

# A Study On Railway Accidental Claims In India

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## Abstract

Present study was conducted to study the causes, impacts and management of disasters in Indian Railway. In order to fulfill the objectives of the study, the secondary data with respect to number of railway accidents, financial losses, deaths, injuries, the causes of railway accidents etc. for last 8 years (2003-2011) was obtained, compiled and statistically analyzed. The disaster management system in Indian Railway was studied with respect to railway disasters. The Ministry of Railways (MoR) has the disaster management plan for management of the Railway Disaster at national, zonal and divisional level which provides the framework for prevention, mitigation, preparedness, rescue, relief and rehabilitation through risk identification, hazard mapping, preventive and anti-sabotage security system, crowd management plans, 'Golden Hour' response, hospital disaster plan, training, technology up gradation, periodic mock drills etc. The results revealed that there are four major categories of accidents viz. derailment, level crossing accidents, collisions and fire in trains which are caused by three major factors viz. human error, equipment failure, and sabotage. Out of total accidents occurred in Indian Railway derailments, level crossing accidents, collisions and fire accidents were 58%, 32%, 5% and 3%, respectively. 85% accidents were caused due to human error, whereas failure of equipments and sabotage contributed to 5% and 4% accidents, respectively. During 2003-2011, 2297 people lost their life in railway accidents and 6088 people got injured affecting total 8385 people in the country. Indian Railway faced a total loss of Rs. 86486 Cr. due to accidents.

**Key words:** Railway Accidental, Act, Claims.

## INTRODUCTION

Railway accidents, which lead to serious injuries including death or maiming of innocent and ignorant human beings have become a matter of grave concern. Due to an alarming development of road transport alien which includes various types of motor vehicles that is buses, trucks, three-wheelers, two-wheelers, a large number of accidents take place day in and day out. In most of the cases who are daily involved in the accidents caused by motor vehicles are mainly the pedestrians or the cyclists. Since the drivers and the owners of such erring vehicles are responsible for the accidents on the railways, the law requires them to give compensation to such victims of the motor vehicle accidents.

The tragedy is that most of such victims are unaware of their rights to get compensation from the owners, drivers of the motor vehicles who due to rash and negligent driving are legally duty-bound to pay compensation for the injuries inflicted on the innocent victims who in most of the cases belong to weaker sections of society. Over the years, many more amendments followed and in 1988, a new Motor Vehicles Act replaced the old one. This Act studies various new rights created by the Motor Vehicles Act, 1988 for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of a motor vehicle. The entire road traffic in India, the registration of all types of vehicles plying on the roads the regulation of the drivers the rules of the road regulations, road accidents, claims made by the victims of accidents and their wards etc are all depend upon a single piece of legislation known as the Motor Vehicles Act. Originally enacted in the year 1939 during the British rule in India, the Motor Vehicles Act has undergone a sea of changes between 1939 and 1988.

## OBJECTIVES OF THE STUDY

The main objectives of the present research work to analyse the existing system of awarding compensations to the victims of motor accidents. Further, an enquiry is also made to know whether the compensation so awarded to the victims is just, fair and reasonable or not. An attempt is also made to find out the factors, which are taken in to consideration by the courts to determine the quantum of compensation. An attempt is also made to study the factors, which are dangerous to "claims" of compensation under Motor Vehicle Act, 1988. Further, an enquiry is made to find out the trends of Lok Adalats in awarding compensation to the victims of Motor Accidents and to study whether the awards delivered by these courts are just, fair and reasonable or not. Extracts from important judgments of various High Courts and Supreme Court of India have been discussed at the appropriate place.

The results of the study may provide the criteria to evaluate the legislation and judicial philosophy in the matter of awarding compensation in Motor Accidents. It would also help in bridging the gap between judicial interpretation and

social perception in respect of matters of grant of compensation to the victims of Motor Accidents. The practical utility of the work lies in the fact that the policy making institutions may formulate their strategies and approach in view of the social perception on different issues concerning grant of compensation to the victims of Motor Accidents.

## STATEMENT OF THE PROBLEM

The Motor Vehicles Act, 1988, between sections 165 and 176 comprehensively provides for the establishment of claims tribunals by the state governments, the procedure for applying compensation by the victims, procedure and powers of the claim tribunals in making the awards, liability of the insurance companies, enabling the state government to make rules, awarding interest on the compensation amount, providing for appeals etc. The Motor Vehicles Act, 1988 has also done away with the provisions of limitation period of six months to file a claim application for a victim. Taking into account the difficulties of a victim or his legal heirs in procuring the documents pertaining to an accident, the limitation provision has been deleted, which is definitely a step forward in the right direction.

