

**Proposals to amend the Fatal Accidents Act,
1855**

Report No. 137

Proposals to Amend the Fatal Accident Act, 1855

The Hon'ble Supreme Court of Pakistan vide its Judgment dated 27/10/2011 in Civil Appeals No. 175 to 177 of 2005 made some substantive and procedural suggestion to enhance the effectiveness of Fatal Accident Act, 1855 and to ensure speedy Justice to the family members of victims in order to provide appropriate compensation for the loss of their dear one who was also the primary bread winner of the family. The Judgment contains a detailed concurring note of Hon'ble Mr. Justice Jawad S. Khawaja wherein he also suggested some proposals for modification of Fatal Accident Law for the consideration of Law and Justice Commission of Pakistan and other concerned bodies.

"Suggestion for consideration"

1. ***Based on the circumstances of these appeals and the foregoing discussion, the need for a review of the law is highlighted. There is a constitutional imperative [as per Article 37 (d)] to "ensure inexpensive and expeditious justice" in all matters. The case for treating fatal accident cases as specie for separate treatment can, however, be made out on the basis of sound legal principles. In these appeals, the very fact that compensation which was meant to provide a substitute for the financial support of the deceased during the most acute period of need for the plaintiffs, was not available. To this extent, the object of the law stood defeated.***

2. ***Some substantive and procedural suggestions which could be considered by the Law and Justice Commission of Pakistan and by the legislature and courts are as follows:-***
 - a) ***An accelerated fast track for such cases may be adopted, where the primary bread-winner of a family has died in a fatal accident leaving behind no earning hand in the family. It may be mentioned here that particular emphasis has been placed in the Holy Quran for the care of widows and orphans. I may also add that under the judicial policy, fast track adjudication of family and rent matters is already in place to good effect.***
 - b) ***Legislation, inter alia, to provide strict liability and compulsory insurance in certain categories of cases may also be considered as in a number of foreign jurisdictions.***
 - c) ***The decree in such cases should be made executable forthwith without the requirement of separate execution proceedings being initiated. In cases decided under the Financial Institutions (Recovery of Finance) Ordinance 2001, for instance, the law already provides for such mechanism. It may be noted that in the present cases, the***

learned trial Bench directed that the decree be satisfied within 60 days from the date of judgment. As noted above, this appears not to have been done. The mere award of interest on the decretal amount, in the event of delayed satisfaction of the decree does not serve the object of the law as discussed above.

- d) *Procedural changes providing for interim orders pending trial and order for costs etc. could also ameliorate the difficulties resulting from the human tragedy of a fatal accident.*
- e) *Other workable ideas are bound to emerge once an effort is made to examine the prevalent laws with the object of bringing changes therein."*

The Secretariat of Law & Justice Commission worked on the proposals and reviewed the provisions of the Fatal Accident Act, 1855.

Interim Orders for Compensation:

The provision of interim maintenance has already been provided in the Family Law wherein the family courts are empowered to order interim maintenance to the wife and minor children, who are entitled to obtain monthly maintenance from husband/father (Sec. 17A of W.P. Family Courts Act, 1964). Further, the concept of interim compensation has already been adopted in the Indian laws. Section 140 of the Indian Motor Vehicle Act, 1988, acknowledged the interim claims of compensations. The compensation under section 140 is made payable if prima facie it is available on record that (1) Accident by the offending vehicle; (2) Offending vehicle being insured; (3) Death or grievous injuries have been caused. Similarly, the Indian Railway Act, 1989 also contains a provision for interim relief, according to section 126 of Indian Railway Act, 1989, if any person sustains injury or any loss due to any rail accident he can file an application for interim relief before railway administration and the administration is bound to pay it to the aggrieved and the same shall be included in the original claim of compensation. Furthermore, the Australian Motor Accidents Compensation Act, 1999, also contains a provision for interim payment in case of financial hardship; (Ref: Section 84A)

The references of above discussed legislations which contain the provisions for interim compensations, reflects that the incorporation of such like provision in Fatal Accident Act, 1855, shall further enhance the effectiveness of such law and the same can also lesser the problems of the family members who are facing gross financial as well as emotional crisis.

Right to Appeal:

The Fatal Accident Act, 1855 does not contain any provision of appeal, whereas, the appeal is a statutory right and any person aggrieved from the judgment of trial court should have the right to challenge the same before superior courts if there is any gross illegality in the judgment. Although right of appeal is not an inherent right of any party, however, the courts of laws can commit error which can affect the civilized

systems of administration of justice; so there should be a provision for at least one appeal to a superior court.

