

A STUDY ON “HIT AND RUN” CLAIM PROCESSES AND AWARDS IN INDIA WITH SPECIAL REFERENCE TO THE STATE OF MIZORAM BY

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ABSTRACT

Vehicle has become one of the primary basic needs of everyone. The automobiles have transformed man with independence and freedom. It enables man to cover within a city and outside too at ease. It has become more vital to cover various places such as shopping centres, workplace and back home, hospitals, schools, colleges etc. Our Indian Government has passed The Motor Vehicles Act in 1988 that covers all road transport vehicles. It covers all traffic rules, procedure for vehicle insurance, registration, role of controlling authority, penalty rules etc. These penalties have been increased as per the Motor Vehicles (Amendment) Act, 2019. These increased penalties are for violation of traffic rules, safeguard to proper road-users, standards for motor vehicles and institution of The Central Consumer Protection Council (CCPA) as well as making liability of the vehicle owners for violation done by minors. The Motor Vehicle Act recognized three types of claims in the incident of motor accident through which one can go for the compensation claim like Hit & Run, Structural Formula basis and Liability based on fault. Hit & Run case is a situation when the accused hits the victim with his vehicle and runs away from the spot of the accident. The act also increased the amount of compensation amount in case of death in Hit & Run cases to Rs.2,00,000/- from Rs.25,000/- and in case of serious injuries the amount increased to Rs.50,000/- from Rs.12,500/- (Section 161). It is no doubt true that the incident of Hit and Run takes place in the state of Mizoram but the Solatium Scheme for compensation of the victim was never implemented in Mizoram, which is to be implemented by the Government of Mizoram. Furthermore, the State Crime Record Bureau does not maintain a separate record to identify the cases of Hit & Run under the Motor Vehicle Act-1988. It is clear that there has been a violation of right towards the victim in case of Hit and Run in Mizoram. So, it is an immediate need of the state to implement the scheme to compensate the victim to enable them to access justice without delay as justice denial oppresses the victim.

Keywords: Hit and Run, Solatium Scheme, Motor Vehicle Act, Compensation.

Introduction

Today, man is living in a world of technology; the daily life of man is dominated by technology everywhere from home, office, school etc. The current condition of the world witnesses numerous innovative technologies unlike any other time. Most of the new inventions aim to make changes in everyday life to assure a better and easier lifestyle in one way or the other. Out of the many innovative inventions, vehicles became one of the most useful utilities that influenced the generation deep enough to change the lifestyle and today every movement has been done by automobiles. It is no doubt true that it has affected the economic, culture and social aspect of everyday living. In a technology driven era, transportation has become an easier method of movement and vehicles have become one of the largest businesses in the country along with the vehicle insurance business. A life without a car is unthinkable; it will affect the life of many people and will thus create a completely different world. The importance of vehicles cannot be ignored, at the same time a systematic regulation should be developed to regulate them so as to prevent a disaster that can be created by vehicles. Fatal Accident Act was enacted in the year 1885 during the colonial period. From time to time the new act was enacted to ensure the safety of travelers. Subsequently, British India made an act called The Indian Motor Vehicles Act 1914, 1939 and 1988. As per this act, Learner's License for obtaining Driver License was introduced and the mandatory use of "L" sign while driving by a person, who possessed only a Learner's License. The Act laid down certain rules and regulations for traffic control, vehicle permit, motor insurance and penalties. This act was applied in the country for 21 years with a number of amendments and currently The Motor Vehicles (Amendment) Act 2019.

Literature Review

Government has made Motor Vehicles (Amendment) Act, 2019 just to prevent motor accidents and in case any accident takes place provision has been made to provide adequate compensation to the injured and to punish the

guilty. In case of death, the legal representative of the deceased will get compensation as per the act. Tribunal decides such compensation claims based to equity and fairness. In fact the mental agony, loss of parts of the body cannot be measured on monetary basis. The compensation should be adequate and based on principles of fairness, equality and reasonability (Chaturvedi, 2014).

