

OUTCOMES OF THE INSURANCE & LEGAL COMPENSATION PROCESS

8 CHAPTER

Legal³⁷ and insurance-based³⁸ compensation can be considered as an instrument of social policy and one of the tools to provide a social safety net for those involved in a road crash. However, in India insurance coverage is quite low and as a consequence, RTI victims frequently do not receive adequate compensation. Long procedural delays are another common cause of insurance-related problems.

Even though MVAA, 2019 mandates the compulsory requirement of third-party, no-fault insurance, a high percentage of vehicles are still not insured. In many instances, payments are made only after lengthy judicial processes, and not when the funds are needed for medical and other costs. Even in cases where vehicles are properly insured, compensation payments are commensurately low and usually insufficient to cover medical treatment and other personal costs.

Therefore, as part of this PSIA Study, an evaluation of the effectiveness of the legal and insurance compensation framework has been mapped by capturing experiences of LIH, HIH victims and truck drivers. Truck drivers have a unique trait as a road user- they constitute one of the biggest victim categories as well as offending category road users. They often undertake long arduous and unsafe journeys on Indian roads and still have abysmal social security conditions and low insurance coverage. The lack of

awareness of the compensation process makes it difficult for them to file claims and receive adequate compensation in the event of a road crash.

FINDINGS

1. Overall, the insurance coverage of HIHs (in terms of the motor vehicle, medical, life insurance) was higher compared to LIHs at the time of the crash.

- Motor vehicle insurance - 43% of vehicles from LIH and 65% vehicles from HIH covered.
- Medical insurance - 1/5th of LIH victims and 1/3rd HIH victims were covered under medical insurance.
- Life insurance - As high as 3/4th of HIH victims were covered under life insurance at the time of crash whereas LIH victims accounted for only 18%.

2. Similarly, a higher proportion of HIH victims/family members availed insurance (motor vehicle, medical, life insurance) compared to the LIHs.

- Motor vehicle insurance - About 14% of LIH and 31% of HIH victims/household members availed motor insurance compensation after the crash.

- Medical insurance - 7.5% of LIH and 17% HIH victims availed medical insurance.

- Life insurance - slightly higher for HIH at 4.2% compared to 3.8% among LIH.

3. About 11% of LIH and 8% of HIH victims/family members availed compensation under ex-gratia. Among those that availed compensation under ex-gratia (N=219), just over half of the LIH victims (52%) and one-fourth (25%) of HIH victims received the eligible compensation.

4. 70% of respondents of LIH and 63% of HIH were not aware of compensation clauses and schemes in the event of a road crash.

5. Only 21 % of the LIH in urban areas availed motor third party insurance, whereas 31.7% of the HIH residing in urban areas availed motor vehicle insurance. However, this proportion is still larger than the proportion of LIH that availed compensation in rural areas. Only 11% of the LIH availed motor vehicle insurance compensation, whereas 25% of HIH availed motor vehicle insurance compensation.

6. Time taken for receiving compensation from motor vehicle, medical, and life insurance was higher for urban areas than for rural areas for both LIH & HIH. The only exception was motor vehicle insurance, where high income

37. Legal Compensation is the amount payable by the owner of the motor vehicle or the authorised insurer, or the Central Government (in hit and run motor accident cases), in case of death or grievous hurt due to accident arising out of the use of motor vehicles. Such amount is payable to the legal heirs, or nominee, or the victim, as the case may be. Legal compensation for road accidents involving motor vehicles is adjudicated by MACT as established under the Motor Vehicles Act, 1988. Appeal lies in the High Court and then the Supreme Court.

38. Insurance-based Compensation is defined as the amount paid by an insurance company to the insured person to cover for the bodily injuries, deaths, or property damage caused by a road crash.

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urban households received compensation sooner than high income rural households.

7. A mere 6.1% of the LIH in rural areas availed medical insurance compensation, whereas 26.3% of the HIH residing in rural areas availed medical insurance compensation.

8. Over half of the respondents in LIH and HIH categories (56%) said that they had not filed any case under MACT after the crash. 38% of the LIH respondents stated that they did not feel the need to file a case under MACT followed by those who did not want to be involved in legal hassles (31%)

9. Overall, 2/3rd of the respondent truck drivers did not file an FIR after the crash. It was highest in Bihar (95%) and lowest in Tamil Nadu (56%).

10. Over 9 out of 10 surveyed truck drivers had motor vehicle insurance at the time of the crash: 47% were covered under comprehensive insurance & 25% under third party liability insurance.

11. Only 40% of the truck drivers were covered under life insurance and 18% under medical insurance at the time of the crash.

12. Overall, 2/3rd of the truck drivers were not aware of

third-party liability insurance.

13. None of the drivers said that they had applied/benefited from cashless treatment at the hospital, solatium fund for hit and run case or ex-gratia schemes.

PART A: HOUSEHOLD LEVEL

8.1: INSURANCE AND COMPENSATION AMONG LIH AND HIH

The following section discusses the variations in insurance claims among LIH and HIH further filtered by gender, geography and habitation.

Overall, insurance coverage (life, vehicle, medical) is lower for LIH victims compared to victims from HIH³⁹. 7 out of 10 victims from LIH are not covered under any insurance policy. Further, the coverage is higher among urban households vis-à-vis rural households for all insurance policy types. More male victims are covered under insurance policies as opposed to female victims irrespective of LIH or HIH; the contrast being the sharpest in the case of life insurance policy where there is a 10% difference among male and female victims.

39. The question on insurance coverage was covered in the telephonic surveys. The N for coverage and availed, received compensation is different and thus they cannot be compared.

