

Compensation for road crashes – is it sufficient?

Abstract

Road traffic crashes are one of the major causes of death, injuries and disabilities all over the world. Its after effects are very severe in developing countries like India. It not only adversely affects the national economy but also worsens the social status. All road crash cases in India are tried at the Motor Accident Claims Tribunal (MACT), constituted under the Motor Vehicle Act, 1988. This report examines the sufficiency of the amount of compensation awarded to the victims of road traffic crashes by the MACT, based on an analytical study conducted among the victims. It takes a long time after the crash incidence to finalize the verdict and award the compensation. This is because nobody seems to understand the plight of the persons injured or the plight of the family whose member has died in a crash. In all verdicts, the final compensation awarded comes only to about 50% of the actual expenditure/claim of the victim or his family. This is mainly because of insufficient proof of income/job or because concerned doctors were not available to record their statements. Many low income families in India get economically paralyzed in the process of treating the road traffic crash victims and this affects the future education and career opportunities of the other family members. This scenario necessitates immediate revisions/updates of the rules and procedure to make the crash settlement process simple, time-bound and least expensive or use any other method of valuing the cost of crashes. Willingness to Pay (WTP) method has been proven to be a valid tool for the valuation of costs of road traffic crashes in developed countries. So it is high time we should think of such innovative methods to evaluate traffic crashes.

Keywords: MACT, road traffic crashes, compensation

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Abbreviations: WTP, willingness to pay; MACT, motor accident claims tribunal; RTC, road traffic crashes; PDO, property damage only crashes

Introduction

Rapid urbanization and tremendous increase in the number of vehicles show the implication of economic advancement in a society, but at the same time it carries high risk to humans and resources. Road Traffic Crashes (RTC) is a major cost in all communities and the number of road traffic casualties increase day by day. Road traffic crashes which involve fatalities, loss of life and properties, in turn affect the economic resources. Crashes not only cause death and injuries to people but also have other social and economic costs including grief, hardship, property damage and administration costs, enormous death toll, high hospital costs and large number of non-hospitalized injured persons. The World Health Organization (WHO) has identified that more than half of the people who die in traffic crashes are between the ages of 15 to 44 years.¹ Unfortunately this is the most productive and economically active age group in the society and hence leads to drain of the economy. As road crashes mainly affect the young section of the society, it also has much severe impact in terms of the life years lost. Most of the victims of the road traffic casualties are poor people walking on the road or riding on bicycles/scooters. It is a catastrophic situation when the main bread winner of a family turns to be a victim of a road crash. Significant costs are associated with the lost productivity experienced by an individual and others when the victim dies prematurely or experiences a short or long-term disability. There is immediate economic hardship to the victim's dependents in the loss of the victim's income and other contributions; society also suffers by the necessity to support the victim or their dependents and through foregone contributions to the nation's productivity. Evaluation of traffic crash cost is a big challenge especially valuing the components such as loss of life, quality of life etc. Methods being used and costs

calculated have invited a great deal of debate worldwide, in particular, putting monetary values on pain and suffering. The sums awarded by the Courts/Tribunals to the surviving dependants of those killed or injured as a result of traffic crashes can be regarded as an indication of the cost that society associates with the road crash or the value that it would have placed on its prevention. Compensation is estimated, considering the value of productive output of people over the remaining lifetime. It is fixed on the basis of some formula that takes into account the age of the victim, his income status and position. In the case of a fatality, the main parameter is loss of future earnings of the victim. In incidents where a road crash leaves the victim with a disability, compensation is calculated on the basis of either permanent total disability or permanent partial disability.

In all verdicts, it is observed that the final compensation awarded comes only to about 50% of actual expenditure/claim of the victim or his family. This is mainly because of insufficient proof of income/job or unavailability of concerned doctors to record their statements. Many low income families in India get economically shattered in the process of treating the road traffic crash victims and this affects the future education and career opportunities of family members. This article discusses the deficiency of the Court compensation to the road crash victims and the need of updating the rules and procedures followed in valuing the compensation awarded by the Court.