Indian apex court has insisted on registration of First Accident Report to be prepared by police as soon as an accident takes place (Kannan, Vijayaraghavan, 2019). Government has given very less power to review the judgment. Hence, there is restriction for appeal or for re-writing a judgment. However, the act allows the right to review within the limit of principles laid down in the aforesaid authorities - National Insurance Co. Ltd. V. Jumrati case (Rath, 2020).

Compensation is also paid to the victims, where the identity of the vehicles is not traceable. Such types of cases come under hit and run cases, wherein we cannot understand the details of the driver or owner of vehicles. However in such cases the law provides some fixed compensation to the victims from a fund called Solatium Fund, which is created by the Government (Jai, 2016)

In law it is the duty of prosecution to prove the guilt such as gross negligence of the accused. This responsibility cannot be carried forward to somebody else; and many times 'res ipsa loquitur' i.e. mere occurrence of some types of accident is sufficient to imply negligence (Kathurai, 2000). Compensation cannot be determined arbitrarily, and there must be a reasonable link between the loss and the compensation to be paid. When carrying out the estimation, the deceased's living costs should be considered while calculating the amount of compensation. Compensation must be reasonable and fair; it should neither be a windfall nor should be too little (Jan, 2022),

The damage can be monetary and non-monetary. However, the damage has to be finally assessed in monetary form only, in order that claimant gets adequate compensation. While deciding the compensation, the mindset of the concerned authorities should not be in conservative manner; nor should be assessed in liberal way. In short there should be uniformity and consistency (Bhatnagar, 2001).

If a driver is negligent of his duties, he will be guilty of negligence and will get punishment under civil law as well as criminal law. Enhancing the penalties provided under the existing legislations is necessary to curb these socio-economic offenses (Gaur, 2016).

In our research work, we have studied different factors which might affect the recurrence of hit-and-run case in respect of six unacceptable behaviours. (Zhoua, Roshandehb, Zhanga, and Ma, 2016).

Method of Data Collection

In this paper, data is collected by primary methods and secondary methods.

Primary Data:

This includes data from the Government Offices through RTI and questionnaire.

Secondary Data:

The secondary data includes Government publications, websites, books, journals, articles etc.

Objectives:

The objectives of the study is as under:-

1. To understand the implementation of Motor Vehicle Act in the State of Mizoram with special reference to the situation of hit and run vehicle accidents covering mostly during the period of 2015 to 2020.
2. It also attempts to analyze the role of the Government authorities in combating vehicle accident risk at various levels.
3. This study is to explore the implementation the Solatium Scheme-1989 in Mizoram and the step taken by the authorities for the implementation of Victims of Hit and Run Motor Accident Scheme-2022.

Role of Ministry of Road, transport and Railway in reducing vehicle accident risk in India:

It is a fact that vehicle accidents occur every day in India, it is one of the common incidents in our day to day life, at the same time the Government has implemented a number of rules and regulations for the prevention of road accidents and improvement of safety measures; like Automotive Industry Standard (AIS) as mentioned in the Central Motor Vehicles (5th Amendment) Rules, 2021. As per the rules, all the manufacturers of automobiles have to fulfill the AIS and go through a Testing Agencies form demanded by the act. As far as two

wheeler motor vehicles are concerned, Bureau of Indian Standards (BIS) has been made compulsory. So, also from April 1, 2015, anti-lock braking system has been made compulsory for Commercial Vehicles. While addressing Intel India's Safety Pioneers Conference 2022 on June 27, 2022, Union minister Nitin Gadkari declared that the government will make rule for the manufacturers of cars to create provisions for incorporating six airbags for eight passengers for enhanced safety of occupants (<https://economictimes.indiatimes.com>). He also declared that a notification in draft form has been issued on January 14, 2022 in that respect providing safety bags for 8 seater vehicles, manufactured after October 1, 2022. Still, in India even every precaution is taken by the Government, but accidents happen every minute in the country. Preventive measures do not stop vehicles from accidents but reduces as shown in the table below.

