



*Spreading Legal and
Economic Awareness*

A Social Initiative by
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Special points of interest:

- Bodily injury is not the only basis of claiming acci-
dental insurance
- A dying person's declaration is a good evidence
- NRE joint accounts holders need not pay higher taxes.
- Magistrates need not wait for police to file report for taking action.
- Why bank reject your loans and what to do about it

Chanderlawpal's Knowledge Law & Economics

Volume 1 , Issue 4

April 2015

Claiming Accidental Compensation? How to Design a Case

The Motor Vehicles Act, Fatal Accident Act, cases of mediclaim, medical neglect and such other laws including consumer law give an opportunity to the victim to claim compensation from the party in question.

A person who has suffered damage to his property in an accident, arising out of use of motor vehicle, has the right to apply to the Tribunal under Section 110-A (1) (a) (Section 166, new) even if he has no bodily injury. Because the accident arose out of a wrongful act violating his right to property, he has the right to claim.

It is a well settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities (3) shortened expectation of life, if any (4) loss of earnings or loss of earning capacity or in some cases or both; and (5) medical treatment and other special damages.

In case of permanent disability, the principles of assessment of compensation depend upon the part of body disabled and not upon the percentage of disability of body due to injuries sustained in an accident. The part of the body related with the profession adopted by the injured is the main consideration.

The following principals are usually followed:- (i) amount of compensation awarded must be reasonable and must be assessed with modification. (ii) regard must be had to awards made in comparable cases; and (iii) the sums awarded must to a considerable extent be conventional. In cases of personal injury, the injured has to be compensated under the following heads (1) pain and suffering

(2) loss of amenities (3) shortened expectation of life (4) loss of earnings or loss of earning capacity or in same cases for both and (5) medical treatment and other special damages like transportation or travelling expenses, nutrition and food etc. In case of injuries, the compensation

new) of the Act, he would not be able to recover any compensation however grave the injury suffered by him may be. Such an absurdity can be avoided only by holding that the expression 'duly authorized agent' contained in Clause (c) of sub-section (1) of Section 110-A (Section 166, new) of the Motor Vehicles Act, does not mean a person expressly authorized, or that the authority should be in writing, but includes a person having implied authority to claim compensation for the one who is injured in the accident.



Claiming Accidental Compensation?
Know how to fight it out

is generally allowed for the amounts spent on medicines, diet, conveyance, compensation for pain and sufferings, loss of income, loss of future prospects, loss of enjoyment of life and permanent disablement, if any.

It is quite often said that no amount of compensation in personal injury would compensate the pain and suffering sustained by the injured. However, the only way an injured can be redressed is by way of awarding reasonable compensation. Therefore, the Motor Accident Claims Tribunal is under a solemn legal obligation to award just, reasonable and adequate compensation to an injured.

The only course open to a person injured in a motor accident for claiming compensation is by way of any application to the Claims Tribunal and not by a separate suit or application to Civil Court or any other Tribunal. From this it follows that if an injured person, because of physical or mental incapacity, is unable to apply himself or duly authorized another person to make an application for compensation under Section 110-A (Section 166

Items of compensation in personal injury claim cases are the following:
(1) Shock, pain and suffering and loss of amenities of life
(2) Injury itself, depending upon the disability, permanent, temporary, partial or complete
(3) Medical and incidental expenses
(4) Loss of income till the date of petition and from the date of petition till the date of award and future loss
(5) Loss of earning capacity, having bearing on item No.4,
(6) Shortened life expectancy
(7) Loss of prospects of marriage, avocation, education, social, economic, cultural and political opportunities
(8) Loss of beauty due to disfigurement
(9) Disability, both physical, mental and social
(10) Medical expenses towards future treatment, if any
(11) Loss of property during the accident and
(12) Any other item depending on facts of each case.

This article is applicable to all kinds to accidents and not only to motor accident cases.

What a Dying Person's Declaration Means...

Statement of the cause of death, by a person who is on his/her deathbed is called a dying declaration.

Dying Declaration is valuable evidence and it is admitted as a good evidence because it rests on a very important humanistic psychological concept which is wrapped with morality- that a person would not gain anything by stating lies at the time of the death. But even this has been manipulated many a times by the prosecution or the defence to suit their purposes, which has resulted in the evolution of the Doctrine of Dying Declaration.

