even. The victim if in his senses or his co-travellers or beat constable who reaches the accident provides the faradbayan (statement) which is the basis of the FIR but himself is in the hospital, or contractor informs family come and take/cremate the body. The eligible applicants do not get even a copy of even the FIR. They may not stay at the site long enough to collect FIR and Final Charge sheet in person or know enough how to obtain them. Once final charge sheet is filed police tend to inform to obtain a certified copy from the Court. Obtaining a copy can be even more complex when the claimant is located in one place and the site of accident was his former place of employment in another state or district. Besides this process of obtaining copy can warrant a lot of payment by way of bribe if there is bodily damage. Hence the creation of tribunal at point of adjudication of benefit does not help if the process is not eased like sending copy of FIR to all victims, MACT having its own method

of validating FIR/ Final Form report from copies furnished to it, or calling for them when not furnished.

**xi. Quantum of Compensation**

**i. Ignorance of need to preserve bills**

Most attendants do not know about motor accident claims or provision for reimbursement of hospitalisation expenses. Many time the bills are not collected, shops do not provide when medicine not available in the hospital must be purchased from outside, even if collected no one is aware the same has to be preserved. Even if admitted in government hospital medicines and surgical materials have to be purchased for which often there is no bill. Udit Ram spent ₹ 10 lac in 1.5 years for his treatment, sold land to raise ₹6 lakh when still in hospital but could produce barely ₹3 lac bills. He could produce as many bills as the claims process was initiated in the year of the accident. If lawyers track down potential claimant after a gap of 2-5 years or a concerned insurance investigator visits them for investigating the no-fault claim and asks for bills alerting them to its value, barely literate households may preserve few bills.

**ii. Inadequacy of expense reimbursement norms**

Out of pocket expenses are not factored. No money is paid for nursing at home, even if the family undertakes it for months together and one caregiver is forced to stay home. Medical bills are paid to an extent but not cost of even one attendant – in cases seen they stay for six months to even 1.5 years with the patient and would incur out of pocket expenses

**iii. Ratio of fault**

Often in one case two vehicles are involved – say a truck and at times a car on one side and a bike. The convention in the grant of compensation is that the owner, passenger and driver will claim from their own vehicle. The third-party on the road can claim from both the vehicles. The passenger of one vehicle can claim from the other vehicle. But when only one vehicle has insurance it is proceeded against – but the final claim amount reduced in proportion to fault of either vehicle. A person maybe 100 per cent disabled in an accident but get only 70 per cent of the sanctioned compensation if the fault of the vehicle he was on is held to be 30 per cent.

**iv. Settlement**

Earlier when sec 140 claim was filed and insurance company realized that its liability in the case will be huge, they pressed for settlement. But due to inability to pay court fees, only section 140 cases was taken up first. So Court refused offers of settlement as under that section court cannot recommend higher amount or take cognizance of the settlement of the parties under other section while there was no overt provision for settlement. The Advocates grouse that potential and system for compromise is not there under MV act is addressed. Sec 149(1) of 2019 amendment act allows an officer designated by the insurance company for processing the settlement of the claim of compensation may make

an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days and after following such procedure as may be prescribed by the Central Government. The claim tribunal can make a record of such settlement and is to be paid within 30 days of such recording. Prakash Oraon with 100 per cent disability as per his family got a total compensation of ₹ 5 lakh only inclusive of all medical expenses due to initiative of the court and persuasion to conclude the case. The family cannot explain how it was settled a year back. Claims case can also be settled by reference of the matter to the Lok Adalat. Sec 168 of the Motor Vehicle Act states the amount of compensation payable under sec 166 would be which appears to be just. MACT will determine whether insurer, driver or owner will pay the same.

**v. Split in family following death of family member**

MACT and insurance conceives one petition for compensation on behalf of all the legal dependants of the deceased. But at least in two cases known to this author death of the husband led to the husband's family driving out the young widow or her natal parents took her back to their place since she was too young live as widow. The wife may be in a different district from the remainder claimants and filing a sole petition is near impossible. The MACT/ MACC considering the matter may even lie in two states and supervised by different high court. Norms are needed in such a situation.

**vi. Close Proximity Insurance**

The date of the motor accident is 30-01-2018 of Amit Xess of village Kinkel, District Simdega has filed a claim where the insurer is based in Sundergarh (Odisha). Two vehicles are involved OR16D 6117 a truck and JH20A 8997 a bike. The period of insurance is 30-1-2018 to 29-01-2019. The date of inception of policy is 30-1-2018 and the date of the accident is 30-01-2018, which gives rise to the doubt that the policy was taken after the accident. In such cases the prior policy will be asked for, if there is a gap between its last date and inception of a new policy or there is no insurance prior to this date, this cements that doubt. This will be treated as a close proximity case of insurance and settlement happens only if Presiding Officer MACT insists and that insurer should fight it out separately with the owner.

