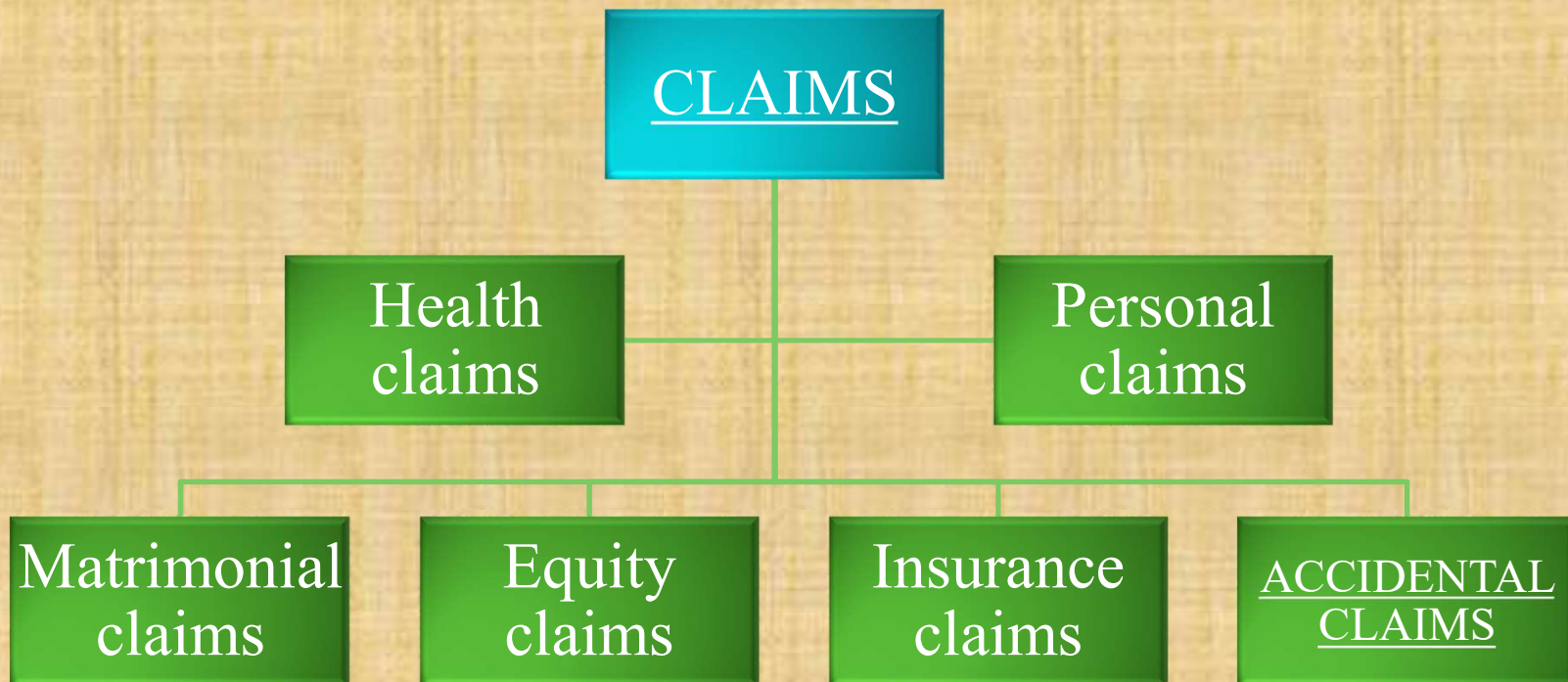


# COMPENSATION AND THE ADMINISTRATION OF JUSTICE



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# DIFFERENT CLAIMS



Meaning of  
Accident

Accident means any unintentional act, an act which is just by chance and without any premeditation.