In general, there is a huge difference in the proportion of victims from LIH and HIH covered under a life insurance policy. While three-fourth of HIH victims (77%) were covered under life insurance at the time of the crash, only 17.5% of the LIH victims were covered under the same. 38% of the victims in Bihar were covered under life insurance, followed by Maharashtra (18%) and Tamil Nadu (8%) (Table 8A.2).

The coverage for medical insurance is almost double for rich households compared to poor households. The coverage of medical insurance among LIH was as low as 7% in Uttar Pradesh and 8% in Maharashtra (Table 8A.3).

57% of the respondents from LIH said that the victims were not covered under motor vehicle insurance compared to 35% of the respondents from HIH⁴⁰. Even though third-party insurance coverage has been made compulsory for all motorized vehicles (except State and Central Government vehicles) under Section 146 of the MVAA, 19, the numbers across both types of households reveal a gap in motor vehicle insurance penetration and reach; that gap being wider for victims from LIH.

Nearly 58% of the LIH respondents stated that the victim's vehicle was insured under Third Party Liability Insurance while 28% mentioned that it was insured under Comprehensive Insurance cover⁴¹. Among LIH, Bihar

reported the highest proportion of victim vehicles covered under insurance (63%) compared to Uttar Pradesh that recorded the lowest proportion of vehicle insurance coverage (25%) (Table 8A.4). However, among the HIH, 8 out of 10 respondents in Maharashtra stated that the victim vehicle was insured at the time of the crash, followed by two-thirds in Uttar Pradesh (Table 8A.4). Further, a majority of the LIH victims were covered under third party insurance (58%) while another 28% were covered under comprehensive insurance (Table 8A.5).

It is important to note that victims that had their vehicles insured were mostly educated till the graduate or postgraduate level. This indicates the role that literacy plays in insurance coverage. Lack of formal education disincentivizes the poor from availing any sort of insurance due to the strenuous paperwork and procedures involved therein.

Since more victims from LIH use two-wheelers to commute, the burden falls disproportionately on them after an crash, more so if they are unlikely to be covered by insurance. In terms of vehicle usage (refer to Table 5A.1), the respondents revealed that about 65% of victims were using motorized two-wheelers at the time of the crash while 11% of them were commuting by cars. 48% of those riding two-wheelers at the time of the crash were not covered under vehicle

40. Motor vehicle insurance being an essential instrument that covers policyholders in case of financial losses due to crash or related damages. The two major types of motor vehicle insurance are Comprehensive Insurance Policy and Third Part Liability or Limited Insurance. The policy premium for Comprehensive Insurance covers both third party liabilities and one's damages, injuries and losses to any vehicles, passengers and other property.

41. Comprehensive vehicle insurance is more expensive than third party insurance because it covers a wide gamut of damages.

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insurance whereas 59% of those using cars were insured under motor vehicle insurance.

In general, due to lack of awareness, excessive documentation, delay in receiving payments/compensation, and several other factors, people tend not to claim insurance compensation after an crash. As per our survey findings, the proportion of claims to coverage under various insurance instruments including a motor vehicle, medical and life insurance remains low, more so for LIH.

There is a need to increase the insurance coverage by increasing accessibility and affordability of insurance products to poor households.

Receiving a fair and adequate amount as compensation under the policy, based on the merits of the case, is an undeniable and unquestionable right that the victims possess. However, among the respondents who confirmed that they/the victim had filed for insurance (N=361), about 35% of the respondents from LIH and 40% from HIH said they had received less than the promised amount as compensation. Further, respondents from LIH in Bihar said that they almost took over a year on an average to receive the compensation amount under motor vehicle insurance (Table 8.1).

8.2: AWARENESS OF INSURANCE AND COMPENSATION AFTER THE CRASH AND MAPPING OF COMPENSATION PROCESS UNDER MACT

Overall, 7 out of 10 (70%) respondents from LIH and 63% from HIH stated that they were not aware of any compensation clauses and schemes run by the Indian Government⁴². This is a major gap in terms of accessing these schemes. In the absence of concrete information, LIH miss out on their chances of availing these schemes. As low as 11% of LIH victims and 8% HIH victims/family members availed compensation under ex-gratia (Table 8.20). The low rates could be indicative of low awareness levels amongst LIH about these schemes and highlight the need to conduct strategic awareness programmes for these households. Among those that availed compensation under ex-gratia (N=219), just over half of the LIH victims (52%) and one-fourth (25%) of HIH victims received the eligible compensation.

In terms of time taken, LIH victims received their compensation in about 13.7 months while HIH victims received it in about 20.1 months. The delay in receiving

42. The Government takes responsibility for certain instances of road accidents and offers compensation to the kin of victims by establishing a fund at the central or state level. For instance, under the MVAA, 19, those killed in a hit-and-run cases qualify for government compensation.

Ex-gratia compensation is given mostly by the Government (State or Central) or local authorities in some instances in the event of a crash. It is given to the victims/their families in case the victim either dies in the crash or survives with severe injuries. Ex-gratia is majorly provided to those victims who are not financially capable of bearing the expense in the near future, i.e., if the victim survives with any sort of disability and cannot resume work. Or if a family loses their sole bread earner in a crash. Regarding payment, ex gratia is done voluntarily from a sense of moral obligation rather than the giver recognizing any liability or legal obligation or requirement.

government compensation makes it difficult for LIH households to recover their losses and pay for the immediate costs. HIH are usually not dependent on the compensation money for their survival and are financially prepared for follow-ups and court procedures. They can often afford lawyers and are in no hurry to receive the amount. This is not the case for LIH households where waiting for more than a year to receive the eligible compensation can jeopardize livelihood and survival chances.

The delay in disbursing compensation often frustrates the very purpose of seeking redress. However, from 2009, at the instance of Justice J R Midha of the Delhi High Court and subsequently approved by the Supreme Court of India, various reforms have been introduced in the scheme of adjudication of motor crash claims.