SECTION 32(1) of the Evidence Act deals with cases in which statement of the cause of death, by a person who is on his/her deathbed, becomes a relevant fact.

To quote, 'Cases in which statement of relevant fact by person who is dead or cannot be found is relevant. —statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without

an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in cases when relating to cause of death. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, or in case the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.'

A bare analysis of the provision would show that a statement made by a person before his death to be relevant, the following ingredients are to be satisfied:

i) The statement is made by a person who is conscious and believes or apprehends that death is imminent. ii) The statement must pertain to what the person believes to be the cause or circumstances of death. iii) What is recorded must be the statement made by the person concerned, since it is an exception to

the rule of hearsay evidence. iv) The statement must be confidence bearing, truthful and credible as held by this Court in *Laxman v. State of Maharashtra* (2002) 6 SCC 710 and consistently followed including the very recent one in *Mallella Shyamsunder v. State of Andhra Pradesh* (in Criminal Appeal No. 1381 of 2011 decided on 29.10.2014). v) The statement should not be one made on tutoring or prompting. vi) The court may also scan the statement to see whether the same is prompted by any motive of vengeance vii) The statement must be recorded by an independent person or authority.

It may be noted that Dying Declaration is neither defined in the Code of Criminal Procedure (For eg confession is defined under Section 164 of the Code of Criminal Procedure- this is different from Dying Declaration) or the Code of Civil Procedure and nor in the Indian Penal Code and any other statute except in the Evidence Act. The Evidence Act is applicable to Civil or Criminal and even other proceedings where evidentiary value is to be ascertained. This means that Dying Declaration is a concept which can be admitted in any law and not only criminal law.

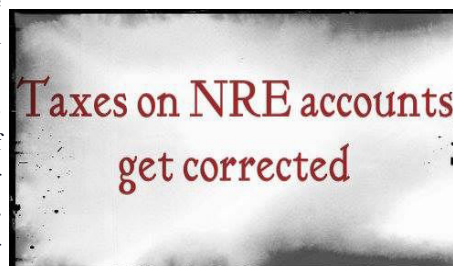
Interest on Non Resident External Accounts is Exempt

Many times people living out of India face problems as regards their joint accounts in banks being treated as an Association of Persons. When individual joint accounts are treated as accounts of 'association of persons', they are levied a higher tax rate, as high as 35% or more, due to being categorized as 'association of persons' account rather than individual accounts. They are usually not given exemption allowed to individuals, despite being accounts of individual persons, which are eligible for tax exemption under Section 10 (4) (ii) of the Income Tax Act 1961. This is because as their bank accounts would be in two names,

self and joint name and the Assessing officers of the Income Tax would categorize them as 'association of persons' rather than joint account of two or more individuals.

Association of persons is a separate legal entity under the meaning of taxes. It is a body

corporate and is a group of persons who are registered and may or may not be incorporated but recognized as a legal body under law.



It is brought to note of all that vide circular no. 592 dated 04. 02. 1991, the Central Board of Direct Taxes the benefit of exemption under Section 10 (4)

(ii) of the Income Tax Act 1961 shall be available to each of the joint account holders provided other conditions under the said section are fulfilled.

Electronic Devices now need Certificate of Authentication

In the recent judgment of Anvar P.V. Vs, P.K. Basheer And Others, decided on September, 18, 2014, the Supreme Court has settled the controversies on Electronic Evidences.

The court has interpreted the Section 22A, 45A, 59, 65A & 65B of the Evidence Act and held that data in CD/DVD/Pen Drive are not admissible without a certificate u/s 65 B(4) of Evidence Act. It has been clarified that in case of computer output without such a certificate, neither there can be oral evidence to prove such an electronic evidence is correct nor the opinion of the expert under section 45A Evidence Act could be resorted to prove the genuineness.

