

**A PROPOSAL FROM THE FEDERAL GOVERNMENT TO
EXAMINE AND REVIEW THE FATAL ACCIDENTS
ACT, 1855, AND THE ALLIED LAWS IN ORDER TO
AFFORD THE MAXIMUM RELIEF, BY WAY OF
DAMAGES OR COMPENSATION, TO THE HEIRS OF
THE DECEASED VICTIMS OF ACCIDENTS WITHIN
THE MINIMUM POSSIBLE TIME
AND COST OF LITIGATION**

It was brought to the notice of the Pakistan Law Commission that the legal heirs of the deceased victims of accidents were facing considerable difficulty in recovering the amounts of compensation or damages payable to them by drivers, employers or the Insurance Companies under the provisions of the Fatal Accidents Act, 1855, on account of prescription of an ad valorem court fee for such suits and proceedings on the one hand and due to the lengthy procedure followed in the Law Courts in connection with suits and appeals filed by such heirs on the other. The Pakistan Law Commission submitted its First Report to the Federal Government, on the 28th February, 1981, recommending that a uniform court fee of Rs.15/-, or so, may be prescribed for civil suits and appeals filed for recovery of compensation or damages under the Fatal Accidents Act, 1855, irrespective of the amount of claim involved, either by making a suitable amendment in the Court Fee Act, 1870, which is now a Provincial subject, or by adding a new section to the Fatal Accidents Act, 1855, which is a Federal Statute.

2. On the 9th of March, 1981, a request was received from the Federal Government, in the Ministry of Law, under the President's directions, that the Fatal Accidents Act, 1855, and the allied laws like, the Insurance Act, 1938, Criminal Procedure Code, 1898, Motor Vehicles Laws, Code of Civil Procedure, 1908, etc. should also be examined and suitably amended, so as

to afford the maximum relief to the families of the deceased victims of accidents within the minimum possible period of time and cost of litigation and that the law in this respect should be uniform in all the Provinces of the Country.

3. Consequently, the Chairman of the Pakistan Law Commission constituted a Sub-Committee consisting of:-

- (i) Mr Justice S.A.Nusrat,
Federal Law Secretary, (Convener)
- (ii) Mr Justice Z.C.Valliani,
Judge, High Court of Sindh, and
- (iii) Mr Bashir Ahmad Ansari,
Senior Advocate, Rawalpindi.

for this purpose.Later on, however, at the instance of Mr.Justice S.A.Nusrat, the Convener, Mr.Justice Shameem Hussain Kadir, Chief Justice of the Lahore High Court and Mr.Justice Abdul Hayee Kureshi, Chief Justice of the High Court of Sind, Karachi, were also associated with the Sub-Committee.

4. The Sub-Committee held its meeting in the High Court Building, Lahore, on the 4th April, 1981.It was attended by all the above named Members of the Sub-Committee, except Mr.Bashir Ahmad Ansari, who could not attend due to certain unavoidable engagements.

5. The Sub-Committee examined, in detail, the relevant provisions of-

- (a) The Fatal Accidents Act, 1855;
- (b) The Motor Vehicles Act, 1939;
- (c) The West Pakistan Motor Vehicles Ordinance, 1965, as amended by the Provincial Motor Vehicles (Amendments) Ordinance, 1978;
- (d) The Insurance Act, 1938;
- (e) The Code of Criminal Procedure, 1898, and
- (f) The Civil Procedure Code, 1908.

6. The Convener of the Sub-Committee, Mr. Justice Nusrat, called for another meeting in his Chamber on the 13th April, 1981, which was attended by Mr. A.S. Shibli, Joint Secretary of the Law Commission and M/S Muhammad Ismail Loona, Joint Secretary of the Law Division and Mr. A.M. Khalife, Controller of Insurance, Government of Pakistan, who had been requested to attend under Part IV Rule 3 of the Pakistan Law Commission (Procedure) Rules, 1980.

7. In the light of discussions in the meeting held at Lahore on the 4th April, 1981, and the subsequent meeting at Islamabad on the 13th April, 1981, the Sub-Committee decided to make the following recommendations, which have unanimously been approved by the Pakistan Law Commission:-

- (i) A suitable amendment may be made in Section 1 of the Fatal Accidents Act, 1855, to the effect that the summary procedure laid down in Order XXXVII of the Code of Civil Procedure, in respect of negotiable instruments, shall also apply to suits filed under the Fatal Accidents Act, 1855.