**TABLE 1.1 NO.OF ACCIDENT CASES IN 2019-2020**

South Zone	Year-2019	Year-2020
Total No. of Cases of railway accidents	188	132
Case in Day	121	89
Case in Night	92	72
Cases of fatal accidents	82	67
Cases of non fatal accidents	110	40
No. of Deaths	95	52
No. of Injured Persons	68	29
Cases in Which Two Wheelers were involved	60	40
Cases in which Pedestrians were involved	45	15

**Source:** Transport Research Wing.

Indian cities have the potential to set things right, yet walking and cycling are the endangered modes of transport. The biggest enemy is the disdain of the affluent. This is breeding hostile policies in cities. The immense mental trauma which a near relative undergoes when shocking, distressing news is received that the person has suddenly been killed and what follows thereafter even though during a short period of time, is pain and suffering of an immensely high gravity which certainly qualifies for award of Compensation. The main object of this Act is to provide a speedy remedy instead of a civil suit as is required under Fatal Accidents Act, 1855. It only changes the forum taking away the jurisdiction of the Civil Court.

**TABLE -2 NO.OF TRAIN ACCIDENTS**

Year	Collisions	Track Problems	Crossing accidents	Other Problems	Total Accidents
2015-16	9	80	70	6	165
2016-17	5	78	53	3	139
2017-18	9	55	61	6	131
2018-19	6	48	58	8	120
2019-20	4	52	51	10	117
	33	313	293	33	

**Source:** Transport Research Wing.

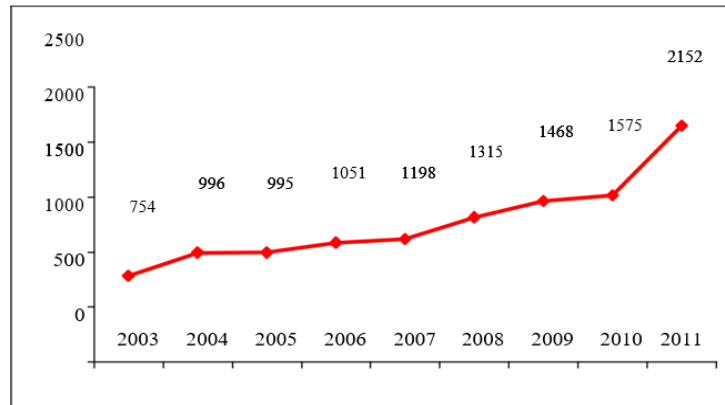
Here, we represented the number of train accidents and seeing the above values, we know that most of the accidents were occurred due to track problems, level crossing and etc. So by using these UV sensors we can avoid the collisions and level crossing accidents also. By using this system we can reduce the accidents and more number of lives can be saved.

## TOP 4 STATES OF INDIA FOR RAILWAY ACCIDENT DEATHS

India has among the highest number of railway accident casualties in the world. A government statistic says that a death occurs every four minutes on Indian railways and inadequate traffic management and so on and so forth. In the years 2001 to 2011, more than a million people died in rail accidents across India. Here are the top five states that have recorded the highest number of deaths due to rail accidents.

### 1. Uttar Pradesh:

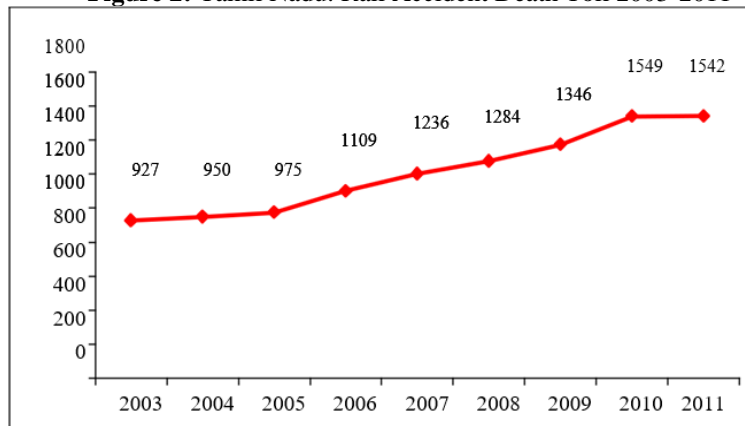
**Figure 1:** Uttar Pradesh: Railway Accident Death Toll 2003-2011