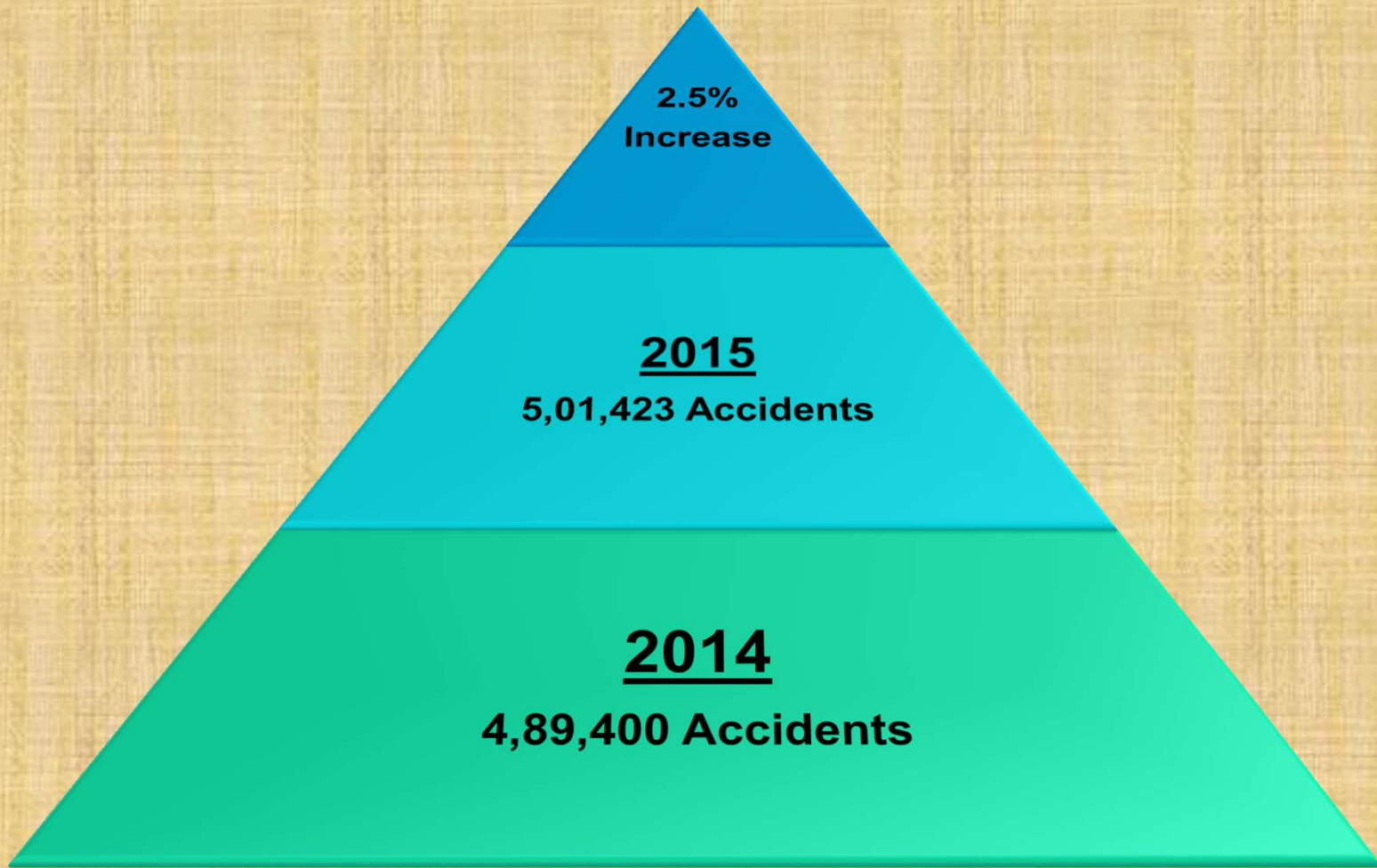
Meaning of Claim

Claim means an assertion, declaration, statement etc. of belongingness/ right.