Discussion

Road crashes are classified based on the severity of the injury as fatal, major and minor.² A Fatal RTC is the one in which one or more persons are killed as a result of the crash within 30 days. A Major RTC will not be including any death, but one or more persons are seriously injured. RTC in which there are no deaths or serious injuries, but at least one slightly injured person is called a Minor RTC. If there is no personal injury, but just damage to vehicle/property, the crash falls under Property Damage Only (PDO) crashes. The usual

practice is that, only crashes involving fatality and serious injury were brought before the MACT for trial. Total costing of crash were done through costing of different injury components according to the latest standards given by the Honorable Supreme Court of India in order to maintain uniformity and consistency in assigning monetary value for each of the road traffic crash case³ and.⁴ Value to each component is assigned by the court, based on the proof submitted for each. If the victim fails to submit solid evidence/documents as proof, a nominal value for each component is decided by the court.

Computation of cost of different components

Major components considered for the costing are extra nourishment, loss of consortium, loss of estate, expenses for treatment, pain and sufferings and loss of dependency. Cost for extra nourishment is the expenditure incurred for food and nutrients for the victim during and after the treatment. Loss of consortium is a claim for damages suffered by the spouse or family members of the crash victim. This amount is decided based on the employment of the spouse and number of old aged dependents. Loss of estate indicates loss in victim's assets. This may include partnerships in some organizations, entitlements to property etc. Treatment expenses and the bystander expenses are decided based on the nature of the injury and the documents submitted by the victims. This includes the medical bills and all other expenses in the hospital for the particular crash case. Assessment of pain suffering involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant.

Loss of dependency is the loss to the family due to loss output of the person. It is the most contributing cost component for a fatality case. The compensation for loss of dependency in death cases is computed by the multiplier method prescribed by the Honorable Supreme Court considering several imponderables in life and economic factors. Factors considered for ascertaining the value of loss of dependency are age, annual income and number of dependents of the victim. Provisions are also provided for future increase of income or future prospects of the victim. After the income of the victim is established, deduction is made towards the personal expenses of the victim, which he would have spent on himself by way of personal and living expenses. If the victim is unmarried, normally 50% of the income is deducted towards his personal expenses and if married and leaves behind two or more dependents, the deduction is made based on some pre-described standard values. The remaining amount of income after deduction is taken to be the loss of dependency of the family members. If the income proof is not submitted, Court fixes a minimum notional income of Rs 15,000 per annum. Annual loss of dependency of the dependants of the victim is then multiplied by the multiplier according to the age of the victim and period of active career. This does not indicate the number of years he would have lived or worked if he had not met with the crash.

It is observed that the compensation awarded by the Court is very less (about 50%) compared to the amount claimed by the victims in the Court. The variation in the average cost is mainly due to the following reasons:

1. Most of the victims could not support their income claims with valid documents. In such cases Court fixed a notional monthly income in the range Rs. 2000 – Rs. 5000 which is very less compared to the actual income of the victims. This affects in fixing values to the components like the loss of earnings,

permanent disability and loss of future earning power. Treatment expenses and bystander expenses were also calculated based on the documents produced by the victims.

2. Monetary value of components like pain and suffering, loss of consortium, loss of estate were fixed by the judiciary without any standard methodology. In the case of the component pain and suffering, the Court considered only the victims value instead of taking into consideration the pain and suffering of the family and the victim together.
3. In the case of components like transport to hospital, damage to clothing, extra nourishment, etc. the average compensation values range from Rs. 1000 to Rs. 2000 only. But this is not the real situation as seen while analyzing the amount claimed by the victims.

There is no foolproof method for finding actual cost of a road traffic crash. Court award also consists of uncertainties in assigning monetary value for road crash as it varies according to the income, age and personal losses to the victims. Also, many jurisdictions have injury claim limitations and various types of no-fault insurance systems effectively limit crash claim payments below what the legal system would otherwise deem fair compensation, in order to make vehicle insurance more affordable. Another problem in obtaining a reliable estimate is the high levels of under reporting of crashes and the variability of reporting levels by the authorities.