Road Category	2019		2020		% Change in 2020 Category of Road over 2019	
	Accidents	Killed	Accidents	Killed		Killed
National Highways	1,37,191	53,872	1,16,496	47,984	-15.1	-10.9
State Highways	1,08,976	38,472	90,755	33,148	-16.7	-13.8
Other Roads	2,02,835	58,769	1,58,887	50,582	-21.7	-13.9
All India	4,49,002	1,51,113	3,66,138	1,31,714	-18.5	-12.8

Table No.01, Comparison for the years 2019 and 2020 (www.morth.nic.in).

Year	Total road accidents	Total persons killed	Total persons injured	Fatal accident	Grievous/ non injury	Minor/ accident
2015	5,01,423	1,46,133	5,00,279	1,31,726	3,69,696	
2016	4,80,652	1,50,785	4,94,624	1,36,071	3,44,581	
2017	4,64,910	1,47,913	4,70,975	1,34,796	3,30,114	
2018	4,67,044	1,51,417	4,69,418	1,37,726	3,29,318	
2019	4,49,002	1,51,113	4,51,361	1,37,689	3,11,313	
2020	3,66,138	1,31,714	3,48,279	1,20,806	2,45,332	

Table No.02, Comparison of vehicle accident during 2015 to 2020 as per NCRB

Deaths due to road accidents take place in spite of various efforts of Governments from time to time. India account for 11% of the accident related deaths world over (www.morth.nic.in). Cases of hit and run increases to an alarming extent. During 2019, 4,49,002 road accidents took place in India, killing 1,51,113 people and injuring 4,51,361 persons (www.morth.nic.in), during the year 2021, the hit and run cases reported was 69621 occupying 15.5 % of the total road accident in India and 29,354 lives were lost, due to the said case and represent 19.4 % of the total death of the victim in road accidents. It is a fact that the case of hit and run cannot be ignored and the percentage occupied by hit and run increases every year as shown in the table-3, the victims are mostly the poor pedestrians. It is important to note that the definition of "Hit and Run" in the Indian Penal Code and the Motor vehicle act is different with different objectives. The table shown below can be considered as the combination of "Hit and Run" a case under both the said Act; but it is believed that most of the cases are related to the offender being traceable that falls under crime in Indian Penal Code. In the case of Motor Vehicle Act, the offenders are not traceable so the compensation is paid as per the Solatium Scheme.

Year	No. of hit and Run	% of Hit and run case from the total vehicle accident	Death cases due to hit and run	% of death due to hit and run from the total death from vehicle accident
2015	57,083	11.4 %	20,709	14.2 %
2016	55,942	11.6%	22,962	15.2%
2017	65186	14.0 %	25,866	17.5%
2018	69822	14.9%	28,619	18.9%
2019	69,621	15.5 %	29,354	19.4 %
2020	52,448	14.3 %	23,159	17.6%

Table No.03, Indian Hit and Run cases according to Road Transport Ministry and Highway

Year	Fatal	Grievous Injury	Minor Injury	Non Injury	Total	Death
2014	22	15			37	22
2015	8	5			13	8
2016	5	1			6	5
2017	9	2			11	9
2018	9	2			11	9
2019	14	1	1	2	18	14
2020	6	4		1	11	9

Table No.04, Detail of hit and run case as per the State Crime Record Bureau, Mizoram dated 25/01/22 (through RTI)

