

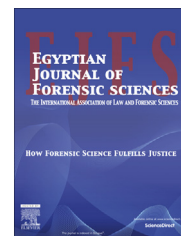
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Legal aspects of motor traffic trauma in Sri Lanka

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Abstract Motor traffic trauma has become a significant denominator of morbidity and mortality statistics in modern Sri Lanka. In 2010, 26,847 were seriously injured, and 2721 people died as a result of road traffic trauma. In 2014, nearly 38,500 road traffic accidents were reported of which 36% were categorized as “critical” with nearly 7% fatalities. Road traffic crashes have increased by 249% between 1977 and 2004. On average, road traffic trauma kills one person in Sri Lanka every 4.5 h. In the 30 year period of 1977–2007 over 40,000 people have died of road traffic trauma with the cost of accidents being estimated at over Rs100 billion.

Increased number of vehicles, poor maintenance of road network and improper expansion of roads, less scrutiny in issuing driving licences, inefficiency of authorities in penalizing for road traffic offences and inefficiency of the public transport system are some of the factors identified for increased incidence of motor traffic trauma in the country. Management of motor traffic trauma victims has become a significant burden for health care institutions.

Legislation plays a critical role in regulating motor traffic in a country. The Motor Traffic Act of Sri Lanka has undergone many revisions in the recent past to accommodate new provisions to regularize road traffic effectively. However implementation of such provisions is heavily dependent on the rapid and effective action of the police on road traffic offences and awareness and attitudes of courts towards penalizing offenders in view of streamlining the legislation on road traffic.

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Traumatic incidents observed in the road network due to involvement of motor vehicles are not always pure accidents. Hence the commonly used phrase “road traffic accident” is a misnomer and should be replaced with a more appropriate phrase such as “motor traffic incident” or “motor traffic trauma” specifically in medico-legal documentation. Motor vehicles could be used to simulate accidents in pre-planned homicidal events and vehicular homicides are well described in forensic literature.¹

A recently reopened case of a death related to a popular sportsman in Colombo draws attention of many spheres as it has become a keen tussle between the documented forensic medical and forensic science evidence. The investigation of vehicle related traumatic incidents needs meticulous coordination of many disciplines.

The injuries sustained by victims during road traffic incidents are collectively referred as transportation-related injuries. They are largely due to accidental causes but suicidal, homicidal and natural causes could also be involved in some instances. Virtually all modes of transportation are capable of causing death or injury.

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Motor Traffic (or Road Traffic) trauma could lead to multitude of effects. As different types of motor traffic trauma could occur in our roads, it is evident that the vehicle type and the impact type are two important determinants of the injury pattern of victims (pedestrians or vehicular occupants) in a given incident.

The possible types of vehicular trauma/collisions in Sri Lanka include:

- Collision of a vehicle with pedestrian/s
- Collision of a vehicle with object/s in the road (movable or stationary)
- Collision of two vehicles – similar or different types of vehicles; frontal/lateral/rear impact
- Collision of multiple vehicles – moving on same/different directions
- Fall from a moving/stationary vehicle
- Vehicle goes off the road and impacting with stationary objects, falling into steep slopes, plunging into water
- Collision of a motor vehicle/s with train
- Collision/impact of a motor vehicle with an animal eg. Elephant
- Indirect effects of natural or man-made disaster/s eg. Explosion/s in cars/buses, landslides, floods etc

The victims of motor vehicle trauma in Sri Lanka may include:

- Pedestrians (men and women of all ages)
- drivers of motor vehicles (four wheel)
- occupants of motor vehicles – front seat passenger and rear seat passengers
- riders of motor cycles/scooters
- pillion riders of motor cycles/scooters
- pedal cyclists
- three wheelers – driver & occupants
- land masters – driver & occupants
- bullock carts – driver & occupants
- hand carts/rickshaw pullers
- civilians living/employed in roadside buildings/dwellings/shops

Although we have a dedicated Motor Traffic Act (No. 31 of 1979) to streamline various issues related to motor vehicles, medico-legal and legal aspects of motor traffic trauma are dealt by different acts, in Sri Lanka. According to our legislation, all deaths caused by such trauma should be subjected to inquests.

The term “traffic” is defined in the Section 240 of the Motor Traffic Act of Sri Lanka. “Traffic” includes bicycles, tricycles, motor vehicles, tram cars, vehicles of every description, pedestrians, processions, and bodies of troops, and all animals being ridden, driven or led. The use of tram cars as a means of public transportation has been abandoned many decades ago. However this section itself is explanatory of major causes contributing for ever increasing problem of road traffic trauma in Sri Lanka.

Some of the legislative enactments dealing with different aspects of motor traffic trauma are mentioned below.

Trauma caused by a vehicular impact

- Penal Code S. 311 – for categorization of hurt/injuries
- Workmen’s Compensation (Amendment) Act No. 31 of 1957 – to assess compensation for victims who are employed

Fatalities due to motor traffic trauma

- Code of Criminal Procedure Act-S. 370 – conduct of inquiry into death of victims (inquest)
- Circular No. 3/2008 of the Ministry of Justice – must conduct post-mortem examinations of ALL road traffic fatalities
- Motor Traffic (Amendment) Act No. 8 of 2009 – Definition of a fatal accident – “fatal accident” means an accident involving a single moving vehicle or several moving vehicles in which one or more persons are killed within thirty days of such accident

Negligent driving

- Penal Code S. 298, 327, 328, 329

Drunken driving

- Motor Traffic Act No.14 of 1951
- Motor Traffic (Amendment) Act No.31 of 1979
- Motor Traffic (Amendment) Act No. 40 of 1984
- Motor Traffic (Alcohol and Drugs) Regulations 1979
- Offences committed under the influence of liquor Act No.41 of 1979

Safety of driving

- Motor Traffic (Seat Belts) Regulations, No. 3 of 2011

1. Negligence in driving

The contribution of the driver of a vehicle to the road traffic incident is a factor which needs to be critically analysed in legal context. Negligence of the driver of a vehicle is a frequent issue raised in these court cases.² It is for the prosecution to prove the case beyond reasonable doubt that the accused (driver of the vehicle) acted in a rash or negligent manner.³

However, the Sri Lankan courts have considered the application of legal maxim “*res ipsa loquitur*” in some cases of alleged negligent driving and hence relieving the victim/s of providing direct evidence of the incident.⁴⁻⁶

The supreme courts have also held that a person who is merely steering a motor vehicle while it is being towed by another motor vehicle is not “driving” it and therefore cannot be convicted under section 298 of the Penal Code upon an indictment charging him with causing death by an act of negligent driving.⁷

The general principle of vicarious liability in respect of master-servant relationship which is accepted as part of our law in Sri Lanka, is also argued in some motor traffic cases referred to courts.^{8,9}

‘Vicarious liability’, is a strict liability principle in civil law holding the owner of the vehicle liable in damages on the driver’s acts of negligence. English Law principles of vicarious liability being similar to the Roman Dutch Law principles of vicarious liability in Sri Lanka, have got invariably accepted and adopted into the Sri Lankan Law, which has been developed over the years.

The courts have shown a firm stand in awarding damages to the victim/s when negligence of the driver is proved. In a

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