The modified Procedure⁴³ that is now in force, has created a better implementation mechanism for motor crash compensation law and claimants can get compensation within 120 days of the crash. The Supreme Court of India further directed all States to implement the Claims Tribunal Agreed Procedure vide order dated 13th May 2016 in the case of Jai Prakash Vs. M/S. National Insurance Co. SLP (C) No 11801-11804/2005. In this case, the Hon'ble Supreme Court directed that the Claims Tribunal Agreed Procedure be implemented through the Motor Crash Claims Tribunals

in coordination with the Legal Service Authorities as well as the Director General of Police of the respective States.

The Delhi High Court further modified the Claims Tribunal Agreed Procedure vide order dated 12th December 2014. Post which, the Supreme Court directed all States to implement the Modified Claims Tribunal Agreed Procedure (MCTAP) vide order dated 06th November 2017 in the case of Jai Prakash Vs. M/S. National Insurance Co.

The Delhi High Court also formulated the Motor Accident Claims Annuity Deposit Scheme (MACAD Scheme) vide order dated 01st May 2018, for ensuring receipt of compensation in the safe hands of victims & kin of victims and for disbursement of compensation amount. The Delhi High Court then directed 21 banks to appoint a nodal officer for implementation of MACAD Scheme, vide order dated 07th December 2018.

The Delhi High Court further modified the Claims Tribunal Agreed Procedure vide order dated 07th December 2018. The Supreme Court in its judgment dated 05th March 2019 in the case of M.R. Krishna Murthi vs. The New India Assurance Co. Ltd., SLP (C) No 31521-31522 of 2017, noted that "there was no proper implementation of the Claims Tribunal Agreed Procedure by the Claims Tribunals at all India level in terms of the directions of the Supreme Court"

43. TThe Claims Tribunal Agreed Procedure was formulated vide order dated 21st December 2009 in the case of Rajesh Tyagi v. Jaibir Singh, IV (2010) ACC 859. As per the Procedure, motor accident claims resulting in death and/or injuries, are settled in a time bound manner within 90 to 120 days. The Procedure which came into effect on 2nd April 2010 provided the following:

Investigation by Police and DAR: The police to carry out complete investigation and submit a Detailed Accident Report (DAR) to MACT within 30 days of the accident.

Computation by Insurance Company: The Insurance Company to compute the compensation within 30 days thereafter and inform the Tribunal. Acceptance of Claim: If the amount offered by the Insurance Company is fair and acceptable to the claimant, it shall be paid within 30 days. Award by Tribunal: If the offer is not acceptable or the Tribunal finds that the offer is not fair, the Tribunal shall pass an award within 30 days.

Thus the claimant shall get the award amount within 90 to 120 days of the accident.

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in *Jai Prakash Vs. M/S. National Insurance Co. (Supra)*. The Supreme Court further directed the following:

- NALSA should take up the matter and monitor the same in coordination and co-operation with the various High Courts.
- The State Judicial Academies should sensitize the Presiding Officers of Claims Tribunal, Senior Police Officers of the State Police as well as Insurance Company for implementation of the Claims Tribunal Agreed Procedure.
- The Supreme Court also directed the Claims Tribunals in the entire country to implement MACAD Scheme contained in the order dated 07th December, 2018 and directed the twenty one banks to implement the same on all India basis.

However the implementation has been debatable. During the survey, respondents were asked if they knew about the MACT, whether they had filed a case and their experience through the process etc. Over half of the respondents in LIH and HIH categories (56%) said that they had not filed any case under MACT after the crash. However, one-fourth of respondents from LIH and one-fifth of the respondents from HIH stated otherwise. Almost, 6 out of 10 respondents

from LIH had not filed a case under MACT across all states except Tamil Nadu, where such a proportion was nearly 40%.

Further, (in table 8A.7) the proportion of LIH respondents who had filed cases under MACT was significantly higher (about 3 times) for road crashes where victims had died (44%) compared to cases where victims had survived (13.5%).

An open-ended unaided question was asked to understand the reasons for not filing cases under MACT. 38% of the LIH respondents stated that they did not feel the need to file a case under MACT followed by those who did not want to be involved in legal hassles (31%). 11% said they had a lack of knowledge about FIR and legal proceedings while 8% mentioned their inability to afford a lawyer/fee to file a case with MACT. The LIH respondents also mentioned that immediately after the crash, they were in a rush to manage monetary help required for medical expenses and thus could not even think of filing a case. Similarly, over half of the HIH respondents did not want to get into legal hassles, followed by those who did not feel the need to file a case (31%). Around 6% of the respondents said they had settled the case outside the court.

The High Court of Judicature at Madras in its recent

Judgment dated 23rd September 2020 in the case of Manager Vs. Shanmugam & Anr (C.M.A.No.2854 of 2016) further stated that, *"The MCTAP directed to be implemented by the Hon'ble Supreme Court ...has not taken off in Tamil Nadu. No systemic change appears to have been brought about by the online platform by establishment of any specific procedure... There is no pre-litigation exercise by making use of the online facility initiated by the concerned authorities/ parties. As observed by this Hon'ble Court in the order dated 16.03.2020, the Insurance Companies still await the filing of claims before the Tribunal and the trial and adjudication still takes considerable length of time."*

These findings point at the systematic intervention required by State Legal Service Authorities to support the LIH to navigate the legal system. The Supreme Court in a Civil Appeal No. 2476-2477 of 2019 had also directed that NALSA should monitor the adoption of MCTAP in coordination and cooperation with various High Courts. Even the Delhi High Court in its initial order had felt that the DSLSA could play a significant role in the settlement of crash cases. Thus, it had directed the Police, in FAO 842/2003 titled "Rajesh Tyagi & Ors. Vs. Jaibir Singh & Ors.", that it would place a copy of the Accident Information Report along with the FIR not only before the Motor Accident Claims Tribunals but also before the DSLSA so that DSLSA can intervene whenever settlement

was getting difficult and legal aid is being provided in the cases where it is required. This role should be taken up by all State Legal Service Authorities specifically prioritising victims from LIH.