It is important to note that, the data of Mizoram confined on hit and run, it does not classify the hit and run under Indian Penal Code and Motor Vehicle Act definition. As per the RTI answer received from Deputy Commissioner's Office on 24th November, 2021, the compensation of victims for hit and run under the Motor Vehicle Act called the Solatium Scheme was never implemented in Mizoram. Though there is no classification of hit and run under the above law, there exists a strong belief that in a certain amount of the incident, there is a chance that the offenders are not traceable. If the Solatium Scheme of 1989 is never implemented by the Government of Mizoram, victims' rights to compensation are being denied by the Government. Even before the implementation of the Solatium Scheme-1989, the Government of India has declared the Compensation to Victims of Hit and Run Motor Accident Scheme-2022 in the Government gazette to be effective from 1st April, 2022

The provision for payment of compensation (Solatium) from Motor Vehicle Accident Fund is mentioned under section 164B of the Act as under:

- 1) Rs.25,000/- has been fixed in case a person dies in hit and run motor accident.
- 2) Rs.12,500/- has been fixed in case of grievous hurt in hit and run motor accident.

As per the new amendment act 2019 with the recommendation of Road Safety Committee, headed by former Supreme court judge Justice K S Radhakrishnan April 22, 2014 (<https://timesofindia.indiatimes.com/india/compensation-for-hit-and-run-death-be-increased-from-rs-25000-to-rs-2-lakh-sc/articleshow/68188640.cms>) implemented from 1st September, 2019, the Solatium for death is enhanced to Rs. 2 lakhs and for injury Rs. 50,000/- respectively. This Solatium will be more effectual and reasonable as compare to the previous act of 1988. The common issue faced in such cases is that there is no direct evidence. Hence, investigation is difficult for police investigation team. Many times, since the vehicles are in high speed and due to heavy traffic, eye-witnesses are unable to understand and explain to the investigation team the exact details of accident. Due to insufficient evidences and witnesses, the actual culprits escape in such cases. In spite of these obstacles, there are many cases wherein the culprits got punished.

Hit and Run Claim Procedure

Filing an FIR is one of the foremost important duties of the victims and the family or if there is any eye witness, the second important thing is to gather evidence as far as possible. The victim or his legal representative will have to prepare an application in form 1 and 2 to the Claim Enquiry Officer, who is responsible to submit a report alongwith post mortem certificate or injury certificate to the Claims Settlement Commissioner, alongwith an undertaking in form 5. He will decide claims and sanction the payment in 15 days. In Hit and Run case, the victim must apply in six months from accident date.

Solatium Fund is utilized for provide compensation under Hit and Run Accident cases. Divisional Manager under New India Assurance Co Ltd. is administering the claims. In order to initiate proper and successful claims, it is essential that the negligence of the driver is proved and the statement of the witnesses are incorporated. The second step is Police Report regarding non-traceability of the vehicle after investigations.

Motor Vehicle Accident Fund

This fund is created as per section 164B of the Motor vehicle act, 2019, for providing compulsory insurance cover to all road users in India and for the following:-

1. Treatment of the persons injured in road accidents under section 162;
2. Compensation to representatives of a person under section 161;
3. Compensation to a person grievously hurt under section 161; and
4. Compensation to such persons as may be prescribed.

Findings

- 1) On 11th November, 2021, Champhai Judicial District was created in Mizoram, comprising the area covered by the existing administrative districts of Champhai and Khawzawl. With the creation of this new district, the scope for establishment of Motor Accident Claim Tribunal is open in the said judicial district. There is no record of Hit and Run separately for Motor vehicle Act and Indian Penal Code by the Police, so the exact amount of the same cannot be identified accurately.
- 2) From the research, it is clear that the Government plays an active role in combating accidents and adopts certain measures for road safety. Several schemes and projects are introduced by the Government to improve the conditions of roads in India and National Road Safety Policy is implemented in India. The Road Safety Engineering Cell is one of the major contributors for the up gradation of the road throughout the country. The Good Samaritan Law introduced by the Government through the Motor Vehicle (Amendment) Act- 2019 is believed to be a life saving mechanism in case of road accidents.
- 3) There is a failure to implement the Solatium Scheme of 1989/ Hit and Run Motor Accident Scheme-2022 in the state of Mizoram, there is a denial of compensation to the victim party that results in the violation of Article 21 of the Indian Constitution that directly hits the right to live with dignity. So, Hit and Run Motor Accident Scheme-2022 should be made mandatory for every state to do justice.

