

## **A Critical Analysis of Road Transport Act, 2018: In light of *Tarek and Catherine Masud Case***

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### **When Criminal Liability becomes Civil Liability**

Though conceptual structure of tort law is disorganized and ramshackle<sup>1</sup>, there is still the space for remedy for criminal injury in the name of compensation. To adjudge the civil liability arising out of the case of causing death or injury to a person or property we often find the solution in compensation for the damage done. Compensation for the criminal injury is a method of making good a loss of replacing something of which a person has been deprived, though it is not as straightforward in criminal case as it is in civil suits. The word 'loss' needs to be interpreted in different way in case of criminal injury cases as well because in criminal case, 'loss' can't be measured or seen straightway. Compensation has two major purposes in the context of personal injury, death and accidental damages to property. Firstly it is designed to compensate for the income which has been lost in that sense in which it is no longer can be earned due to the accident and repair and replacing cost of the damaged or destroyed property. Secondly, it makes amends for disabilities, loss regarding pain, suffering of family members. To think about what can constitute as compensation even though it is not measurable in financial value, money can be, and is given as compensation.<sup>2</sup>

### **No Fault Principle and Application**

If there is no negligence or fault is found on the part of driver or rider of a vehicle, the victim is entitled to the compensation-that is the basic concept of No-fault principle. Justice Goddard in *Hunter v Wright [1938] 2 All ER 621 at 625* has said that the Late Justice Swift told if parliament permits the dangerous motor vehicle to operate in public way, it[parliament] has to allow the victims to get the compensation even when the negligence is not proved. The No Fault Principle is enshrined in section 111 of Motor Vehicles Ordinance Act, 1983 where it is stated that the victim of the motor accident or his heir shall be entitled to get the compensation from the insurer or in absence of valid insurance policy from the owner of the motor vehicle involved in the accident in respect of death, permanent disablement or any other injury. It is the underlying principle under fault principle that one has to pay the compensation as the penalty for the bad conduct. As the extent of tort law goes there is no such concept that the compensation should be paid in accordance with the proportionality to the tortfeasor's fault. The traditional justification of the concept of fault principle is if someone causes damage to another person, the former should compensate the latter one. The fault principle cannot be justified on practical grounds like convenience, efficiency, speed or cheapness of operation. Though the Motor Vehicles Ordinance enshrined this moral principle of tort law the Road Transport Act, 2018 remained silent about this principle. Thus, this act remained silent about this important underlying principle.

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<sup>1</sup> Cane P, *The Anatomy of Tort Law* (Oxford, 1997)

<sup>2</sup> Cane P and Goudkamp J, *Atiyah's Accidents, Compensation and the Law* (9th edn Cambridge University Press 2018)

### **Comparison between 1983 law and Road Transport Act, 2018**

Under the Motor Vehicles Ordinance, 1983 a Motor Accident Claims tribunal is constituted in which the District Judge will have the jurisdiction regarding the adjudication of claims of compensation in respect of accidents involving the death or bodily injury or damages to the any property or persons arising out of the motor vehicles under section 127 of the said act. Under the section 128 of the ordinance an application for the compensation can be filed by the victim who has suffered injury, any legal heirs of the deceased whose death has been resulted due to the accident within six months of the occurrence of the accident. After the receipt of the application for the compensation the claims tribunal shall give notice to the owner and insurer of the motor vehicle and hold an enquiry into the claim and will make an award of determining the just amount of compensation.<sup>3</sup>

Contrary to the provisions of Motor Vehicles Ordinance, 1983 after the government passed the Road Transport Act, 2018 the procedure regarding the claims of compensation in case of death or injury of a person arising out of a motor vehicle will be settled by the decision of Trustee Board from the fund of Financial Support Fund.<sup>4</sup> The injured person or where death is caused due to the accident, in that case the legal heir of the deceased is entitled to receive the compensation or the medical expenses from the Financial Support Fund as the amount set by the Trustee Board. The owner or institution of Motor vehicle will contribute to the Financial Support Fund yearly as the rate set by the authority.<sup>5</sup> In this act under section 61(4) No Civil Court shall have the jurisdiction to entertain any question relating to any claim for compensation or have the power to issue injunction in respect of any actions taken by the arbitrator. This is how the jurisdiction of court is ultimately ousted in adjudging the claims of compensation. In the new act, no Motor Accident Claims tribunal is constituted like the provisions of Motor Vehicle Ordinance. So the decision of computing the compensation in cases of death or injury involving in motor vehicle shall lie under the executive authority rather than judiciary. This would give rise to the question of putting such unfettered powers upon the executive authority in adjudging compensation. Often we see the leaders of transport owner and workers associations are elected as the leaders of ruling party, thus it can be inferred that they would not let the trustee board to take decision regarding setting compensation in a way which is inconvenient for the transport owner or workers. This mechanism might lead a serious biasness regarding the decision of Trustee Board.