Similarly, sub-section 2 of section.173 of Indian Motor Vehicle Act, 1988, also contains same bar on filing of appeals to High Court against the award of the claims tribunals if the amount in dispute is less than ten thousands rupees. The said provisions reflect that the same creates a bar on filing of appeals against decrees where the relief in shape of monetary compensation is nominal. Presumably, the intention of the legislature in creation of such bar was to provide speedy relief to the suppressed class and to restrict the tendency of filing of appeals only to lengthen the litigation. In this regard it is also suggested that addition of similar bar along with the provision of the appeal shall further improve the usefulness of the Fatal Accident Act, 1855.

Execution of Decree:

The Procedure for execution of decree of compensation is need to be redefined in lines with the Financial Institutions (Recovery of Finances) Ordinance, 2001, in order to provide speedy justice to the family members of the deceased, it is also suggested that upon passing of a decree for compensation the same should automatically be converted into execution proceedings, therefore, the Fatal Accident Act, 1855 is proposed to be amended by incorporation of provision for speedy execution of decree.

The Recommendations of the Sub-Committee:

The subject proposals were referred to the Sub-Committee of Law and Justice Commission of Pakistan for consideration. The Sub-Committee in its meeting held on 13.11.2013, examined the proposal and recommended certain changes in the proposals. A comparative table showing existing provisions, amendments proposed by the Secretariat and recommendations of the Sub-Committee is as under:

Comparative Table

Existing Provision	Proposed Amendments	Recommendations of the Sub-Committee
<p>An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.</p> <p>Preamble. WHEREAS no action suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another</p>	No change	

<p>person, and it often-times right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him; It is enacted as follows:-</p> <p>1. Suit for compensation to the family of person for loss occasioned to it by death by actionable wrong. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action of suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.</p> <p>Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative or the person deceased;</p> <p>And in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and</p>	<p>No change</p> <p>No change</p>	<p>The Sub Committee directed that only legal heirs of deceased are entitled to file a suit of compensation, in this respect it suggested modification in 2nd Para of section 1 which is as under:-</p> <p>Every such action or suit shall be for the benefit of the legal heirs of the person whose death shall have been so caused, and shall be brought by in the name of the legal heirs of the deceased;</p>
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<p>expenses, including the cost not recovered, from the defendant, shall be divided amongst the before-mentioned parties or any of them, in such shares as the Court by its judgment or decree shall direct.</p> <p>2. Not more than one suit to be brought. Claim for loss to estate may be added.-</p> <p>Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of <u>complaint</u>.</p> <p>Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.</p> <p>3. Plaintiff shall deliver particulars, etc. -- The plaintiff in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.</p> <p style="text-align: center;">Not Existed</p>	<p>2. Not more than one suit to be brought. Claim for loss to estate may be added.-</p> <p>Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of <u>Suit</u>.</p> <p style="text-align: center;"><i>No Change</i></p> <p style="text-align: center;"><i>No Change</i></p> <p>3A. Interim order for compensation. - (1) During pendency of a suit, the plaintiff may file an application for</p>	<p style="text-align: center;">Approved</p> <p style="text-align: center;">Amendment in Section 3A (1) (a) was approved as it is.</p>
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	<p>interim compensation. On such application, the Court may,</p> <p>(a) if prima facie appears to it that death of a person was caused by wrongful act, neglect or default of defendant; and</p> <p>(b) the plaintiff, being legal heir of the deceased, is facing financial hardships in meeting his basic needs,- pass an order for interim compensation per month as it deems appropriate.</p> <p>(2) If the defendant fails to pay interim compensation in compliance with the order of the Court, the Court may strike off the defense and decree the suit.</p> <p>(3) Interim compensation to the plaintiff under subsection (1) shall be adjusted in the amount of actual compensation awarded by the decree of the Court:</p> <p>Provided that payment of interim compensation during pendency of the suit shall not exceed from the actual claim of</p>	<p>Proposal for amendment in 3A(1) (b) was rephrased and approved as under:-</p> <p>(b) any of the legal Heirs of the deceased facing financial hardship in meeting his basic needs,- pass an order for interim compensation per month as it deems appropriate.</p> <p>Proposal for amendment in Sub Section 2 and 3 of Section 3A were rephrased and approved as under:-</p> <p>(2) Interim compensation granted under subsection (1) shall be adjusted in the amount of actual compensation granted by the decree of the Court.</p> <p>(3) If the defendant fails to pay interim compensation in compliance with the order of the Court, the Court shall strike off the defense and decree the suit.</p>
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	<p>compensation in the suit.</p> <p>(4) No appeal shall lie from the order in respect of payment of interim compensation.</p> <p>3B. Disposal of cases within specific period. - A trial Court shall dispose of the cases within a period of six months from the date of institution.</p> <p>3C. Appeal. - (1) Notwithstanding anything provided in any other law for the time being in force, a decree passed by a trial court shall be appealable,- (a) to the High Court, where a decree has been passed by a District Judge or an Additional District Judge; and (b) to the District Court, in any other case.</p> <p>(2) No appeal shall lie from a decree passed by the trial Court if the amount of compensation awarded does not exceed one hundred thousand rupees.</p> <p>(3) The appellate Court shall dispose of the appeal within a period of three months.</p> <p>3D. Execution of decree. Upon pronouncement of judgment by the trial Court, the suit shall</p>	<p>Sub-Section 4 of Section 3A Approved by Sub-Committee</p> <p>Sections. 3B and 3C were also been rephrased and approved, as under:</p> <p>3B. Disposal of cases within specific period. - Where a trial Court refuses an application under section 3A it shall decide the case within a period of six months.</p> <p>3C. Appeal. - An appeal against the decree passed by the trial Court shall lie in the manner provided under section 96 of the Code of Civil Procedure, 1908.</p> <p>Approved</p>
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<p>4. Interpretation clause. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother and grandfather and grand-mother; and the word "child" shall include son and daughter and grandson and grand-daughter and step-son and step-daughter.</p>	<p>automatically stand converted into execution application and no fresh notice shall be issued to the judgment-debtor.</p> <p>No change</p>	<p><i>The Sub-committee suggested to delete section 4 and proposed an addition in Sec.1 of the Act, to define the entitlement of legal heirs to file the suit.</i></p> <p>Deleted</p>
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The Sub-Committee in its meeting dated 13.11.2013 reconsidered the compensation awarded under Fatal Accident Act, 1855 and recommended that award should be equal to the amount of Diyat and there may also be some minimum and maximum amount to be paid to the legal heirs. The Committee was briefed that Diyat is a criminal liability to be determined on basis of Islamic injunctions u/s. 323 of Pakistan Penal Code whereas the Compensation under the Fatal Accident Act, 1855 is purely a civil liability which ought to be determined by the court keeping in view the life expectancy of deceased alongwith some other factors which include the earning of the victim, the physical health and habits of the deceased etc, therefore, fixation of minimum or maximum amount of compensation under Fatal Accident Act, 1855 is not feasible .

