Report of

COMMITTEE ON ABSOLUTE LIABILITY

JULY 1963

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NEW ZEALAND

REPORT OF COMMITTEE ON ABSOLUTE LIABILITY

2 July 1963.

The HONOURABLE MINISTER OF JUSTICE,
Wellington.

1. On 4 September 1962 you appointed:

Mr H. R. C. WILD, Q.C., Solicitor-General (Chairman);
Mr K. R. CONGREVE, Insurance Manager (nominated by all insurers undertaking business under Part V of the Transport Act 1949 (now Part VI of the Transport Act 1962));
Mr L. A. HADLEY, Union Secretary (member of and nominated by the National Executive of the New Zealand Federation of Labour);
Mr R. J. A. MUIR, Registered Accountant, Senior Administration Officer of the Transport Department;
Mr J. C. WHITE, Barrister (nominated by the Council of the New Zealand Law Society)

to be a Committee to examine and report to the Minister on the desirability of the introduction of some form of absolute liability for death or bodily injuries arising out of the use of motor vehicles, including the adequacy and justice of the present law and insurance practice and legal procedure, and such incidental matters as the Committee may think worthy of reporting. On 12 December you appointed:

Mr E. C. CHAMPION, Barrister, Christchurch (nominated by the North and South Island Motor Unions)

to be an additional member of the Committee.

EXTENT OF INQUIRY

2. At its first meeting held on 17 September 1962 the Committee decided to invite submissions, preferably in writing, from interested persons and bodies, and to this end to advertise in the press in Auckland, Wellington, Christchurch, Dunedin, and Invercargill. This was done. The Committee also arranged for a verbatim record to be made of the proceedings at its public sittings. This record, together with the formal written submissions made, is presented with this report.

3. The following is an alphabetically arranged list of the persons and bodies who either orally or in writing made submissions or presented views of any kind to the Committee. Those whose names are marked with an asterisk appeared personally.

Borley, D. C., Wellington.
*Campbell, I. B., Wellington.
Constitutional Society (Inc.).
Department of Justice.
Gaffaney, P. D., Rangiora.
Griffin, K. M., Auckland.
*Harris, D. R., Oxford University, England.
*The Insurance Industry Committee on Absolute Liability (T. A. Lawson and I. B. Compton).
Johns, E. A., Kaitaia.
*Joint Standing Committee of the North and South Island Motor Unions (H. W. Dowling), with which was associated the New Zealand Carriers Federation (Inc.) and the New Zealand Road Transport Alliance (Inc.).
*Law Society of the District of Auckland (J. D. Gerard).
MacMaster, H., Auckland.
*New Zealand Law Society (E. D. Blundell).
New Zealand Motor Omnibus Proprietors Association (Inc.).
New Zealand Passenger Services Federation (Inc.).
Otago Road Services Limited, Dunedin.
Public Passenger Transport Association of New Zealand (Inc.).
*Rose, L. G., Wellington.
Yates, F. R., Auckland.

4. The Committee took steps to obtain and to consider the reports of inquiries of a similar kind carried out in other countries and also referred to as much as possible of the considerable volume of writing that has been done on the general topic of this inquiry. For convenience a list of all the reports and writings which came to the Committee's attention is set out in Appendix A hereto.

5. The Committee was prepared to sit wherever necessary for the purpose of receiving submissions in public, but in the result those wishing to make submissions came to Wellington. As will be evident from the list of submissions, all associations and bodies which might be expected to have a special interest in the inquiry presented submissions as did a number of experts with special knowledge in the field, and some private citizens. The Committee is satisfied that every opportunity was given to anyone who wished to make submissions.

6. The Committee held four sittings in public. These were so arranged in point of time as to give interested parties ample opportunity to consider questions raised and to answer submissions presented.

The Committee also held many private meetings in the course of deliberating and formulating this report.