In this connection the Commission is of the view that the amendment prescribing summary procedure for disposal of such suits should be very carefully drafted so that simultaneously with the provision of maximum relief to the affected families with the minimum time and cost, the filing of exaggerated claims is also discouraged.

The defendant in such cases should be given leave to defend, after a reasonable amount of security, preferably in cash, has been deposited either by the owner or by the Insurer to the extent of their respective liabilities in accordance with the order of the Court concerned, so that the third party's claims are guaranteed under the insurance cover. In case the required security is not furnished the suit should be decreed to the extent of the third party's claim only, which must not be a preliminary decree, and the suit should proceed in the normal manner as regards the amount of the remaining claim.

(ii) In Section 125 of the Motor Vehicles Act, 1939, the punishment for driving or allowing to drive a motor vehicle in contravention of the provision of Section 94 thereof, i.e. without proper insurance in respect of the third party's risk, is imprisonment for three months, or a fine of Rs.500/-, or both. The Commission recommends that this sentence should be raised to three years rigorous imprisonment with a fine of not less than Rs.5,000/-. The recommendation, if accepted by the Government, would have a considerable deterrent effect in respect of such like offences.

(iii) In Section 95(2) of the Motor Vehicles Act, 1939, relating to the limits of liability in respect of goods vehicles, a limit of Rs.20,000/- in all, in respect of death of or bodily injuries to employees, other than the driver, is prescribed, subject to a further limit of six such employees. As regards `passenger carrying

vehicles' a limit of Rs.20,000/- in all, has been prescribed for persons other than the passengers carried for hire or reward, and the same amount, in all, has been mentioned in respect of passengers also with a limit of Rs.4,000/- in respect of each individual passenger if the vehicle is registered for carrying not more than six passengers, excluding the driver and Rs.2,000/- in respect of each individual passenger if the vehicle is registered for carrying more than six passengers, excluding the driver. In case of vehicles of any other class the limit is the amount of liability incurred.

The Commission recommends that the limit of Rs.20,000/- in this Section should be raised to Rs.50,000/- in case of death and the provisions contained in the 13th Schedule to the West Pakistan Motor Vehicles Ordinance, 1965, as amended by the Provincial Motor Vehicles (Amendments) Ordinance, 1978, should be followed in respect of other bodily injuries.

- (iv) The Commission also recommends that in the 13th Schedule to the West Pakistan Motor Vehicles Ordinance, 1965, which was added thereto by the Provincial Motor Vehicles (Amendments) Ordinance, 1978, containing a detailed table of the amounts of compensation payable in cases of death and other bodily injuries in accidents, the sum of Rs.16,000/- prescribed for death should be raised to Rs.50,000/- and the other amounts mentioned therein in respect of injuries etc. should be increased three times. A revised Schedule is, consequently, enclosed with this Report.
- (v) The Commission also recommends that in the Code of Criminal Procedure, after Section 516A relating to order for custody and disposal of property pending trial in certain cases, a new Section 516B may be added to the effect that in a case of

fatal accident the motor vehicle involved, after necessary test, shall not be handed over to the owner unless he produces a valid original insurance certificate and policies in respect of the third party coverage to the satisfaction of the Ilaqa Magistrate. All the original documents like insurance certificate, registration book, etc., in respect of the vehicle should be forwarded by the investigating officer, along with the challan, to the Court concerned. These documents should be kept on record of the Court after giving attested photo-stat copies thereof to the owner.

- (vi) Similarly in case a vehicle is involved in a fatal accident the owner should not be allowed to alienate his movable or immovable property for one year and if a suit for compensation is filed within that period, he should not be allowed to do so without the permission of the court trying the suit. Any sale in contravention of this provision should be treated as null and void.
- (vii) Whenever a motor vehicle is transferred from one person to another, the liability of the insurance company vis-a-vis the third party risk should not extinguish till the date of expiry of the Policy.

The above mentioned steps can be taken by suitably amending the Motor Vehicle Laws and the Insurance Act, 1938.

- (viii) The amount of security in respect of general insurance companies should also be suitably increased so as to ensure payment of compensation to the third parties by the insurance company concerned.

8. In order to achieve this object, the Commission recommends the following specific amendments, inter alia, in:-

- (1) The Fatal Accidents Act, 1855;
- (2) The Insurance Act, 1938;
- (3) The Motor Vehicles Act, 1939, and
- (4) The Criminal Procedure Code, 1898.

