

ACCIDENT IN INDIA DUE TO POTHOLE ON THE ROAD

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The Problem of Potholes is the topic which generally remains unnoticed by our society, the victims of the pothole -accident have to indulge themselves in tedious litigation Process to seek remedy, mere 'law of tort' is not sufficient route for remedy especially in the case of compensation because generally, our civil court awards less compensation as compared to the amount of compensation awarded by the American Court. Even the Union of India admitted in Bhopal Tragedy case that 'The Courts in India are not an adequate alternative forum in which litigation may be resolved, delays in the resolution of these cases (cases based on the law of tort) in India, and India's Court system lacks the procedural and practical capability to handle this litigation.' And after the incident of Bhopal gas tragedy, the parliament enacted an Act i.e. The Public Liability Insurance Act,1991 for providing relief to the Victims.

Bhopal Gas Tragedy

The Fatal Bhopal Gas Tragedy which is considered as the world's worst industrial disaster, which was occurred on the night of December 2, 1984, at the Union Carbide pesticide plant in Bhopal, where an accident took place due to the leakage of methyl isocyanate, as well as several other poisonous gases which resulted in deaths of over 25,000 people. The Pesticide Plant was surrounded by small shelters, where many people were being exposed to the deadly gas.

Meanwhile, Warren Anderson, the Chairman of Union Carbide who was the prime accused in this case didn't appear for the trial and he managed his exit from India. On February 1, 1992, Justice Gulab Sharma who was CJM in Bhopal Court declared him a fugitive.

This incident created outrage among the people and Various non – governmental organizations fighting for gas leak survivors for their appropriate medical care and Reasonable compensation. And after huge pressure from public our legislator enacted The Public Liability Insurance Act 1991.

What is 'The Public Liability Insurance Act,1991?'

Under this law, there is a provision for providing immediate relief to the persons affected by accident while handling any hazardous substance and for matters connected therewith or incidental thereto.

Section 3 of this Act incorporates the doctrine of 'liability without fault' where liability is imposed on the owner as defined under section 2(g) of this act, to give relief in case of death or injury to any person (other than a workman) or damage to any property, resulting from an accident while handling any hazardous substance at the time of the accident, and the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Section 4 of this Act requires that the owner shall take out one or more insurance policies before he starts handling any hazardous substance, and such policies should cover a policyholder from claims from third parties for death or injury to any person (other than a workman) or damage to any property has resulted from an accident.

And under section 7 of the act, the collector, on receipt of an application for a claim for relief, to hold an inquiry into the claim or each of the claim, after giving notice of an application to the owner and after giving them an opportunity of being heard and making an award determining the amount of relief payable to person or persons.

Victims of Pothole Deaths

Now coming to the point that is Pothole Deaths in India, here also the victim of pothole deaths are not assured of any relief except long-drawn legal battle where the victim person is being exhausted then the victim person either withdraws their complaint or stop taking any legal action. A 34-year-old biker and member of the Bikerni Motorcycle Group her name was Jagruti Hogale died when she was trying to overtake the truck in a normal speed of her bike which was gifted by her husband and came to contact with the pothole on Mumbai – Ahmedabad Highway as per the statement of fellow bikers and eyewitness. Rather than

taking action against the road contractor and other agencies who are responsible for maintaining the highway and expressing condolence for the victim, the Mumbai Police booked her for negligent driving under section 304(A) of Indian Penal Code which shows our justice system still in pathetic condition.

On the other side Manoj Wadhwa who lost his 3-year-old child Pavitra on the 10th of February 2014 on the National Highway at Batamod, Faridabad due to pothole accident and his wife was critically injured in this accident. Manoj Wadhwa showed courage and decided to fight against the preparators, after the long legal battle Haryana police set up the SIT and founded that the directors of the two companies who were responsible for the construction of road and their project manager were responsible for the accident and booked them under section 304(A) of IPC for their negligence. This is a very reverse situation if we take the Jagruti Hogale's case where the victim herself booked under section 304(A) of IPC for her negligence and there are some of incidents which happened where the Police register the complaint against the victim under section 279 of IPC. However, Mr. Wadhwa still engages himself in a legal battle to prevent the death of other innocent people and sent a proposal to many states in India to bring a law on this subject matter.

However, Mr. Denson Joseph appearing on this case which is popularly known as #Justice4Pavita or #Pothole Death case stated in his statement that the couple suffered mental agony and Mr. Wadhwa family spent 24 lakh rupees on the treatment of her Wife for which he is still not compensated by the Government and no any Criminal Liability is fixed against the NHAI because this authority, whose function is to maintain and manage the National Highway across the country, So how can the NHAI escape the liability under the veil of Road Contractor.

Position of India in terms of number of Road Accident

As per the data given by the World Road Statistics for 2018, India ranks 1st in terms of the number of Road Accident across the globe and as per the WHO Global Report on Road Safety for the year 2018, India accounts for almost 11% of the accident-related deaths across the globe. It's doesn't mean that all the road accidents occurred due to the driver's own negligent or bad judgment of the driver while driving.

Observation of Apex Court

Supreme Court Committee on Road Safety which is chaired by a former apex court judge, Justice (Retd) KS Radhakrishnan revealed in his report that a total 14,936 deaths between the year 2013-2017 in which Uttar Pradesh rank 1st, 3,597 death alone in 2017 which means around 10 death every day and around 4% deaths accounted by the 8 states alone respectively Uttar Pradesh, Maharashtra, Madhya Pradesh, Gujarat, West-Bengal, Bihar, Tamil Nadu, and Andhra Pradesh, this committee recommended 5 lakhs as an amount of compensation to Kin. Supreme Court observed that the number of deaths in road accidents were more than the Casualties by terrorist attacks in India and the situation was "frightening".

Specific Law on the Pothole

Now, the time has come to seek a law that has a similar compensatory provision like The Public Liability Insurance Act, 1991. As Section 4 of this act provide the provision of 'Compulsory Insurance' similarly here also the Government should mention in their Tender Agreement that whoever any Contractor or Road Agency are applying for this tender, Certain Terms and Condition must be followed such as the Contactors have to take insurance policy. So that in case of an accident occurred due to the Pothole on the road, the victim by simple application to Concerned Authority gets the Compensation just like Section 6 of 'The Public Liability Insurance Act, 1991.

Measures

Apart from this, the following Certain Measures must be taken to Control the Pothole death-

- Ensure fair and transparent Audit of Road Construction.
- Relief Fund set up by the Government to compensate the victim.
- Installation of Video-based Pothole detection system through this technology, We will be capable of quickly identifying the pothole location and their size.
- Choose the best quality material which is suitable for the failure condition.
- Fixation of Criminal Liability against the Road Contractors, Agencies, and against the National highways Authority of India for the failure of due diligence.

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