EARLIER CONSIDERATION OF QUESTION IN NEW ZEALAND

7. The first recorded mention in New Zealand of the question involved in this inquiry occurred as far back as the Parliamentary debate on the Motor-vehicles Insurance (Third-party Risks) Act 1928. The object of this Act, as stated in the short title, was to require the owners of motor vehicles to insure against their liability to pay damages on account of deaths or bodily injuries caused by the use of such motor vehicles. The compulsory insurance scheme thus established was indeed a new idea, as was acknowledged by other countries throughout the Commonwealth and beyond which adopted the principle in later years. The Act was acclaimed overseas as well as in New Zealand as an admirable piece of legislation.

8. The Attorney-General (Hon. F. J. Rolleston), who introduced the Bill, was careful to tell the House that the Act would cover only those cases in which the driver was liable in law for the death or injuries in question[1] and it was forecast that the fact that there would be no liability without proof of negligence would lead to much litigation. Referring in his reply to the suggestion that there should be "cover against risk no matter how the accident happened" the Attorney-General said: "That is a goal to which I should very much like to attain, and I hope it will eventually be possible to extend this scheme to that extent."[2] The possibility of that extension is the question we are now asked to consider.

9. In 1933 the *Report of the Committee to Study Compensation for Automobile Accidents* made to the Columbia University Council for Research in the Social Sciences was received in New Zealand and summarised in an article[3] by Mr H. F. von Haast, a Wellington barrister. He concluded that the scheme was "well worth consideration by our motorists, pedestrians, lawyers and legislators".

10. Three years later in the course of the debate on the Judicature Amendment Bill 1936 (which widened the classes of civil actions to be tried by jury), the Attorney-General (Hon. H. G. R. Mason) was prompted, by assertions that juries in road collision cases well knew that their verdicts would really fall upon the pool of insurance premiums, to refer to the question. He said:

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[1]219, *N.Z. Parl. Debates,* 595.
[2]Loc. cit., 617–8.
[3]9, *N.Z. Law Journal,* 296.

> All injuries on the road should be compensated, irrespective of whether the driver was negligent. They will be compensated by the insurance pool, which means that the motorists in general will pay for the accidents in general, as they do today, but instead of paying only for the accidents due to their negligence they will pay for all the accidents and insure the people on the roads against the accidents due to motor-cars. That is the only logical solution of that problem, and I think we may as well recognise that fact. I hope to raise the issue in a more practical form.[1]

11. The Attorney-General did raise the issue in a more practical form during the same year, instructing the Department of Justice to consider the Columbia Report with a view to making liability for motor accidents analagous with liability under the Workers' Compensation Act.

12. During 1937 a Bill was drafted accordingly, providing for compensation in respect of all persons killed or injured as a result of motor accidents but excluding the victim who:

(a) Intended to cause injury either to himself or someone else; or

(b) Was a passenger in a converted car and had knowingly consented to the conversion; or

(c) Was a willing passenger with an intoxicated driver.

The draft Bill provided that if the accident was caused by the negligence of some person other than the owner or the person injured then the owner or insurer was to have a right of recovery against that negligent person. The liability was to pay compensation according to a schedule similar to that under the Workers' Compensation Act, with a maximum of £2,000. The injured person's common law rights were to remain unaffected. To these proposals there was immediate and strong opposition, mainly from the motor unions, and the Bill was never introduced.

13. At the Fifth Dominion Legal Conference[2] held in 1938 Mr W. J. Sim[3] read a paper[4] in support of a remit "that this Conference approves of the principle of absolute liability in motor collision cases with provision for assessment of damages by a Judge and two assessors". A careful perusal of the paper as a whole supports the distinct recollection of the three legal members of the present Committee (who attended the discussion) that the remit was inspired not so much by enthusiasm for absolute liability as by thorough disillusionment with the jury as the tribunal for trying motor accident cases under the law as it then stood. The author asserted that the jury treated each case as a trial between the plaintiff and the insurance company and that

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[1]246, *N.Z. Parl. Debates*, 56

[2]A gathering of some 120 practitioners; not a meeting of elected representatives.