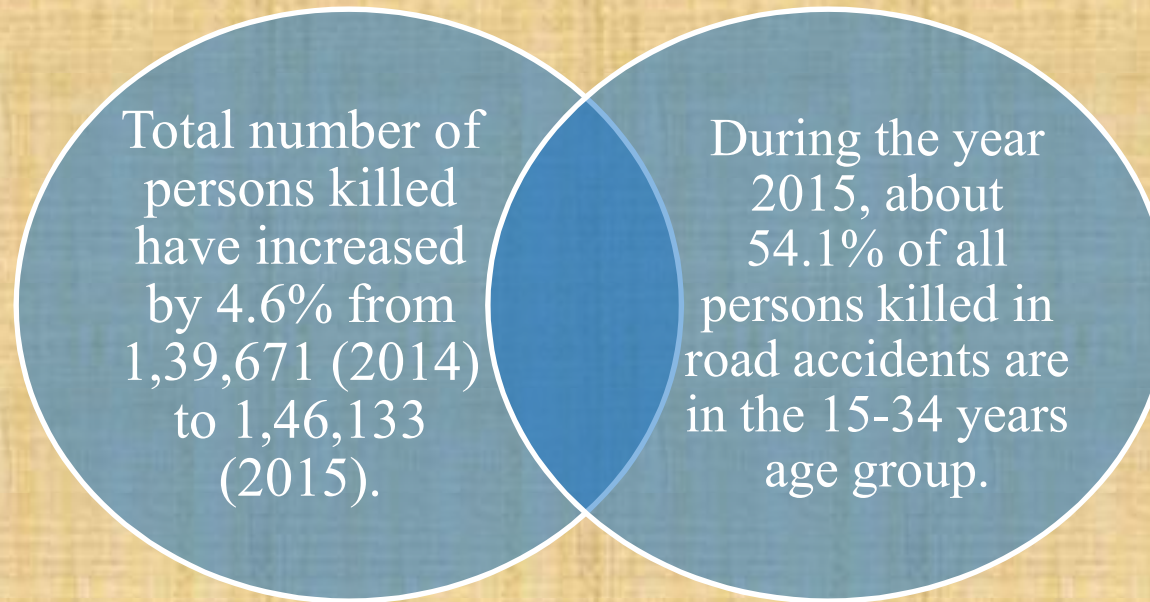
ACCIDENTAL  
CLAIMS

Means claim of right with respect to accident caused due to act of negligence of other. Act of negligence have become actionable wrong.





## As per a Government Report (2015):



In the case of *Rattan Singh vs State of Punjab*, (1979) 4 SCC 719, Krishna Iyer J., observed with respect to the chaotic conditions prevailing on Indian roads:

1...More people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country....

XXX XXX XXX



# EVOLUTION

Under common law no right to claim damages in case of death.

Right to claim injury was always recognized as in case of personal injury.

In order to give effective rights to the person injured or expired in an accident, Fatal Accidents Act, 1885 was enacted in India.

The Motor Vehicle Act, 1988, deals with motor vehicle accidents and related issues and is a welfare legislation.



## THE MOTOR VEHICLE ACT, 1988

Hon'ble Supreme Court has repeatedly held it to be welfare legislation and the interpretation is required to be made so as to help the victim.

Hon'ble Supreme Court has passed various judgments restricting statutory defences of the Insurance Company to a greater extent.



# COMPENSATION NOT TAXABLE

Compensation not income as intention in awarding compensation is to retribute and rehabilitate.

Circular of 14.10.2011 directing deduction of Income Tax on the award amount and the interest accrued on the deposits made under the order of the Court in Motor Accident Cases, quashed.

Court on its Motion Vs. H.P.State Co-operative Bank Ltd & Ors 2014 SCC Online HP 4273.





## WHAT COMPENSATION MEANS?

# Indemnification;

payment of damages; making amends; that which is necessary to restore an injured party to his former position. An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person indemnified may receive equal value for his loss, or be made whole in respect of his Injury.



## ASSESSMENT OF COMPENSATION

A human life cannot be valued and hence no human being can be put into any monetary value for his loss of life or limb.

In its very nature whenever a tribunal/court is required to fix the amount of compensation in cases of accidents it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused.



## **Raj Kumar v. Ajay Kumar (2011) 1 SCC 343**

The award must be just.

To be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.



# STEPS INVOLVED FOR ASCERTAINING THE COMPENSATION IN DEATH CASES

*Sarla Verma vs. Delhi Transport Corporation,*  
(2009) 6 SCC 121

## Step 1

Income per annum to be ascertained. Deduction of expected personal and living expenses. The balance is contribution to the dependent family and constitutes the multiplicand.

## Step 2

Having regard to the age of deceased and active career, the multiplication method should be selected.



## DEVIATION FROM SARLA VERMA CASE

Santosh Devi v National Insurance  
Company Ltd. (2012) 6 SCC 421

Court disagreed with observations in Sarla  
Verma's case. Rule can be deviated where  
income of the deceased was bound to  
increase.



## DEATH OF HOUSE WIFE

Sher Singh v Raghubir Singh 2006 (1)  
Cur.L.J (HP) 15

Tribunal assessed Rs.600/- per month.

High Court estimated Rs.1500/- per  
month



**ARUN KUMAR AGARWAL**  
**V**  
**NATIONAL INSURANCE COMPANY**

**AIR 2010 SC 3426**

Loss of personal care and affection can not be measured.

1994- Legislature fixed notional income of non earning person at Rs.15,000- per annum and in case of spouse  $\frac{1}{3}^{\text{rd}}$  of income of surviving spouse for computing compensation.