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TABLE 8.1: INSURANCE AND COMPENSATION OVERVIEW: CLAIMS FILED AND COMPENSATION RECEIVED

MOTOR VEHICLE INSURANCE COMPENSATION	Category (State, habitation, gender)	LIH			HIH		
		Availed [N=1647]	Received eligible compensation [N=229]	Avg. time taken (months) [N=148]	Availed [N=432]	Received eligible compensation [N=132]	Avg. time taken (months) [N=79]
MOTOR VEHICLE INSURANCE COMPENSATION	Overall	13.9%	64.6%	7	30.6%	59.8%	7.3
	Bihar	10.7%	59.1%	12.6	21.7%	48%	17.6
	Maharashtra	9.2%	55.3%	10.5	38.1%	76.7%	3.1
	Tamil Nadu	28.5%	75.9%	3.9	32%	66.7%	6.4
	Uttar Pradesh	7.5%	41.9%	11.1	30.7%	38.7%	10.3
	Habitation Type	13.9%	64.6%	7	30.6%	59.8%	7.3
	Urban	21%	64.4%	7.1	31.7%	54.9%	6.9
	Rural	11%	64.8%	6.9	25%	89.5%	8.9
	Victim Gender	13.9%	64.6%	7	30.6%	59.8%	7.3
	Male	13.5%	63%	7.6	32.6%	58.6%	8.1
	Female	16.3%	73%	4.2	22.8%	66.7%	3.4
MEDICAL INSURANCE COMPENSATION	Category (State, habitation, gender)	LIH			HIH		
		Availed [N=1647]	Received eligible compensation [N=229]	Avg. time taken (months) [N=148]	Availed [N=432]	Received eligible compensation [N=132]	Avg. time taken (months) [N=79]
MEDICAL INSURANCE COMPENSATION	Overall	7.5%	79%	2.5	16.9%	74%	2.7
	Bihar	8.7%	69.4%	2.8	20.9%	45.8%	2.6
	Maharashtra	2.4%	70%	3.4	19.5%	81.8%	2.4
	Tamil Nadu	17.4%	88.7%	2.2	16.5%	94.1%	2.4
	Uttar Pradesh	1.7%	42.9%	3.7	9.9%	90%	4
	Habitation Type	7.5%	79%	2.5	16.9%	74%	2.7
	Urban	11%	83%	2.8	14.9%	66%	2.8
	Rural	6.1%	76.1%	2.2	26.3%	95%	2.5
	Victim Gender	7.5%	79%	2.5	16.9%	74%	2.7
	Male	7.7%	78.2%	2.5	19.4%	72.7%	2.8
	Female	6.2%	85.7%	2.4	7.6%	85.7%	2

LIFE INSURANCE COMPENSATION	Category (State, habitation, gender)	LIH			HIH		
		Availed [N=1647]	Received eligible compensation [N=229]	Avg. time taken (months) [N=148]	Availed [N=432]	Received eligible compensation [N=132]	Avg. time taken (months) [N=79]
	Overall	3.8%	77.4%	4.2	4.2%	77.8%	5.3
	Bihar	4.1%	76.5%	4.5	4.3%	100%	4.4
	Maharashtra	2.7%	81.8%	4.1	--	--	--
	Tamil Nadu	2.5%	40%	3.8	1.9%	50%	5
	Uttar Pradesh	5.8%	91.7%	4.1	10.9%	72.7%	5.9
	Habitation Type	3.8%	77.4%	4.2	4.2%	77.80%	5.3
	Urban	2.3%	81.8%	5.1	3.9%	78.6%	5.6
	Rural	4.4%	76.5%	4	5.3%	75%	4.3
	Victim Gender	3.8%	77.4%	4.2	4.2%	77.8%	5.3
	Male	4.2%	79.7%	4.1	5.3%	77.80%	5.3
	Female	1.3%	33.3%	6	--	--	--

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TABLE 8.2: STATE-WISE SPLIT: VICTIM/NOMINEE FACED DIFFICULTIES IN ACCESSING COMPENSATION

