

CHAPTER EIGHT

**COMPENSATION UNDER OTHER
LAWS:
SECTION 8**

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8.1 Section 8: Other rights saved

Section 8(1) saves right of the claimant to claim relief under "any other law for the time being in force". However, as provided by Section 8(2), the amount of relief granted under the Public Liability Insurance Act operates to reduce the compensation otherwise available under the other law.

8.2 Remedies under other laws

The "other law for the time being in force" which is saved by Section 8(1), can be uncodified law or it may consist of special statutes which confer a right of action. Again, the liability under the other law (whether that law is codified or uncodified) may be based on the principle of "fault" (broadly, intention or negligence) or it may be based on the principle of no-fault liability. Section 8(1) of the Public Liability Insurance Act seems to be wide enough to save all such legal provisions or rules, and it appears to be a fairly sound view to take that "law" in Section 8(1) is not confined to codified or enacted law. The legislature, one may presume, was aware that liability to pay compensation for death or personal injury caused by accidents is, in the majority of situations in India, governed by uncodified law.

8.3 Various aspects

The subject of accidents has the following legal aspects:-

- (a) Principles of liability for each type of accident;
- (b) Principles for assessing damages/compensation for each accident;
- (c) Machinery (court, tribunal or administrative agency) for determining the amount of compensation for each type of accident.
- (d) In case of accidents which cause death, the persons (relatives and others) entitled to compensation.

The principles for liability depend on common law, except where modified or supplemented by statute.

8.4 Analysis

When an "accident" (that is to say, an unintentional act which causes bodily injury or death, by negligence or otherwise) occurs, the legal questions that arise are the principally of the following types:-

- (a) Is there a legal liability for the harm so caused? If so, who is to be regarded as liable? And on what principles? Does liability exist even where there is no negligence?

- (b) If such liability exists, how is the amount to be paid (as damages or compensation) ascertained?
- (c) Who determines the question of liability and compensation? That is to say, what is the "forum"? Is the matter decided by a-
 - (i) Court?
 - (ii) tribunal other than a court?
 - (iii) some other officer or agency functioning permanently? or
 - (iv) some agency created ad hoc for the purpose?
- (d) If the accident has unfortunately caused death, who are the relatives or dependents of the deceased who can claim compensation?

8.5 Sources of law

In India, the law relevant to ascertainment of the above points is not to be found at any one place or in one single code. In theory, one begins with the common law principles of liability in tort. But these principles have, *in respect of certain types of accidents*, been modified, supplemented or even abrogated, by specific statutes. Each of those specified statutes addresses itself to one particular type of accident. For example, work related injuries are dealt with exhaustively in the Workmen's Compensation Act, 1923.

That Act, modifies the common law principles of liability, creates its own adjudicative machinery and furnishes its own calculus. Accidents caused in the running of railways are governed by the relevant provisions of the Railways Act. For accidents causing death, the Fatal Accidents Act, 1855 is also relevant.

8.6 Common law

Where no specific statute exists, one must still have regard to the "common law" principles, to be derived from judicial decisions. This itself constitutes a growing body of jurisprudence and is still of considerable practical importance. For example, where accident is caused by open electric wires laid across a field and a person walking across the field for a lawful purpose is injured, the liability is based on common law principles. Breach of certain provisions of the Indian Electricity Act, 1910 can, no doubt, be proved, but this fact merely constitutes evidence of negligence. Similarly, for accidents caused in hospital or in course of medical treatment, we must still have regard to the law of negligence.

8.7 Type of accidents, and the law applicable

An accident may occur in building construction, railway, other transport, civil commotion, military exercises, natural calamities and work-related injuries and so on. The law applicable to various types of accidents can be indicated as under:-

(alphabetically) (apart from the Public Liability Insurance Act, 1991):-

(a) **aircraft:** See the Indian Aircraft Act, 1934. The Act creates its own machinery and also fixes the quantum of compensation.

(b) **building construction:** Accidents in building construction, if injury is caused to workmen, are governed by the Workmen's Compensation Act. If the injury is caused to others, the common law applies.

(c) **civil commotion:** Accidents caused by riots etc. are governed by common law principles. Ex gratia compensation is, of course, sometimes awarded by the Government.

(d) **electricity:** Accidents caused by electricity are governed by the common law. Breach of statutory duties may be strong evidence of negligence.

(e) **fire:** Common law applies. But the position is obscure as to whether the liability is fault based or strict.

(f) **motor vehicles:** See the Motor Vehicles Act, 1988. The Act introduces new principles of liability, creates its own machinery and makes other special provisions. The relevant provisions are a substantial re-enactment of the provisions of Section 92A, Motor Vehicles Act, 1939.

(g) **medical negligence:** Common law applies.

(h) **natural calamities:** These are governed by common law principles. "Calamities" include earthquake, flood, cyclone, etc.

(i) **military:** Field manouevres and Artillery Practice Act applies.

(j) **railways:** The Railways Act creates special machinery and quantum.

(k) **transport(other forms):** Common law applies.

(l) **work-related injuries:** See the Workmen's Compensation Act, 1923. This Act, in relation to deaths or injuries covered by it,-

(i) modifies the common law principles of liability;

(ii) quantifies the amount of compensation on a pre-fixed scale;

(iii) creates its own machinery (a Commissioner for Workmen's Compensation) for determining the amount of compensation; and

(iv) makes several other special provisions.

(m) **other accidents:** Other accidents are governed by common law principles.

This residuary category may cover (just to take one instance) an accident caused to a pupil at school in the laboratory, an accident on the play field and so on. The school authorities may be liable if negligence is proved. The residuary category will also cover an accident caused in the kitchen by the bursting of a gas cylinder. Product safety is a topic not yet developed in India, but extensively cultivated elsewhere. Although it principally belongs to consumer law, yet accidents, if caused by an unsafe product, offer interesting material.

The list given above is not intended to be exhaustive. But it will show the variety of situations of practical importance and the variety of approaches adopted in legislation and law. It thus illustrates the wide scope of Section 8 of Public Liability, Insurance Act.

8.8 Insurance regarding liability under other law

It may be useful to point out, that while Section 8 of the Public Liability Insurance Act saves liability of the owner under any other law for the time being in force, the Act does not make it compulsory for the owner to take out insurance against such liability. Of course, an owner is free to take out such insurance and, where the enterprise is a big one, it would be usual to take out such insurance, but there is no legal obligation to do so.