[3]Now Sir Wilfrid Sim, Q.C.

[4]14, *N.Z. Law Journal*, 124.

it was almost a foregone conclusion that the plaintiff would succeed, but that it was futile to hope that the jury could be dispensed with as the tribunal for such cases. The remit was strongly supported by the Hon. F. J. Rolleston who, as Attorney-General 10 years earlier, had introduced the Motor-vehicles Insurance (Third-party) Act. He disclosed to the conference that

> it was just a toss-up whether the Bill . . . would contain this principle of absolute liability or not, and the only reason that it did not was that the whole subject was new, and we felt that we must proceed on safe lines . . . and not introduce the principle . . . until we had a little experience of the working of the system.[1]

Mr Sim's paper produced what the *Law Journal* records as "the most animated discussion of the Conference", which in the end, after all points of view had been put, resolved by a majority:

> That this Conference approves the principle of absolute liability for personal injuries in motor collision cases, such liability to be covered by compulsory insurance, and that compensation be assessed in some suitable manner.[2]

14. These proposals were in due course considered by the motor unions. While acknowledging the need for amendment of the law to provide for contributory negligence, the motor unions strongly objected to absolute liability, principally because it would enable a person injured to recover unlimited damages despite his own negligence. Having been informed by the Minister of Justice on 29 February 1940 that the Government had decided to appoint a Committee to examine the question, the motor unions resolved to combine in opposition and sent a deputation at once to the Acting Prime Minister to express their views. The Committee appointed comprised two law practitioners, the General Manager of the State Fire Office, a person experienced in assessing accidents, and two representatives of the motor unions. In view of the war situation the Committee deferred its consideration and, in fact, never took up its task.

15. During 1941 Mr O. C. Mazengarb, writing a thesis which was subsequently published as *Negligence on the Highway*,[3] discussed the case for some form of absolute liability and himself proposed a compensation scheme. Of this the essentials were that any person injured through the driving of a motor vehicle should be entitled, without proof of negligence, to compensation for his medical and hospital expenses and loss of earnings during any period of incapacity up to one year; that the funds required should be

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[1]14, *N.Z. Law Journal*, 124.
[2]Ibid.
[3]Wellington, 1942. The author, now Dr O. C. Mazengarb, Q.C., omits this proposal from later editions of his book.

charged by way of petrol tax or impost on licences on the whole motoring community and administered by a board having power to make periodic or lump sum payments; that the injured person should have to elect whether to accept such compensation or claim damages and, in the latter case, the compensation he might have had would be available towards a successful defendant's costs; and that no benefits would be payable to a driver whose injuries were not in any way due to the operation of another vehicle.

16. No further active steps have since been taken with regard to proposals for absolute liability and there has certainly been no public demand for any such scheme. At its meeting on 6 April 1962, however, the Law Revision Committee recommended that the question be referred for investigation to a committee to be appointed by the Attorney-General. The present Committee is the result.

SHORT HISTORY OF LEGISLATION

17. It is convenient first to give a short account of the history of the New Zealand legislation. Before 1928 owners of motor vehicles pleased themselves whether they insured against claims for damages for death or bodily injuries arising out of the use of their vehicles. By that year, however, the increasing numbers of motor vehicles and accidents had raised such a demand from all parts of the community that the Government devised and passed legislation for a compulsory insurance scheme.

The Motor-vehicles Insurance (Third-party Risks) Act 1928

18. Section 3 of this Act[1] required every owner of a motor vehicle to insure against his liability to pay damages on account of the death of or bodily injury to any person caused through or by or in connection with the use of that vehicle in New Zealand. Every person other than the owner who was at any time in charge of the vehicle, whether with the authority of the owner or not, was deemed to be the authorised agent of the owner acting within the scope of his authority in relation to the vehicle.