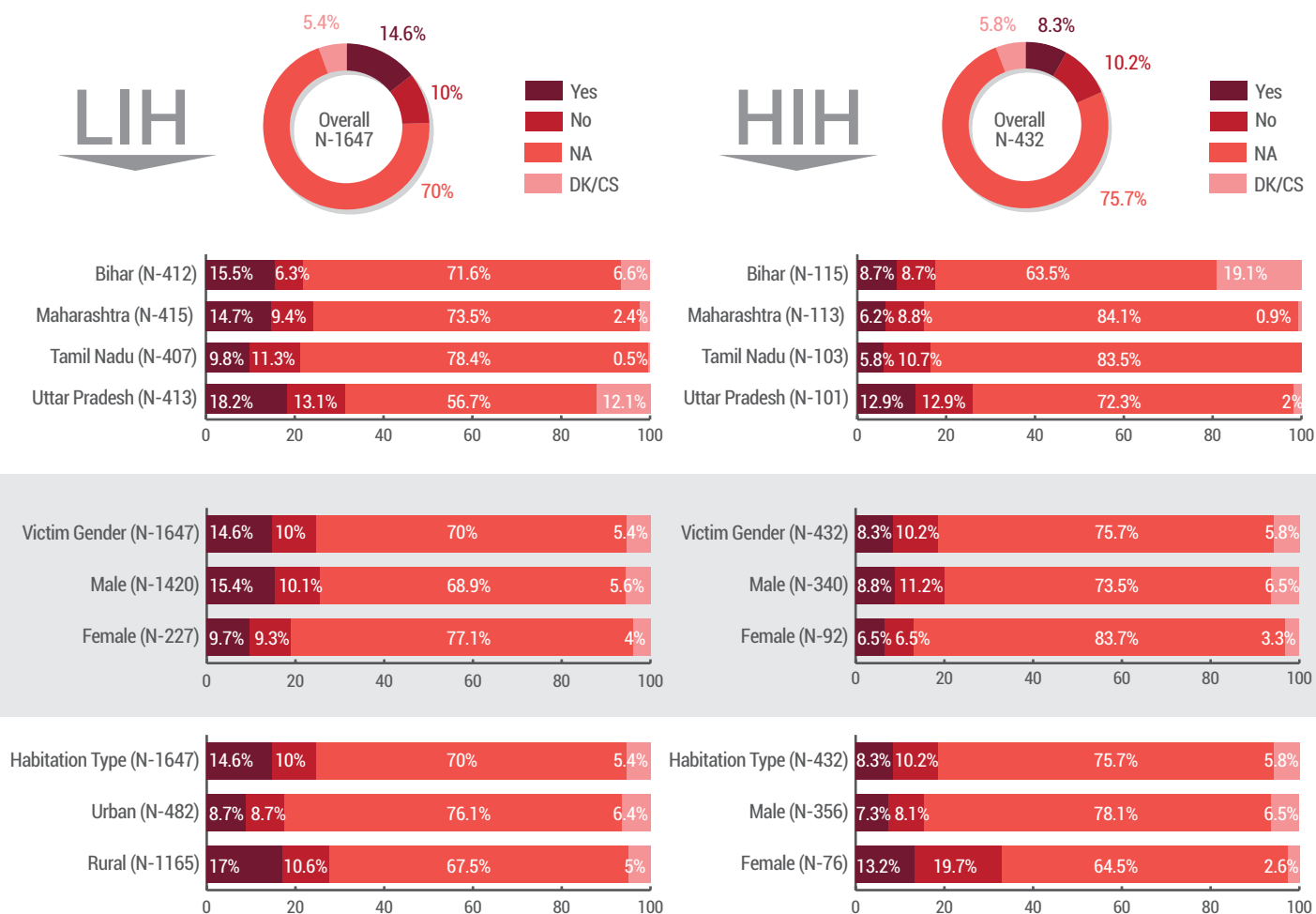
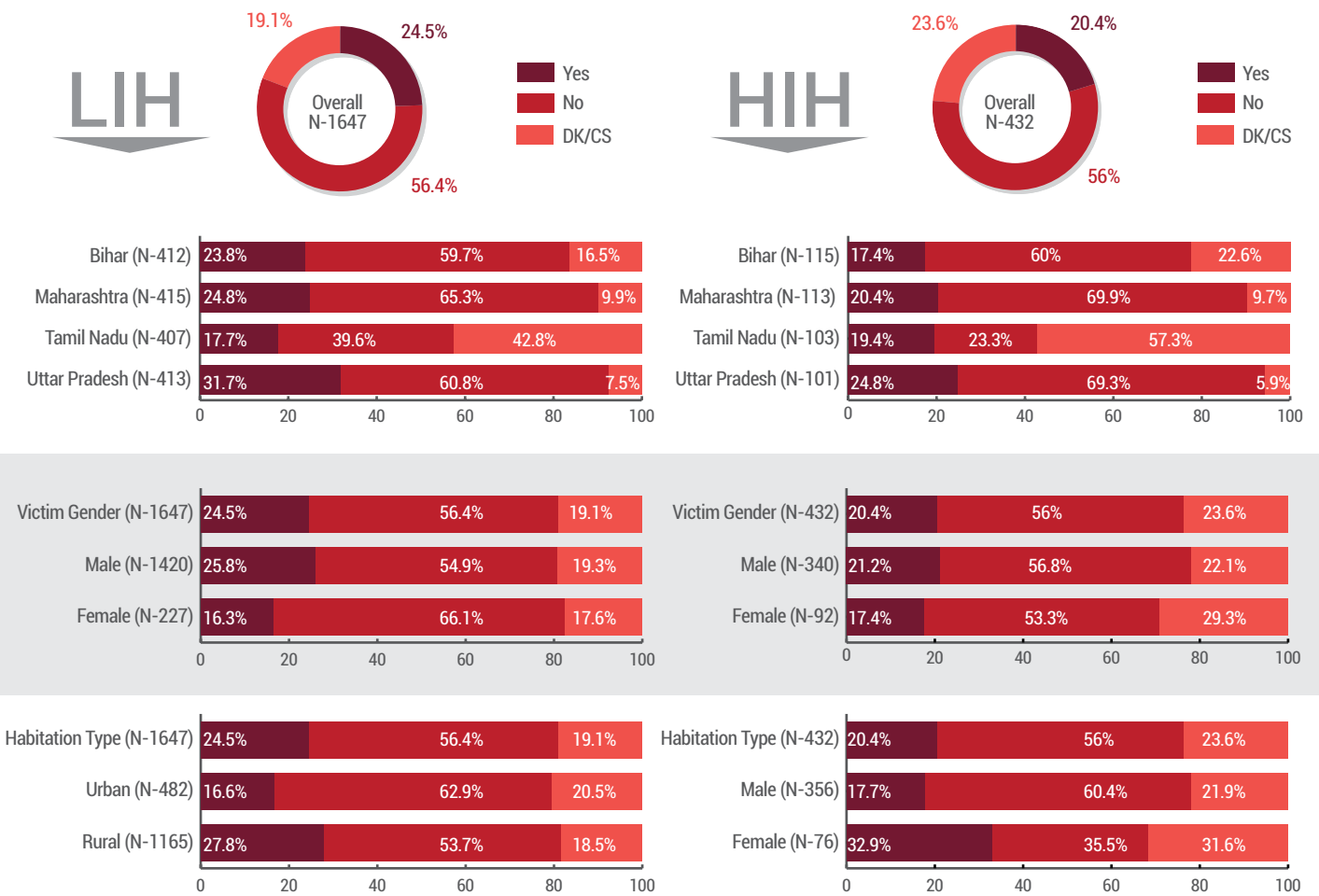
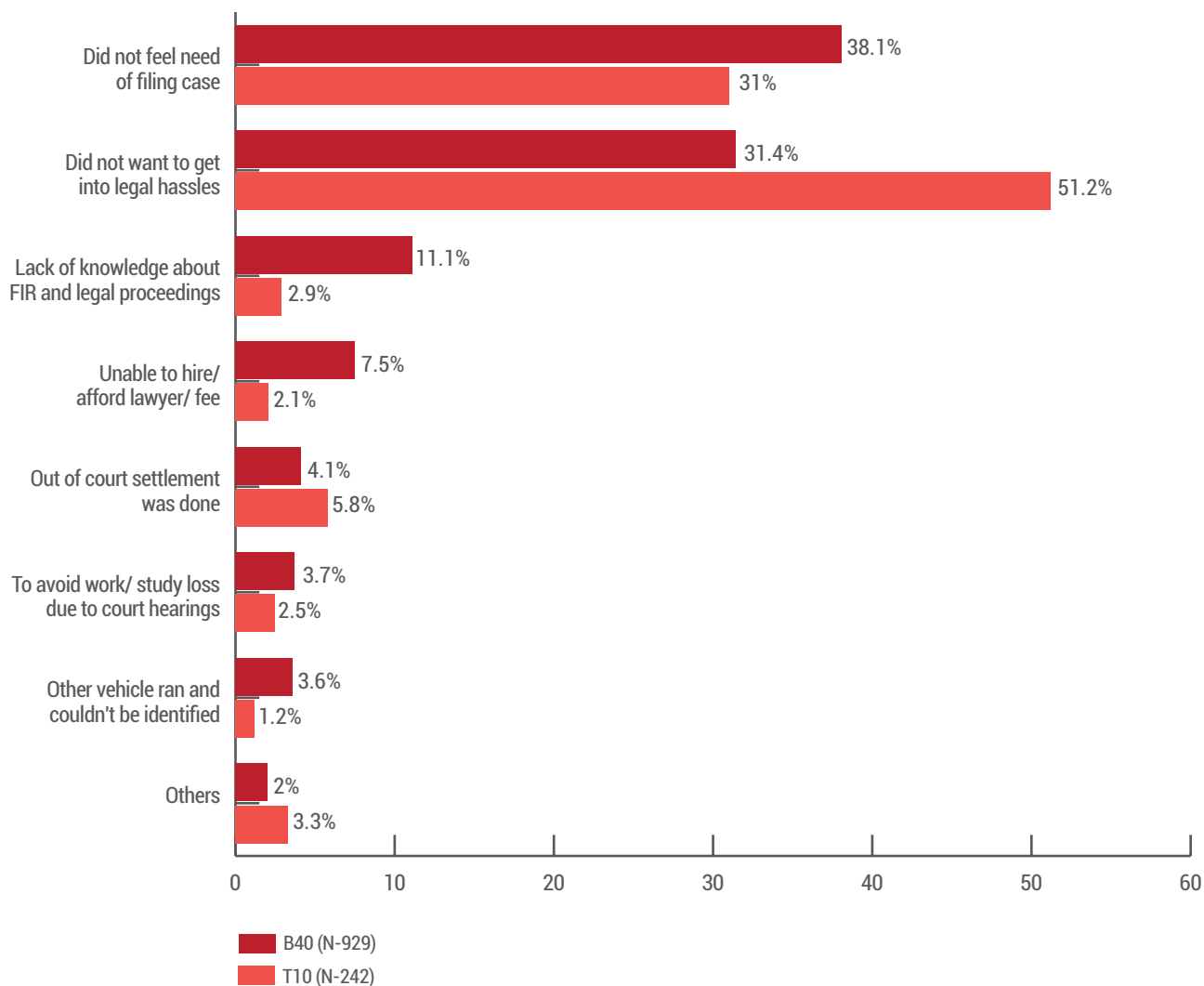