Suggestions:

- 1) In India majority of accidents happen due to over speeding. It is suggested to use speed detection devices like Rader (Radio Detection and Ranging) by every Indian states to control over speeding. In case of violation of the speed limit, the driver should be fined from Rs. 1000 to 2000 based on vehicle type. Implementation of this rule can definitely reduce the road accidents in India to a great extent.
- 2) Government should encourage increased activity in road safety research programmes by identifying priority areas and allocate sufficient fund for research.
- 3) Driver awareness training programmes should be conducted effectively in all the Indian States.
- 4) With the failure to implement the Solatium Scheme of 1989/ Hit and Run Motor Accident Scheme-2022, there is a denial of compensation to the victim party that results in the violation of Article 21 of the Indian Constitution that directly hits the right to live with dignity . So, Hit and Run Motor Accident Scheme-2022 should be made mandatory for every state to do justice.

Conclusion:

Hit and run cases took place in many parts of the country and have been a common incident in India. Some cases involve the high profile citizen, like the Mercedes hit and run case in the year 2016, Salman Khan the famous bollywood film star case in 2002 popularly known as the BMW case, Reliance lawyer hit and run case 2012 and so on. In the above case, even-though it is considered Hit and Run the police team could trace the offenders and are liable under the Indian Penal code 1860 unlike the condition of Section 161 of the Motor Vehicle Act, where hit-and-run case is an accident while using motor vehicles wherein the identity of the culprit cannot be ascertained. So, since there is no distinction between "Hit & Run " under India Penal Code and the Motor Vehicle Act-1988, the exact and accurate number of "Hit & Run" cannot be mentioned, even in the state of Mizoram. In India the common cause for hit-and-run cases is rash driving, drink and drive, negligent driving, intoxication of driver etc. When it comes to reparation, the compensation amount given to victims under the Solatium scheme is very low in comparison to the value of one's life. However, the parliament increased the same from Rs. 25,000/- to Rs. 2,00,000/-(two lakh) by the Motor Vehicle act 2019 and Rs 50,000/- in case of injury. Hit and Run incidents can be avoided by proper application of the Road Safety rules in the state including CCTV surveillance in Highway and outskirts cities or towns where people hangout often. In many cases, stricter traffic rules may result in the reduction of the case and monitoring of the road in the city may reduce the risk of "Hit and Run".

The general people of Mizoram are not aware of claiming compensation in "Hit and Run" cases as many of them lack the knowledge of the Solatium Scheme apart from being unimplemented by the Government. Now, the Government of India has declared a new scheme "Victims of Hit and Run Motor Accident Scheme-2022" in the Government gazette to be effective from 1st April, 2022. If the scheme is implemented accordingly in every state, victims of Hit & Run will receive just compensation. Justice Gopal Krishn Vyas stated that the Indian law is beautiful but the problems arise due to lack of implementation. (<https://timesofindia.indiatimes.com/city/jaipur/non-implementation-of-laws-properly-leads-to-problems/articleshow/12488053.cms>). It is the duty of every state Government to implement the law to enable every person to enjoy the fruits. The Solatium Scheme-1989 & Victims of Hit and Run Motor Accident Scheme-2022 can be considered as a good piece of legislation but if it fails to be utilized it would be pointless. The non-implementation results in the violation of the right to compensation of the victim. When the rights are violated by the state, the right to live a dignified life is also affected. The real issue is that, even though there are a number of Hit & Run cases in the state, the non-

implementation was never questioned at any stage. The scheme should mandate against the Government the right to compensation under the Victims of Hit and Run Motor Accident Scheme so as the state would make appropriate steps to implement the same.

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