Willingness to pay for road safety improvements

The method of court awarding has significant limitations as explained earlier because it only aimed to estimate the damages (dead or injured) mainly in terms of loss of production. The value of the damage and the suffering resulting from the injury or the loss of a human life was completely hidden. Considering this an approach developed on individual preferences and perceptions; the method of the willingness to pay (WTP). The WTP is defined as the maximum amount of money a person is willing to pay to reduce his risk of premature death or personal injury due to road traffic.

For evaluating the acceptance of any road safety improvement scheme, public attitude towards safety and their willingness to pay (WTP) to reduce their involvement as a victim has to be taken into account. In other words, in order to monetize the preferences for crash reduction it should be valued by what a person would pay for it or it should be expressed as the aggregate of individuals' willingness to pay for the safety improvements. Studies show that, pain, suffering and lost quality of life for fatalities are best valued using WTP approach.⁵⁻⁸ In WTP method the monetary values of road traffic crashes were derived by means of Revealed Preference (RP) and Stated Preference (SP) studies. This approach determines the value of pain and suffering by studying what people really pay (RP method) or what they are ready to pay (SP method) for a change in their chance of being involved in a road traffic crash. WTP method has been proven to be a valid tool for the valuation of costs of road traffic crashes in developed countries. Studies show that pain, suffering and lost quality of life can be valued perfectly through WTP approach.^{9,10}

Conclusion

It is clear that the significance of road crash costs has been consistently underestimated, especially in the case of awarding

compensation. The compensation calculated in Court awards are much lower than the compensation claimed by the victims or their dependants. Valuing risk to life is a key issue and compensation for loss of limbs or life can hardly be weighed on golden scales. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of crash, it involves some guess work, some hypothetical consideration and some amount of sympathy linked with the nature of the disability caused. At the same time, insurance companies wait for a case to be filed before MACT and even on receipt of summons, no steps are taken to resolve the case and the trial goes on for years. Once a case gets into Court, litigants face difficulty in ensuring that the doctors who examined the victims are available at the Court to give their testimony. A disability compensation claim will come through if and only if the concerned doctor is available in the Court to record his statement. Coordination of this task is a big challenge. Further, improper collection and recording of the evidence of crashes by the police is another issue. Also witnesses are usually reluctant to come forward and give evidence and are not aware of the lengthy legal procedures. Lack of awareness and proper presentation too sets back compensation cases. Even though more than one lakh people die in road crashes every year, very few cases were reported for claims in MACT. Majority of the cases were reported as hit and run as the particulars of the offending vehicles were not traceable. A large number of vehicles are uninsured and the victims do not get any compensation in those cases. Even in the case of insured vehicles, the insurance companies do not have any attitude to process and settle the claim and they wait for the award of the Tribunal. They vehemently fight against all cases. Most of the victims of the road crash are sole bread winners from the poorest strata of the society and their families starve after the death of the victim. Rules and procedures have to be updated so as to ensure due process of law for expeditious payment of compensation in the event of injury or death of the road user and thus to ensure the fundamental right to life and liberty of the victims/dependents and their safety on the roads.

On the other side, several studies calculate the WTP against road traffic crashes in developed countries. Differences with respect to time–monetary and personal constraints and other socio–economic factors are prominent between developed countries and developing countries. Only very few studies were done in India to estimate the cost of road crashes and most of them were underestimated because of improper/inadequate data recording and difficulty in obtaining the essential data to calculate crash cost. Many families in India get financially destabilized once their main earning member meets

with a serious road crash injury or a fatality. Future education, career opportunities and even survival of several families have been seriously affected by road crashes. These factors can be included in the costing process only through WTP approach as done in developed countries. So, attempts have to be initiated to investigate the WTP values against road traffic crash in the context of a developing country, like India.

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Conflict of interest

The author declares there is no conflict of interest.

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