TABLE 8.3: FILED CASE IN MACT AFTER THE ROAD CRASH



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FIG 8.1: REASONS FOR NOT FILING CASE WITH MACT [OPEN-ENDED, ALL FIGURES IN PERCENT]



To address the issue of legal and procedural hassles, the Supreme Court in its judgment dated 05th March 2019 in the case of M.R. Krishna Murthi vs. The New India Assurance Co. Ltd., (Civil Appeal No. 2476-2477 of 2019) further recommended that *"the Government (should) examine the feasibility of setting up the Motor Accident Mediation Authority (MAMA) in every district by making necessary amendments in the Motor Vehicles Act itself."*

PART B: TRUCK DRIVERS

Truck drivers form the backbone of the economy, controlling 67% of India's freight and logistics sector (Road Transport Year Book 2015-16). Out of the 1.5 lakh people killed in road crashes in the country, 15,000 of the total (10%) road crash victims are truck and lorry drivers (MoRTH, 2018). In terms of vehicle category, trucks and lorries are involved in over 57,000 crashes (MoRTH, 2018). It is not surprising then that 61.5% of the truck drivers feel unsafe driving on roads (SaveLIFE Foundation, 2020). The living conditions of truck drivers are abysmal with no standardization in wages, lack of social security and incentives to complete a trip on time. 53% of the truck drivers earn a meagre income of Rs.10,000-Rs.20,000 per month. 93% of truck drivers do not get any social security benefits such as provident fund, pension, health insurance, life insurance, gratuity, etc (SaveLIFE Foundation, 2020). Three-fourth of the fleet owners have confirmed that their trucks were involved in road crashes and listed "getting insurance claim for vehicle

repair" as among the top 5 challenges they face when their trucks are involved in crashes (SaveLIFE Foundation, 2020).