Source: data.gov.in

### 2. Tamil Nadu

**Figure 2:** Tamil Nadu: Rail Accident Death Toll 2003-2011

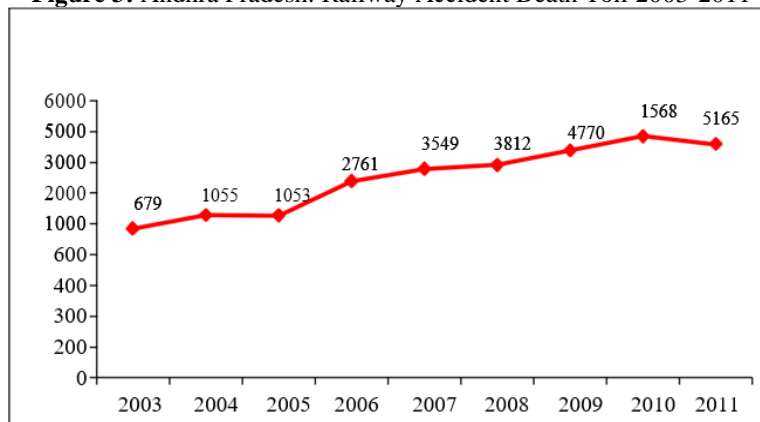


Source: data.gov.in

The number of deaths occurring on the railways of Tamil Nadu in the year 2003, was 927. From the period of 2003 to 2005 the death toll remained almost the same. Since 2006 however the death toll has been steadily on the rise topping off to 1549 deaths in the years 2010 and 2011.

### 3. Andhra Pradesh

**Figure 3:** Andhra Pradesh: Railway Accident Death Toll 2003-2011

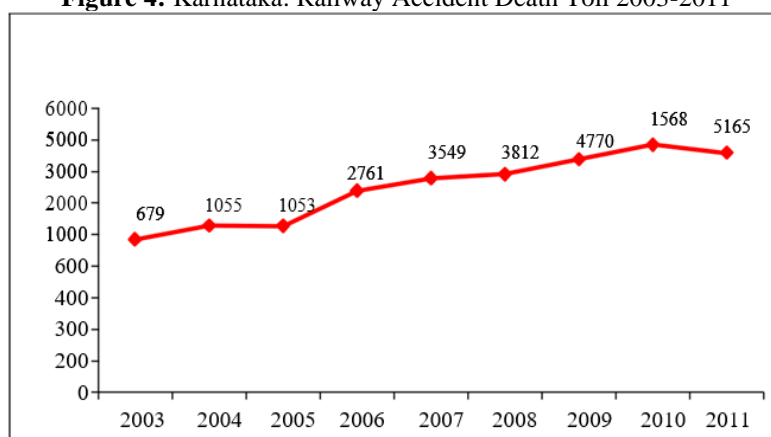


Source: data.gov.in

The death toll caused due to rail accidents in the state of Andhra Pradesh as at par with Tamil Nadu. In 2003 the state witnessed 679 deaths on its railways and the death toll has steadily risen since then. In the year 2011 however the number of deaths fell by a few hundred when compared to the number in 2010.

#### 4. Karnataka

**Figure 4:** Karnataka: Railway Accident Death Toll 2003-2011



Source: data.gov.in

The number of deaths due to road accidents in the state of Karnataka stood at 619 in the year 2003. Since then there has been a rise in the death toll, topping off at 9590 in the year 2010. In the year 2011, the number of deaths fell by over 500 when compared to 2010.

#### **MOTOR VEHICLES ACT, 1988**

The Motor Vehicles Act, 1988 which has been enacted to give expeditious, cheap and adequate compensation to the hapless and helpless victims of motor vehicle accidents. This Act studies various new rights created by the Motor Vehicles Act, 1988 for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of a motor vehicle. The Motor Vehicles Act can be hailed as welfare legislation since it deals with comprehensively about the road accidents involving motor vehicles and also enabling the victims to claim compensation. The Motor Vehicles Act, 1988, between sections 165 and 176 comprehensively provides for the establishment of claims tribunals by the state governments, the procedure for applying compensation by the victims, procedure and powers of the claim tribunals in making the awards, liability of the insurance companies, enabling the state government to make rules, awarding interest on the compensation amount, providing for appeals etc. The Motor Vehicles Act, 1988 has also done away with the provisions of limitation period of six months to file a claim application for a victim. Taking into account the difficulties of a victim or his legal heirs in procuring the documents pertaining to an accident, the limitation provision has been deleted, which is definitely a step forward in the right direction. Motor vehicle activity has been growing rapidly in India over the last three or so decades, but particularly since the 1980s. The Motor Accident Claims Tribunals have been constituted by different State Governments, for the speedy disposal of third party claims, in accordance with Section 110. Such tribunals are presided over by a person of the rank of a District Judge or High Court Judge. Only a nominal fee has to be paid for instituting a case and the court fee is not based on the value of the suit. Thus, poor third party claimants are not prevented from making proper claims. All third party claims for personal injury and property damage have to be filed with the tribunals.