**I- FATAL ACCIDENTS ACT, 1855
(XIII OF 1855)**

A. In Section 1:

- (a) the first paragraph shall be numbered as Ss.(1);
- (b) the remaining part of Section 1 shall be omitted and substituted by the following new Sub-Sections (2), (3), (4) and (5), namely:-

"(2) 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 of the person deceased."

"(3) The summary procedure laid down in Order XXXVII of the Code of Civil Procedure, 1908, in respect of negotiable instruments, shall be followed in the trial of actions or suits filed under this Act:

Provided that the defendant in a suit or action, relating to a motor vehicle accident, shall be given leave to defend on furnishing of a security, preferably in

cash, either by the owner or by the insurer, to the extent of their respective liabilities, in accordance with the order of the Court trying such suit or action:

Provided further that in case the required security is not furnished the suit shall be finally decreed to the extent of the third party's claim only, and shall proceed in the normal manner as regards the remaining claim."

"(4) In case a motor vehicle is involved in a fatal accident the owner shall not alienate his movable or immovable property for a period of one year from the date of accident, and if a suit for compensation is filed within the said period of one year he shall not do so without the leave of the Court trying the suit. Any transaction in contravention of the provisions of this Sub-Section shall be treated as null and void."

"(5) In every such action the Court shall award compensation or damages, in accordance with the scale laid down in the Schedule attached to the Motor Vehicles (Amendment) Ordinance, 1981, (of 1981), to the parties, respectively, for whom or for whose benefit such action shall be brought."

II- THE INSURANCE ACT, 1938 (IV OF 1938)

- (A) In Section 2 of the Insurance Act, 1938 (IV of 1938),
- (i) In Clause (13B) after the words and figures, namely, (6B), (11) and (13A) words "(13BB)" shall be added.

(ii) After Clause (13B) a new "Clause (13BB)" shall be inserted, namely,

"13BB. Motor Insurance business means business of effecting contracts of insurance pertaining to self propelled vehicles and includes the insurance of any liability due to death or injury or damage to property arising from the use of such self propelled vehicles."

(B) In Section 7 of the said Act:-

(i) In Sub-Section (1) a new Clause (j) shall be inserted, namely:-

"(j) Where the business to be done includes motor insurance business, whether done exclusively or in combination with the classes of business specified in Clauses (b), (c) or (d); one million rupees."

(ii) After Sub-Section (1) the following Sub-Sections (1A), (1B) and (1C) shall be added, namely:-

"(1A) The deposit specified in Clause (j) of Sub-Section (1), shall be made in the State Bank of Pakistan within 30 days of coming into force of the this Ordinance, (of 1981)."

"(1B). No insurer shall carry on the business of motor insurance after the expiry of 30 days from the coming into force of this Ordinance, (of 1981) unless the deposit specified in Clause (j)

of Sub-Section (1) has been made in full in the State Bank of Pakistan."

and

"(1C) An insurer who has been granted an order staying operation of the order of cancellation by any court in Pakistan, shall cease transacting motor insurance business immediately on coming into force of this Ordinance, (of 1981) unless the deposit specified in Clause (j) of Sub-Section (1) has been made in full in the State Bank of Pakistan."

(iii) In Sub-Section (10) the words "two months" shall be substituted by the words "thirty days".

(iv) After Sub-Section (10) a new Sub-Section (11) shall be inserted, namely:-

"(11) where any part or whole of the deposit made for motor insurance business has been used up for discharging any liability the insurer shall cease to transact motor insurance business immediately after expiry of 30 days from the date on which any part or whole of the deposit money was used to discharge any liability unless the deficiency has been made good by fresh deposit in the meantime."

(C). In Section 103 of the said Act after Sub-Section (1) a new Sub-Section (1A) shall be added, namely:-

"(1A). Any insurer, or any person acting on behalf of an insurer, who issues a certificate of insurance, or a cover note or a policy pertaining to a motor insurance business in contravention of Section 3 or Section 7 of the said Act or does any one or more of the acts constituting the business of insurance, in relation to motor vehicle, carried on in contravention of any of the said sections shall be punished with fine, which shall not be less than 25,000/- rupees and may extend to 50,000/- rupees."