Out of the 420 respondent truck drivers surveyed as part of this study, 58% of them stated that they were involved in road crashes where they had sustained injuries. In Maharashtra, 96% of the respondents had been injured in a road crash whereas the proportion was less than 50% among the other three surveyed States. Among the respondents who said that they had experienced injuries in the crash (N=244), about 50% of them were severely injured while the other half (50%) had sustained minor injuries. Nearly 47% of the respondents stated that they were admitted to a hospital for treatment.

One of the biggest challenges in claiming compensation after an crash for truck drivers has been the under-reporting of the crash and non-filing of FIRs. Overall, about two-thirds (66%) of truck drivers hadn't filed an FIR after the crash. State wise (refer to Table 5A.11), only 2.5% of the truck drivers from Bihar reported filing an FIR after the crash, followed by Uttar Pradesh (27%), Maharashtra (42%) and Tamil Nadu (44%).

The most significant and concerning finding of this study is that despite having a high rate of crashes and sustaining injuries, none of the respondent truck drivers had applied/benefited from any Government run scheme for compensation after the road crash. They had neither laid claim to or benefited from any Government scheme like

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cashless treatment at hospitals, solatium fund for hit-and-run cases, or any other ex-gratia schemes at the central or state level.

8.3 PERSONAL INJURY INSURANCE AND COVERAGE AT THE TIME OF THE CRASH

The process of claiming insurance is fraught with challenges for vulnerable groups like truck drivers who often hail from LIH and disadvantaged sections of society. Truck drivers from Maharashtra stated they had to go through certain hassles during the claim proceedings and received late approval for their claims filed. Overall, more than half the truck drivers (54.5%) said that they were not covered under any sort of personal injury insurance⁴⁴, whereas nearly 40% were covered under life insurance and 18% under medical insurance.

Over 8 out of 10 respondents (87%) in Tamil Nadu had filed a claim for insurance for personal injuries while in Bihar, such a proportion was as low as 13.5%. It must be noted that while the coverage of personal injury insurance was highest in Bihar, the proportion of claims was lowest, whereas for Tamil Nadu it was directly proportional.

8.4 AWARENESS REGARDING "INSURANCE OF MOTOR VEHICLE AGAINST THIRD PARTY RISKS" AND OTHER RELATED ASPECTS

According to MVAA 2019, it is compulsory for drivers to have third-party insurance in order to get coverage for their own liability and the damage caused to the third party w.r.t bodily injury/death or vehicle. It is important to note that despite the Government bringing in progressive changes in the MVAA, 19 listed above, about two-third of the respondents were not aware/somewhat aware of third-party liability insurance, while about one-third stated otherwise (refer to Table 5A.19). Only 36% of the truck drivers said they were fully aware of the fact that third party insurance had been made mandatory under the MVAA, 19.

Interestingly, awareness about third-party liability insurance was directly related to the driving experience of the respondents, i.e., respondents with more driving experience seemed to be more aware of it. Also, those drivers who had experienced a crash seemed to be more aware (49%) of the clause than those who had not (13%). At the State level, less than one-fifth of truck drivers were aware of third-party liability insurance except for Maharashtra where nearly 8 out of 10 truck drivers were aware of it.

44. Personal accident insurance is a policy that can reimburse medical costs, provide compensation in case of disability or death caused by accidents, depending upon the nature of the disability.

There remains a confusion and misunderstanding among truck drivers on the definition of third party insurance and what it includes. Nearly two-third of the respondents said that third party insurance covers the other party involved in the crash, followed by nearly 13% who said that the insured gets compensation as cover while 8% said that the insuree can claim compensation on death, severe injury and damaged vehicle. In terms of the nature and scope of coverage under third party insurance, 7 out of 10 respondents mentioned that it covers for death, injury, and property damage. Similarly, almost 27% stated that it covers only property damage, while 25% stated it included only for injury/disability. Only 4% of the respondents thought that it included only death under its purview.

About one-third of the respondents stated that they were 'not aware' of the compensation process, including time limitation for filing the case before the Claims Tribunal and deputation of an officer by the insurer for settlement of the claim. Almost, a similar proportion of respondents were not aware of the inclusion of khalasi or attendant under third party insurance coverage under MVAA, 2019.

This lack of awareness across respondent categories has emerged as a trend throughout the study. Information asymmetry and poor literacy levels often deter the poor from filing claims. Even if the claims are filed, the proportion

of compensation received is not adequate and the delays in awarding compensation make the process unfavourable. Government schemes are also not well publicized among the poor and do not offer immediate relief after a road crash.