19. Under section 5 the owner was compelled to pay his insurance premium with the annual licence fee and no vehicle would be licensed unless the premium was first paid; and on payment of that premium the insurer nominated by the owner became bound to indemnify him within the limits provided in respect of his liability

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[1] 8, *Public Acts of New Zealand,* 1908–1931, 822.

to pay damages. It was this provision that was the novel and distinctive feature of the legislation. It was regarded by the Attorney-General as the key to the success of his scheme for it ensured within the limits laid down that an injured person who could prove a driver at fault was assured of his damages, and it has since been acknowledged in overseas reports with admiration and even envy.[1] The insurance money so provided was, of course, available only to those who could establish the driver's liability at law.

Changes Since 1928 in Legislation and Administration

20. The gradual widening of the scope of the indemnity may be briefly indicated:

(a) In 1928 the liability of the insurer did not extend to indemnify the vehicle owner against claims in respect of persons living with him as members of the same family, or relatives whose degree of relationship was not more remote than the fourth. In 1955 this degree of relationship was narrowed to the second, and by the Transport Act 1962 this limit on the indemnity was removed altogether.

(b) The 1928 Act also excluded from the indemnity all claims in respect of persons in the service of the owner of the vehicle at the time of the accident. The 1955 amendment narrowed this exclusion to claims in respect of such persons arising from accidents in the course of their employment. The Workers' Compensation legislation extends to these accidents.

(c) With regard to fare-paying passengers the original limit of the indemnity was £2,000 in respect of any one claim and £20,000 for all claims arising from any one accident. In 1950 these amounts were increased to £5,000 and £50,000 respectively, and in 1959 to £7,500 and £75,000.

(d) To meet the case of a defective insurance nomination it was provided in 1953 that the vehicle would be deemed to be insured by the company which last insured it or, if that company were no longer in business, then by the State Fire Insurance Office. This notional insurance was extended in 1958 to include the case where the company nominated was no longer undertaking third-party insurance business.

(e) Following the passing of the Contributory Negligence Act 1947 a problem arose as to claims for contribution – for example, where portion of the damages recovered by the owner's passenger against another driver were recoverable by that

[1]See, for example, *Saskatchewan Report,* pp. 32–3; *South African Report,* pars. 208–215.

driver against the owner on the ground of contributory negligence. The Transport Act 1949 extended the insurer's indemnity of the owner to include all such claims.

(f) It is convenient also to mention here the Court of Appeal's decision in *Marsh* v. *Absolum*[1] that the driver of a stolen vehicle is for the purposes of the insurance the agent of the owner. The full indemnity is therefore available even when a thief is driving.

(g) In the same context it is appropriate to refer to the provision made in respect of accidents caused by a motor vehicle that cannot be identified (the "hit and run" accident is the common example) or by one whose owner has failed to insure as required by the Act. With regard to unidentified vehicles an agreement made between the insurers and the Crown on 27 October 1931 provided that the insurers would pay up to £1,000 for any one claimant and £5,000 for all involved in one accident, each case to be referred for decision to a Magistrate and two arbitrators appointed respectively by the claimant and a committee of insurers. On 31 March 1935 this agreement was extended to meet the case of claims against indigent uninsured drivers, the insurers agreeing to pay such portion of a judgment for damages as the claimant could not recover, with the same maximum limits. In 1956 these limits were increased to £2,000 and £7,500 respectively and on 4 November 1961 to £7,500 and £75,000. On this latest revision of the agreement[2] claimants against uninsured drivers were given the alternative of having their claims dealt with as though the defendant were insured, provided that the insurers took over all rights against the defendant.

21. The present law is stated in Part VI of the Transport Act 1962, the full provisions of which are set out in Appendix B.