The judgment will have serious implications in all the cases where the prosecution rely on the electronic data and particularly in the cases of anticorruption cases where the reliance is being placed on the audio-video recordings which are being forwarded in the form of CD/DVD to the court. In all such cases, where the CD/DVD are being forwarded without a certificate u/s 65B Evidence Act, such CD/DVD are not admissible in evidence and further expert opinion as to their genuineness cannot be looked at, by the court as evident, as per

the Supreme Court Judgment. It has been specified in the judgment that Genuineness, Veracity or Reliability of the evidence is seen by the court only after the stage of relevancy and admissibility. It was further observed that all these safeguards are taken to ensure the source and authenticity, which are the two hall-marks pertaining to electronic record sought to be used as evidence. Since electronic records are more susceptible to tampering, alteration, transposition, excision, without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

In the anticorruption cases launched by the CBI and anticorruption/Vigilance agencies of the State, even the original recording which are recorded either in Digital Voice Recorders/mobile phones are not been preserved and thus, once the original recording is destroyed, there cannot be any question of issuing the certificate under section 65B(4) of the Evidence Act. Therefore in such cases, neither CD/DVD containing such recordings are admissible nor the oral testimony or expert opinion is admissible. Thus the recording/data in the CD/DVD's cannot become a sole basis for conviction.



**CDs, pendrives
-electronic media
now need
certification
to prove
they are authentic
-Supreme Court**

In the aforesaid Judgment, the court has held that Section 65B of the Evidence Act being a 'not ob-

stante' clause' would override the general law on secondary evidence under Section 63 and 65 of the Evidence Act. The section 63 and section 65 of the Evidence Act have no application to the secondary evidence of the electronic evidence and same shall be wholly governed by the Section 65A and 65B of the Evidence Act.

The only options to prove the electronic record is genuine, are, by producing the original electronic media as Primary Evidence court or it's copy by way secondary evidence u/s 65A/65B of Evidence Act. Thus, in case of CD, VCD, or a chip, the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

Do you Avoid going to Magistrate Courts?

When police refuses to act on genuine complaints, the only recourse left to the victim or complainant is to go to a magistrate or approach the High court in writ jurisdiction. High court in many cases tells complainants that they have an alternate remedy to approach the magistrate. What is it that stops people from going to magistrate courts? Of course, it is the dates and lengthy procedures even before cognizance can be taken or direc-

tion to register a case can be given. One reason for delay is that many magistrates direct the police to file a report based on which the magistrate may commence the trial or reject the complaint. It may be noted that nothing debars the magistrate from commencing the trial by issuing a process. The magistrate can himself examine and issue process to commence trial. However, many a times he wants police to file a report based on which he decides. This often

takes a lot of valuable time and the complainant gets tired due to delay by the police in filing a report. If the police does not file a report for a long time the magistrate can himself examine the complaint and complainant and issue process. The judgments of the Bombay High court in S.M.Muley vs R.M.Kedia 1980 MHLJ 765 and Madhao vs state of Maharashtra 2013 (5) SCC615 clarify this point.

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*A law and economics knowledge
sharing initiative*

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Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is a social initiative taken by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.

Why a Bank Refuses to Give you a Loan Mystery of your Credit History

There have been times when you see an advertisement of a bank eager to give you a loan. But once you put up an application, your loan gets outright rejected. Disgusting, isn't it? And the bank is under no obligation to tell you why it does not intend to entertain your proposal.

Your application gets rejected because your bank found out that you have a bad 'credit history'. You have taken loans in past and have either not repaid them at all, or have not paid your EMI's in time, or have not bothered to get the loan account closed or have made too many inquiries for loans recently.

Banks can get this information from a body called the CIBIL or the Credit Information Bureau of India. All banks give information about their loan customers to CIBIL and the CIBIL, prepares reports on each of you custom-

ers. These reports are shared with all the banks, when they require to look at them. When you apply for a loan, the bank asks for your 'credit report' from the CIBIL. The bank scrutinizes your 'credit behavior' and understands whether you are worthy enough to get a loan, whether you would pay it back at all, whether you would pay attention when the bank calls you for completing documentation during the tenure of the loan; in short, whether you are a risky client for the bank or a trustworthy one. If you have defaulted in repaying your loans in the past, banks blacklist you and you do not get a loan for atleast the next seven years.

Never think that other banks will not find out if you have cheated one bank earlier.

CIBIL gives your report to you too, if you ask for it, apart from giving it to

the bank. You must always, get your report and check the status of any past loans. Make sure the details in the report are correct. If they are not, you need to approach the bank that has given wrong information to CIBIL. You cannot approach CIBIL directly for updating your report.

CIBIL calculates a 'score' called credit score, on basis of information about your credit behaviour. A score of above 600 is good enough.

You can get your CIBIL report and your score from CIBIL's website-you need to pay for this.

It is good to know what your report says, after you have closed a loan account, to find out whether the bank has given correct details to CIBIL. This brightens up your credit future.

-Harjot Kaur