The insurance policies include the date of receipt of premium. Frequently the small print states that the policy will commence from midnight of the date of receipt of premium and even that cover shall commence on the actual realization of premium (excepting where it is continuing policy where cover would remain in force). These extend the period of argument in the court. Insurance may outright refuse to honour the policy too.

**xii. Delay in the appearance of Opposite Party before the insurer**

Applicants and the Presiding Officers of MACC rue in open court that neither the vehicle owner nor the insurer bothers to appear even if there is an insurance cover. Following several notices, the advocate for insurer appears but not in other cases. Sec 150(2) of amending act increases the problem when it requires due service of notice on the insurer and opportunity were given to defend liability on all available grounds but does not enjoin

any duty on the insurer. It does not cast any duty. Rule 6 of Jharkhand rules are focussed on non-release of such vehicle without security which does not have insurance or does not produce a copy of insurance on demand to investigating officer. It has no provision to enforce the attendance of the owner to facilitate he gets his insurer to appear.

The experience is that since vehicle accident causing death it is a bailable offence, even uninsured vehicle owner does not appear. Hence 2-3 notices are issued by post, then the cost of publishing public notices in two newspapers in the district is needed which raises the cost of noticing several folds for applicants. Insurance companies do not have branches in all districts in India. Also, there is no clarity who has to be noticed, the concerned branch that issued the policy or their local zonal office. Earlier some insurers reportedly appointed standing counsel but now lawyers are asked to appear on a case-to-case basis. A statutory duty that all insurance companies need to designate standing counsel at each MACT/MACC to receive notices could have eased delays significantly.

**xiii. Death claims of uninsured vehicles**

Superintendent of Police of Simdega Sri Sanjiv Kumar was strongly supportive of the auction of vehicles without due papers under amended MV provisions if full papers are not in place as several accidents involve large trailer. However, he was more in favour of using such money for interim relief rather than holding towards the final settlement. But many accidents also involve uninsured bikes and autos. He shared his concern on the situation where vehicle owner cum driver of an identified is at fault in an accident and there is no other vehicle involved for example 3-4 person on one bike is illegal and it hits a tree etc. Even if there is no insurance, dependants should receive compensation since it is penalising the surviving dependants who are not at fault. He shared In a recent accident in an interior, village-road resulted in three deaths and one grievously injured. No support is available to families of such persons – not even no-fault benefits when the vehicle is identified. Often extremely poor parents lose their only able-bodied son and their support system in life.

**xiv. The mental aspects are not catered**

Udit Ram of Role Ranchi wants to forget the accident and its aftermath. He has been severely handicapped and his quality of life gone down significantly. His income as a contractor is gone and he survives on pensions and small per-transaction commission. During the 10 months in hospital in Ranchi and thereafter another 10 months bedridden at home where he needed help even with toilet, and when he saw his wife struggling in the hospital with a seven-month baby at her breast, he says he often thought why did he live. He felt death was preferable.

Nil Kumar Singh spent 10 months in hospital, his one leg was amputated. On discharge, he was confined to a ramshackle house for nine months unable to use the prosthetic leg as his other leg with breaks in four places had not healed straight. His classmates finished matric and moved on in life. His schooling had stopped at class IX. But he credits one Hari Babu at Shanti Bhawan Mission Hospital for putting him back on feet and is his hero and counsel. After discharge, he reports Hari Babu and the hospital initiated steps needed to have Nil fitted with a prosthetic leg. He insisted schooling had to resume. Once he got a tricycle after he petitioned the chief minister, he resumed schooling. He befriended boys two years younger in school and is now in class XII piecing together money for further education.

The existing system has no provision for even one round of counselling or support to prepare the victims for life as PWD. Ranchi has several mental health institutions but Simdega Sadar hospital does not even have a counsellor. The transition from an able-bodied person to a severely handicapped person can be tough for those not rendered paraplegic and incapable of perceiving. Resuming education/economic activity on recovery is a tough but necessary part of the healing.

### **Conclusion**

The problems persons rendered handicapped through motor accident are many. State action through amendments in reducing the beneficial provision of time for claim compounds their misfortune and pain. Opportunity to inform victims when they report to the institution for Disability Certificate is not being capitalised. The entitlement for general benefits available to Persons with Disability is the subject of a separate paper and has its own set of issues.