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Compensation under the new Road Transport Act: A critique

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The recently approved Road Transport Act 2018 has long been in the works but was accelerated for enactment by the Bangladesh Parliament in response to the groundbreaking student protests for road safety in August 2018. The Preamble to the 2018 Act states that it is being passed with a view to replacing the Motor Vehicles Ordinance 1983 keeping provisions largely unchanged save where change was necessary to modernise the law and satisfy the demands of the day. Unfortunately, upon primary inspection of Chapter 9 of the Act- which deals with compensation claims for road deaths and injuries- it can be said that the new law arguably leaves victims in a worse off situation than the 1983 Ordinance.

The major issue with the Act is the non-operation of vicarious liability within compensation claims. The imposition of vicarious liability is crucial because it is one of the main ways in which the root causes of road accidents (e.g. rash driving incentivised by payment per trip instead of weekly wages, shoddy recruitment of unqualified drivers and operation of unfit vehicles etc.) can be addressed since these factors are in the full control of motor vehicle owners acting as employers. Thus, it is only when motor vehicle owners are vicariously held liable for the negligence of their employees and forced to pay damages for accidents arising out of such negligence will they feel compelled to address these root causes. In this regard, Section 111 read with Section 128 of the 1983 Ordinance granted victims the right to sue for compensation not only from insurance providers but also motor vehicle owners in the event insurance coverage was inadequate, therefore imposing vicarious liability on employers for the purposes of compensation.

Unfortunately, Chapter 9 (namely sections 52 and 53) of the 2018 Act replaces this right of the victim to sue for compensation with a right to 'apply for compensation' from a rather charitably

titled '*Arthink Shohoyota Tohobil*' i.e. 'Financial Aid Fund' (one may wonder if its purpose is to compensate then why it is not called a compensation fund). Section 59 sets down the procedure a claimant must follow when they 'apply for financial aid' from this fund.

Regrettably, the Act seems to use the term 'compensation' and 'financial aid' for the purposes of claims under this fund interchangeably and does not seem to adequately appreciate the difference between the two, which is problematic since 'aid' is always gratuitous whereas compensation is an entitlement as of right.

Section 57 of the Act states that this fund will be established from five main sources: grants from the Government, contributions from motor vehicle owners, fines obtained under the Act and grants from motor vehicle owners' and workers' associations. This, therefore virtually nullifies the operation of vicarious liability in compensation claims since it imposes no specific compensation liability on the motor vehicle owner whose employee (i.e. the chauffeur) causes a road death or injury in any given case. Additionally, it is important to bear in mind that fines can only be imposed on those who incur criminal liability, which would not apply to motor vehicle owners (i.e. the employers) since vicarious liability does not operate in criminal law. As such, if the landmark case of *Catherine Masud v Kashed Miah and Others* (where vicarious liability was imposed on different types of bus owners for the road crash that led to Tareque Masud's death to pay 4.4 crore in compensation), was to be filed under the 2018 Act, rather than the 1983 Ordinance, the claimant would simply not be able to impose compensation liability on the bus owners.

Another major setback of the 2018 Act is its failure to impose a mandatory duty of insurance on motor vehicle owners (including third party risks) as section 109 of the 1983 Ordinance did (and in fact section 46(1) of the 2017 Road Transport Bill did as well). This is a crucial omission since insurance plays a cardinal role in speeding up compensation claims in road accident cases.

While it is appreciable that the law introduces a state administered fund for the exclusive purpose of granting relief to road accident victims, such an introduction should not replace the victim's preexisting right to sue for compensation under the 1983 Ordinance, rather it should exist in addition to this right as they serve two distinct purposes. While the fund ought to provide immediate and interim relief to victims in the short term, more substantial compensation ought to be claimable from a civil compensation tribunal in the long term. As such, it must be recognised that a road accident victim's right to sue for compensation and their ability to apply for financial aid are certainly not one and the same.

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