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## Law on compensation for road crash fatalities lacks balance, clarity

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Within the span of just four days in January, the country saw five deaths in road accidents where four of the victims were children. What followed was a High Court order that held the government responsible for the losses.

On February 11, the High Court issued an order that the secretaries of home affairs and road transport, and the BRTA chairman have to pay BDT 100,000 to each of the victims' families as interim compensations.

The authorities were asked to respond as to why they would not pay BDT 50 lakhs. In response to the HC rules, the police (the inspector general of police and additional police commissioners of the districts where the accidents took place) have to submit reports containing details of the victims, the vehicles, their drivers and owners.

Despite being shrouded by doubt, given the lengthy nature of such cases (such as that of journalist Mozammel

Hossain Montu or filmmaker Tareque Masud), the HC order stands out as it demonstrates to the masses that the government can, and should, be held liable for losses of lives in road crashes.

The High Court issued the order and rules after hearing a public interest litigation filed by Bangladesh Legal Aid and Services Trust (BLAST).

Barrister Md Abdul Halim of the Supreme Court, who is representing BLAST, says, "Every citizen has a right to life and the state is the custodian of life—as guaranteed by the constitution. And the government is the custodian of the constitution. So, the government must be held liable if negligence of its functionaries results in loss of lives."

"The lives cannot be brought back but the compensation is a form of condolence that must be offered. Breach of public duties is not allowed by the constitution," he adds.

According to Barrister Halim, Bangladesh currently lacks any specific guideline on compensation for victims of road accidents. The Road Transport Act (RTA), which was passed by the parliament in October last year following student protests demanding road safety, is yet to be implemented as no gazette notification has been published till date.

In such a circumstance, the High Court order comes as a respite. But the question remains: how come only the government is being penalised and transport owners, who appointed unskilled drivers for unfit vehicles in the first place, get away scot-free?

Taqbir Huda, a research specialist at BLAST, flags some loopholes in the RTA and explains why the Motor Vehicle Ordinance 1983 should have been modified or enforced instead of being summarily replaced.

"The Ordinance had a provision on formation of a Motor Accidents Claims Tribunal to provide a speedy system through which victims could sue not only the negligent drivers but also the owners and their insurers. But Chapter 10 of the 2018 Act (which deals with compensation) replaces the victim's right to sue vehicle owners with the right to apply for 'financial aid' from a rather charitably termed Financial Aid Fund (Arthik Shohayota Tohobil). Funds are given out of kindness while compensations are realised through legal procedure," says Huda.

Terming the drivers as "symptoms" and owners as "causes" of the fatalities, he adds, "Under RTA, the driver is slapped with a BDT 500,000 fine which is likely to remain unrealised. The driver cannot pay such an amount but the owner can! The RTA ignores the owner's vicarious liability. If the owners are given the notion that no penalty would follow

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them in case of accidents, they are likely to be least bothered about appointing skilled drivers and checking the fitness of vehicles."

When asked why the government dissolved the Ordinance, the law practitioner argues, "Because it was more focused on passing a new law rather than enforcing or modifying the existing one. Doing the latter would have showed their failure."

Victims, especially when they are from lower-income groups, often do not know that they are entitled to compensation. "In most cases, the vehicle owners try to settle the matter out of court by giving a paltry amount to the victims and get their own way," says Barrister Bilkis Akter Mily, who represented Catherine Masud, widow of Tareque Masud, during her legal battle in 2017.

"One needs to start a case under the MVO six months into the accident. At first, we were confused about which law we would pick to initiate Catherine's case. We found MVO to be the best and her case was the first one filed under the Ordinance that reached the Appellate Division," says the Supreme Court lawyer, while stressing on the need of publicising the law to make the masses aware of their rights.

Interestingly, as per section 1(2) of the Road Transport Act 2018, any law will be in force only after the government publishes it through a gazette notification—which it is yet to do for RTA. This means we are still under the mode of MVO 1983 which offers "compensation" not "funds."

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The maiden compensation order for death in road accident was given in 2014 to the heirs of ex-news editor of the *Daily Sangbad*.

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