### **Case Study of Compensation: The Tarek and Catherine Masud Case**

In Bangladesh, however law of tortuous liability has seen some developments in recent years from the Apex court of the country. After the long legal Battle *Bangladesh Beverage Industries Ltd. vs. Rowshan Akhter*<sup>6</sup> 1.7 Crore taka was awarded as compensation to the dependant of victims. In the M.V Nasreen Launch capsized case 17.1 crore taka was adjudged as compensation for the victims. In a recent case of Catherine Masud Case<sup>7</sup> High Court Division awarded 4.3 crore taka as compensation for the death of renowned film maker

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<sup>3</sup> Section 130, Motor Vehicles Ordinance, 1983

<sup>4</sup> Section 52, Road Transport Act, 2018

<sup>5</sup> Section 53, *ibid*

<sup>6</sup> 69 DLR 196 (AD), [2016]

<sup>7</sup> Transferred Misc. Case No.1 of 2016 (HCD) The claimants initially filed the case under section 128 of the MV Ordinance before the District Judge, acting as the Motor Accident Claims Tribunal, Manikganj (shortly, the Tribunal). It was accepted by the Tribunal and registered as Miscellaneous Case No. 01 of 2012 on 13.03.2016

Tareq Masud. Justice Zinat Ara reassured that neither Motor Vehicles Ordinance or Motor Vehicles Regulations do not contain specific guidelines in determining compensation, so principles laid down by Supreme Court needs to be followed in computing the compensation.

In the *Catherine Masud* case, to compute the compensation financial and non-financial losses were claimed and considered by the High Court Division. Loss of earnings from job (which were lost it could not be earned due to accident), post retirement earnings, medical expenses (if injured), damage to property, funeral expenses are amongst the financial loss that can be claimed and awarded by the court. Loss of love, care and affection suffered by the dependant are amongst the non-financial loss category. In computing the compensation claim of the Catherine Masud loss of income of the amount of 2,40,00,000 taka was claimed but it was rejected by stating that 'it was not justifiable, simply because the death of Tareq has not resulted in the loss of income of the claimants, rather their security on account of their dependence on Tareq's income has been lost'.<sup>8</sup> The case also reiterated the principle followed in Bangladesh Beverage case and the criterion applied was the potential income of the deceased victim, as salaried person up to his retirement. Amongst other financial loss, the claim of future advancement was rejected by stating that it being a remote cause and is merged with the compensation on account of dependency.

In regard to the non-financial loss i.e loss of love and affection court held that it is a sensitive item for compensation and there was no strict and concrete principle for qualifying love and affection in terms of money. So whatever compensation can be awarded under this head would be consolation in nature.

From the overview of case laws of tortuous claims in the higher court of our country it can be perceived that the practice of claiming compensation in context of accident has begun and court has been responding to it as well. Since there are no guideline regarding the law of compensation, courts require to follow the principle laid down by the higher court in computing the compensation claim.

### **Concluding Remarks**

It is understood from the above discussion that Bangladesh is recognizing the right to compensation to the victims of Road Accident through newly passed Road Transport Act and with the instances from Supreme Court. But it is high time to enact a central piece of legislation regarding compensation laws to provide uniform guidelines in computing the compensation to the victims. For the victims of Road Accidents, the loss can't be measured, or nothing could work as consolation but for the existing legal framework and as the way the tort law is evolving, a central piece of legislation regarding compensation is much needed.

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<sup>8</sup> Catherine Masud Case, Transferred Misc. Case No.1 of 2016 (HCD), Page 88