#### **COMPENSATION UNDER MOTOR VEHICLES ACT, 1988**

Justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among all, fraternity assuring the dignity of individual and unity of nation. Effective access to justice has thus come to be recognized as the most basic requirement, the most basic human right in the modern egalitarian system, which purports to guarantee and not merely proclaim legal rights to all. Articles 14 and 28 of the Constitution clearly expresses the letter and spirit of equal justice to all citizens, irrespective of status, caste, color and creed was uppermost in the minds of founding fathers, who had framed the Constitution. Though Article 14 of the Constitution provides equality of opportunity before law, but in practice it is not so. The poor victims of the road accidents, in fact, do not even know the remedies available to them. The people in India are not well aware of the entitlement of the grant of compensation in case of injury or death in a road accident under the Motor Vehicles Act. The poor victims of the road accident, in fact, do not even know the remedies available to them. Taking in to considerations the recommendations made by the Law Commission in its report, the recommendations made by various High Courts And Supreme Court of India in their judgments, the Motor Vehicles Act , 1939 has been amended many times, unfortunately, the piece meal and half-hearted legislation has left many loop holes and deficiencies even in present Act of 1988. The main object of this Act is to provide a speedy remedy instead of a civil suit as is required under Fatal Accidents Act.

## SUGGESTIONS OF THE STUDY

- To ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third party insurance. For example, in South Africa and some other African countries, Road Accident Funds have been created, managed by Road Accident Fund Commissions, thereby eliminating the need for third party insurance.
- The procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals results in consequential hardship to the victims and their families. In cases where the accident victim dies, the family, usually the widow and children loses its sole bread winner and are virtually driven to the streets. Many a time, the widow and children are forced to take up unaccustomed manual labour for their survival, the children foregoing their education. Payment of compensation without delay will help them to sustain themselves and pick up the threads to live with dignity.
- Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If, such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of.
- It is necessary that the full compensation amount should not reach and benefit the victims and their families, particularly those who are minor, uneducated, ignorant, or not worldly-wise. Unless, there are built-in safeguards they may be deprived of the benefit of compensation which may be the sole source of their future sustenance. There should be some measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation.

## CONCLUSION

After making in-depth study, the researcher comes to the conclusion that in a welfare State the government undertakes to provide for various services to the benefit of the people, particularly in any democratic country where government call for the role of a welfare and service State. The compensation in accident cases of vehicles under the Motor Vehicles Act, 1988, Fatal Accidents Act, 1955 and other relevant related laws, belong to the branch of Social Welfare Legislation which is based more on consideration that the society under the Constitution wedded to Socialism or the social justice is bound to provide for the victims of the accidents and their dependants. It is primarily the duty of the State to take care of them. Unfortunately the number of deaths and injuries on account of road accidents is as alarming as any other dreaded disease and need to be controlled by every possible effort on the part of those who owe a sacred duty towards the preservation of human lives. The Legislature should make a suitable provision so as to pay adequate Compensation by properly evaluating the precious life of a human being in its true perspective rather than declaring human lives on the basis of an artificial mathematical formula. The main object of this Act is to provide a speedy remedy instead of a civil suit as is required under Fatal Accidents Act, 1855. It only changes the forum taking away the jurisdiction of the Civil Court. To ensure that all accident victims get compensation, it is necessary to formulate a more comprehensive scheme for payment of compensation to victims of road accidents, in place of the present system of third party insurance. For example, in South Africa and some other African countries, Road Accident Funds have been created, managed by Road Accident Fund Commissions, thereby eliminating the need for third party insurance. Today road accidents in our country has touched a new height and are increasing day by day and resultant cases relating to motor accidents are increasing in our courts. In majority of road accident cases because of rash and negligent driving, innocent person becomes victims and because of this their dependents in many cases are virtually on the streets. Because of increasing number of motor accidents and their victims, question of payment of compensation is assuming great importance in public as well as for the courts. Generally as a rule, victims of road accidents have to first establish that the accident was due to fault of the person causing injury or damage, then only court will direct for payment of compensation. The quantum of compensation cannot be equal in two cases, even if the origin of wrong be identical, since the same accident may cause death of one but only a scratch or abrasion to the other. It is the difference which imports the idea of liability, quantitatively, the extent and qualitatively, the kind of liability.

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