III- MOTOR VEHICLES ACT, 1939 (IV OF 1939)

(A) (i) In Section 95 of the Motor Vehicles Act, 1939, (IV of 1939) in Sub-Section (1) the proviso shall be omitted;

(ii) Sub-Section (2) shall be substituted as follows:-

"(2) A policy of Motor Vehicle Insurance shall cover liability in respect of death and in respect of bodily injuries to the extent specified in the Schedule, attached to this Ordinance:

Provided that if the person killed or injured is a workman or employee of the owner of the motor vehicle, the heirs of the person, or the person himself, as the case may be, shall not prefer a claim both under the Workmen's Compensation Act, 1923, i.e. (VIII of 1923) and under this Act:

Provided further that if the person killed or injured is a fare paying passenger, the heirs of the person or the person himself, as the case may be, shall not prefer a claim both under the West Pakistan Motor Vehicles Ordinance, 1965, (West Pakistan XIX of 1965) and under this Act."

(iii) After Sub-Section (2) a new Sub-Section (2A) shall be added, namely:-

"(2A) Nothing contained in Sub-Section (2) shall prevent an insurer from insuring liability for death or bodily injury to any person for sums in excess of those specified in Sub-Section (2)."

B. In the said Act after Section 104, a new Section 104A shall be added, namely,

Irrevocability of policy of insurance to the extent of third party's risk.

"104A (1) No policy of insurance or certificate of insurance issued by Company shall be terminated or suspended so far as the policy of insurance or certificate of insurance pertains to the requirements of Section 95 of the Act.

(2) Notwithstanding any thing contained in any law for the time being in force a policy of insurance or certificate of insurance shall stand transferred and assigned from the vendor of a motor vehicle to the vendee so far as the policy of insurance or certificate of insurance pertains to the requirements of Section 95 of the Act."

C. In Section 108 of the said Act relating to Co-operative Insurance, in Sub-Section (1), Clause (b) shall be substituted as under:-

"(b) the society shall comply with the provisions of Clause (j) of Sub-Section (1) and with Sub-Section (1A), (1B), (1C) and (10) of Section 7 of the Insurance Act, 1938, (IV of 1938)."

D. In Section 125 of the said Act the words "with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both", shall be substituted by the following words, namely:-

"with rigorous imprisonment for three years and with a fine of not less than five thousand rupees."

IV- CRIMINAL PROCEDURE CODE, 1898

After Section 516A, a new Section 516B shall be added, namely:-

516B. In case of a fatal accident the vehicle involved shall not be handed over to the owner, unless he produces a valid original insurance certificate and policy in respect of the third party's risk to the satisfaction of the Magistrate concerned.

All the original documents like insurance certificate, registration book etc., in respect of the vehicle shall be forwarded by the Police Officer concerned alongwith the report under Section 173 of the Code, to the Court concerned for being kept on the record of that Court, after giving attested photostat copies thereof to the owner."

MOTOR VEHICLES (AMENDMENTS) ORDINANCE, 1981
(of 1981)

THE FIRST SCHEDULE

Scale of compensation payable under the Fatal Accidents Act, 1855, and Motor Vehicles Act, 1939, on death or bodily injury in the event of an accident.

Death or Injury	Amount of Compensation
	Rs.
1. Death	50,000/-
2. Loss of right arm above or at the elbow....	15,000/-
3. Loss of left arm above or at the elbow...	12,000/-
4. Loss of right arm above the elbow.....	12,000/-
5. Loss of leg at or above the knee	15,000/-
6. Loss of left arm below the elbow	10,800/-
7. Loss of leg below the knee.	15,000/-
8. Loss of both legs.	30,000/-
9. Permanent Loss of hearing.	15,000/-
10. Loss of one eye.	18,000/-
11. Loss of both eyes	30,000/-
12. Loss of thumb.	9,600/-
13. Loss of all toes of one foot. ...	12,000/-
14. Loss of index finger.	12,000/-
15. Loss of great toe.	9,000/-

16.	Loss of any finger other than index finger.	9,000/-
17.	Permanent disfiguration of the face or head.	12,000/-
18.	Fracture or dislocation of a bone. ...	9,000/-
19.	Emasculation.	12,000/-
20.	Loss of one or more teeth.	3,000/-
21.	Any injury which endangers life or which causes the sufferer to be, during the space of twenty days, severe bodily pain, or renders him unable to follow his ordinary pursuits.	6,000/-
22.	Medical expenses for an injury not specified in this Schedule. Actual expenses certified by the Medical Officer.	

N.B.- Maximum compensation payable for more than one injury shall be limited to Rs.30,000/-

9. The Law Commission also recommends that a very early action may be taken in the matter by the Federal Government.