Court held: in absence of any definite criteria, reasonable to rely on the criteria in clause 6 of second schedule then apply appropriate multiplier.



## ASCERTAINING THE COMPENSATION IN INJURY CASES

The damages may vary as per gravity and nature of disability or of injuries suffered.

The damages can be pecuniary as well as non pecuniary. But all this has to be converted into rupees and paisa. It is desirable that so far as possible comparable injuries should be compensated by comparable awards.





**Pecuniary Damages  
may include expenses  
incurred by the  
claimant on:**

Medical treatment,  
attendance,  
transportation,  
special diet, etc;

Actual loss of earning  
of profit up to the  
date of trial; Future  
loss of earning

**Non-pecuniary  
Damages include:**

Damages for mental and  
physical shock, pain and  
suffering already  
suffered or likely to be  
suffered in the future;

Damages to compensate for  
the loss of amenities of life  
which may include a variety  
of matters, i.e., on account of  
injury the claimant may not  
be able to walk, run or sit.



## CONTRIBUTORY NEGLIGENCE

Expression implies, the person who has suffered damage, is also guilty of some negligence and has contributed towards the damage.



## “COMPOSITE NEGLIGENCE”

Negligence on the part of two or more persons.

In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them.



## **DISTINCTION BETWEEN THE TWO**

### **DISTINCTION BETWEEN CONTRIBUTORY NEGLIGENCE AND COMPOSITE NEGLIGENCE.**

“Contributory negligence” applies solely to the conduct of a plaintiff.

“Composite negligence” means both the parties can be held liable for compensation.

**Heer Singh & Ors. v. Jai Singh & Ors. I (2005)  
Acc 718 Rajasthan**



## DEPOSIT OF COMPENSATION

In General Manager , KSRTC, Trivandrum vs Susamma Thomas, (1994) 2 SCC 176 Hon'ble Supreme Court has laid down guidelines that in cases of minors, women and illiterate persons, as a matter of abundant precautions, the amount should be invested in long term deposits. Interest should, however, be paid on monthly or quarterly basis to the claimants to meet their day to day expenses.

In A V Padma & Ors vs R Venugopal & Ors, 2012 (2) SCALE 1, sufficient discretion should be given to the Tribunal not to insist on investment of the compensation amount in long term fixed deposit and to release even the whole amount in the case of literate persons.



## WC ACT AND MV ACT

Section 167 of the MV Act and principle of election of remedies.

Section 140, imposes a liability on the owner of vehicle to pay compensation fixed therein, even if no fault is established against the driver or owner of the vehicle.

Section 143 re-emphasizes what is emphasized by Section 167 that the provisions of Chapter X of the MV Act, would apply even if the claim is made under the WC Act.

Section 144 of the Act gives provisions of Chapter X of the MV Act, overriding effect.

## STRICT COMPLIANCE OF LAW

First, police to carry out investigation within 30 days and submit report to MACT.

Secondly, Insurance company to compute the compensation within 30 days thereafter and inform the tribunal.

Third, if the amount offered is acceptable to the claimant/injured then it shall be paid within 30 days.

Fourthly, if the offer is not acceptable or the tribunal finds it not fair, then the tribunal to decide within 30 days.

This means that in maximum the claimant/ injured will get the compensation within 90-120 days from the date of accident.



## SECTION 357 AND 357A CR.P.C: COMPENSATION TO THE VICTIM(S) OF THE OFFENCE

Section 357 Cr.P.C:- Court to award compensation to the victim(s) of the offence in respect of the loss/injury suffered.

Section 357A:- Recommend the case to the State/District Legal Services Authority for award of compensation from the State funded Victim Compensation Fund.





# COMPENSATION / BLOOD MONEY

Islamic Law; Diyya/Blood money

Salman Khan was convicted in 2002 hit-and-run case with five years in jail.

Salman wanted it further reduced in exchange for better compensation to the victims. The actor told the court that he is willing to substantially hike the compensation to the four victims of the accident who are alive, and the family of the one killed.

Should a convict be allowed to exercise money power to get a milder sentence?



## INSTANCE OF BLOOD MONEY

January 2017, a Nizamabad man, who was sentenced to death for murder in Saudi Arabia returned home after spending 8 years in jail, as a local businessman paid Saudi Riyals 1.3 million (approximately `1.80 cr) as "blood money" on his behalf to get him pardoned.



**THANKS**