The Commission's deliberations.

The Commission was informed that the Supreme Court of Pakistan in its judgment dated 27.10.2011 in subject referred civil appeals suggested some amendments in the Fatal Accidents Act, 1855 for improving its effectiveness and ensuring speedy justice to the legal heirs of the victim for provision of compensation. Accordingly, the Secretariat is recommending amendments for provision of interim compensation during pendency of the suit, striking off the right of defense when the defendant fails to pay interim compensation, decision of appeals within six months if the interim compensation is not awarded, and finally, if the suit is decreed, treating the same as execution petition etc.

The Commission deliberated on the proposals and approved the same being beneficial for the legal heirs of the deceased.

Draft Bill for amendments in the Fatal Accidents Act, 1855 is hereby annexed.

A

Bill

further to amend the Fatal Accidents Act, 1855.

Whereas it is expedient further to amend the Fatal Accidents Act, 1855 (Act No. XIII of 1855) for the purpose hereinafter appearing;

It is hereby enacted as follows;

1. **Short Title and commencement.** (1) This Act may be called the Fatal Accidents (Amendment) Act, 2014.
(2) It shall come into force at once.

2. **Amendment to section 1, Act XIII of 1855.** In the Fatal Accident Act, 2014, hereinafter said Act, in section 1, for second paragraph the following shall be substituted, namely:-

“Every such action or suit shall be for the benefit of the legal heirs of the person whose death shall have been so caused, and shall be brought by in the name of the legal heirs of the deceased.”

3. **Amendment to section 2, Act XIII of 1855.** In the said Act, in section 2 for the word “**complaint**”, the word “**suit**” shall be substituted.

4. **Insertion of new section, Act XIII of 1855.-** In the said Act, after section 3, the following new sections shall be added, namely;-

“3A. Interim order for compensation.- (1) During pendency of a suit, the plaintiff may file an application for interim compensation. On such application, the Court may,

**(a) if, prima facie, appears to it that death of a person was caused by wrongful act, neglect or default of defendant;
and**

(b) any of the legal heirs of the deceased is facing financial hardship in meeting his basic needs,-

Pass an order for interim compensation per month as it deems appropriate.

(2) Interim compensation granted under subsection (1) shall be adjusted in the amount of actual compensation granted by the decree of the Court.

(3) If the defendant fails to pay interim compensation in compliance with the order of the Court, the Court shall strike off the defense and decree the suit.

(4) No appeal shall lie from the order in respect of payment of interim compensation.

3B. Disposal of cases within specific period.- Where a trial court refuses an application under section 3A, it shall decide the case within a period of six months.

3C. Appeal.- An appeal against the decree passed by the trial court shall lie in the manner provided under section 96 of the Code of Civil Procedure, 1908.

3D. Execution of decree.- Upon pronouncement of judgment by the trial court, the suit shall automatically stand converted into execution application and no fresh notice shall be issued to the judgment-debtor.”

5. Omission of section 4, Act XIII of 1855.- In the said act, section 4 shall be omitted.