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TABLE 8.4: AWARENESS OF MOTOR THIRD PARTY LIABILITY INSURANCE-RELATED ASPECTS AT STATE

CATEGORY	Bihar (N=101)		
	NA	SA	FA
The purchase of Motor Third party liability insurance is compulsory and you may be fined by the Police if vehicle is uninsured	2%	79.2%	18.8%
If the vehicle UNINSURED, you/ owner may be personally liable to pay for injuries caused to others if you are at fault for crash	3%	69.3%	27.7%
Motor Third Party liability insurance provides compensation to other people for their injuries if the crash is your fault	2%	71.3%	26.7%
Motor Third Party liability insurance does not provide compensation for injuries you incur if the crash is your fault	5%	69.3%	25.7%
If someone else is a fault for an crash & you incur injuries, you may be able to claim compensation from the insurer the vehicle is insured with	5%	72.3%	22.8%
The compensation you are eligible to receive may be reduced if you breach a traffic law	5%	66.3%	28.7%
Along with driver, truck attendant (khalasi) is also covered for benefits under third party insurance under MVAA, 2019	20.8%	63.4%	15.8%
The time limitation for filing of cases for compensation for injuries before the Claims Tribunal is 6 months from the date of the crash	0.9%	64.4%	24.8%
In case of road crash, insurance company is liable to designate an officer to help you with the process of settlement of your claim	1.9%	71.3%	16.8%

Maharashtra (N=113)			Tamil Nadu (N=100)			Uttar Pradesh (N=106)		
NA	SA	FA	NA	SA	FA	NA	SA	FA
5.3%	15%	79.6%	53%	53%	31%	33%	40.6%	26.4%
9.7%	31.9%	58.4%	50%	50%	33%	31.1%	31.1%	37.7%
13.3%	19.5%	67.3%	26%	26%	55%	30.2%	34.9%	34.9%
13.3%	27.4%	59.3%	46%	46%	38%	47.2%	34.9%	17.9%
9.7%	35.4%	54.9%	54%	54%	30%	28.3%	43.4%	28.3%
17.7%	26.5%	55.8%	26%	26%	47%	35.8%	40.6%	23.6%
17.7%	31%	51.3%	50%	50%	33%	43.4%	36.8%	19.8%
23%	37.2%	39.8%	55%	55%	28%	45.3%	35.8%	18.9%
27.4%	24.8%	47.8%	45%	45%	38%	55.7%	29.2%	15.1%

OUTCOMES OF THE INSURANCE & LEGAL COMPENSATION PROCESS

6- POINT POLICY RECOMMENDATIONS

1. Comprehensive Implementation of MCTAP

A Director level official should be appointed by MoRTH for ensuring compliance with all Supreme Court & High Court judgments including but not limited to judgment on MCTAP. Further, an advisory should be sent to JS Centre-State Coordination for implementation of these judgments. The Supreme Court in its judgment dated 05th March 2019 in the case of M.R. Krishna Murthi vs. The New India Assurance Co. Ltd., SLP (C) No 31521-31522 of 2017, noted that there was no proper implementation of the Claims Tribunal Agreed Procedure by the Claims Tribunals at all India level. Even though the Supreme Court directed NALSA to ensure implementation in coordination and cooperation with various High Courts, yet, the implementation has been weak. The National Road Safety Board, which will be created under the Motor Vehicles Amendment Act, 2019, can be the main coordinating agency to ensure proper implementation of the MCTAP.

2. Issuance of Notification under MVAA,2019 to standardise protocol between MACT, Police and Insurance Company

For effective and efficient implementation of online DAR is important to ensure no delay in compensation being awarded to claimants. The standardization of this process will ensure that all crash documents, vehicular records, compliance with statutory provisions in regard

to use of vehicles, details of victims, family members and other aspects are shared with the tribunal as quickly and efficiently as possible. The notification should also direct the use of Crime and Criminal Tracking Network and Systems (CCTNS) by Police as well as Tribunals as the formal electronic to share files and information including FIRs and DARs.

3. Mechanism for Interim Compensation

The MVAA,2019 also mandates a Motor Vehicle Accident Fund to be set up by the Central Government (Section 164B) for giving interim compensation to victims of road crashes under Section 164 A. The Central Government can also establish a Motor Accidents Mediation Authority (MAMA) in every district to provide fixed interim compensation as direct credit to Aadhaar linked bank accounts. MAMA can also take over pre-litigation procedures from MACT.

The Union Govt must fix an amount that can be transferred immediately as interim compensation pending adjudication of the compensation claim. The recommended range of amount is INR 2-5 lakhs in case of death and INR 50,000 for injury.

4. Ensuring coordination between MAMA, State Road Safety Council (SRSC), and State Legal Services Authority (SLSA)

An effective institutional mechanism needs to be put in place to ensure smooth coordination between the relevant agencies. Appointment of a 3-member team at

the State level could include officials from the Health, Law and Transport departments respectively. MVAA,19 has brought in certain progressive changes in the insurance and compensation process to make it more victim-friendly. The Act has simplified the claims process to benefit the claimants by reducing the litigation period, which currently runs into years. To further increase coordination and ensure real-time monitoring of implementation, the Central Government should create a policy framework to ensure efficient coordination between MAMA, SRSC and SLSA.

5. Increasing Awareness about MCTAP and other Compensation Schemes

This can be achieved through the Government mandating General Insurance Corporation (GIC) to set up a dedicated helpline number for LIH. Other insurance companies can contribute to this and the number can be linked to the hospital database of LIH.

Information asymmetry and poor literacy levels often deter the poor from filing claims. Even if the claims are filed, the proportion of compensation received is not adequate and the delays in awarding compensation make the process unfavourable. Government schemes are also not well publicized among the poor and do not offer immediate relief after a road crash.

6. Inserting Technology to ensure Insurance Coverage

Inserting technology to increase accessibility and affordability of insurance products to poor households

should be incentivised. Government should encourage companies to create low-price, micro- insurance products with LIH in mind. For example, Medical insurance provides coverage only for hospitalization, pre-specified ailments and crashes, for a pre-specified amount while health insurance provides a comprehensive coverage against hospitalization expenses, pre-hospitalization and post-hospitalization expenses and ambulance charges. An insurance product designed to ensure pay-out on losing "one-month of work due to ill-health" would help create an interim-safety net for the entire household. Also IRDA should ensure that insurance agencies create mechanisms for simple claim settlement.