Statistics as to Numbers of Vehicles and Road Accidents

22. In Appendix C is set out a table compiled from official records showing the number of motor vehicles in relation to population at intervals from 1925 to 1961. Appendix D shows the number of casualties per 10,000 vehicles for 1937 and for each year from 1947 to 1962.

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[1][1940] *N.Z.L.R.*, 448.
[2]*New Zealand Gazette*, No. 71, 9 November 1961, p. 1747.

CASES IN WHICH INSURANCE MONEYS ARE NOT NOW RECOVERABLE

23. The Committee's duty to examine the adequacy of the present system involves a consideration of the classes of accidents in respect of which insurance moneys are *not* at present recoverable. This situation arises either because fault on the part of a driver is not admitted or cannot be proved and the owner is accordingly not liable in damages, or because the insurer's statutory indemnity does not extend to the particular claim, and may be shown as in the following three paragraphs:

24. *Accidents caused to third parties without fault of the driver.* If the driver is not admitted to be or cannot be proved negligent in accordance with the requirements and under the procedures of our civil law then the owner is not liable and accordingly no question of insurance indemnity arises. Inability to establish negligence covers the following cases which, while overlapping in law, were discussed separately before the Committee:

(a) Mechanical defect: The owner is not liable for an accident caused by a mechanical defect in his vehicle if it cannot be proved that he knew or ought to have known of the defect.

(b) Inevitable accident: Such a phrase is usually used to describe accidents caused by a driver's sudden incapacity (e.g., by sudden heart seizure or an insect entering his eye) or other cause beyond his control (e.g., the bursting of a newly purchased tyre).

(c) Other cases in which the plaintiff cannot establish negligence. These include the case of the accident victim who because of amnesia or lack of eyewitnesses is advised not to launch his claim at all as well as the plaintiff who fails to prove his case in Court. The governing factor is the inability to prove negligence.

25. *Accidents caused to a driver or passenger without fault on the part of another driver.* If fault on the part of another driver can be established the injured driver and passengers can expect to recover from that other's insurers. But if there is no other vehicle involved there can be no such recovery. This classification therefore includes accidents caused by:

(a) The fault of the driver of the car in which the claimant is driving, e.g., where he runs the car off the road or drives it into a power pole.

(b) The action of a cyclist, tram, train, or animal, or a defect in the road itself.

26. *Accidents caused to persons in respect of whom the insurers are exempted by the Act.* The persons now in this category are:

(a) Employees whose claims arise out of accidents in the course of employment (section 82 (4) (a)). These claims are, of course, covered by the Workers' Compensation Act 1956.

(b) Passengers, except those carried for hire in a vehicle plying for hire (section 82 (4) (b)).

Statistics as to Cases in which Insurance Moneys are NOT Now Recoverable

27. The Committee has tried to get the most reliable statistics possible as to the respective totals of accidents in respect of which insurance moneys can and cannot be recovered under the present system. The Transport Department is concerned primarily with safety and it does not make records of the numbers of victims who ultimately recover from third-party insurance sources. It does, however, record the main cause of an accident based on the opinion of the police officer who investigates at the scene immediately after the accident, and also the nature of the injuries as assessed by him at that time. Appendices E and F to this report, showing respectively the types of accidents and the severity of injuries, have been prepared by the Department from those records. In examining these it should be borne in mind that some injuries that appear immediately after an accident to be minor may turn out to be more serious, and some apparently serious injuries may in fact prove to be minor. For the purpose of considering the payment of third-party insurance moneys the figures shown in Appendices E and F must therefore be taken with some reservations but, subject to these qualifications, the Department has made the following estimates from all the information available to it as to the extent of the present third-party insurance system:

Accident Victims

	Per Cent	Per Cent
Claims covered by existing third-party insurance system		30
Claims not covered by existing third-party insurance system—		
Passengers in motor vehicle	35	
Drivers of motor vehicles	20	
Pedestrians, cyclists, and other non-motorists	15	
	—	70
		100

IMPROVEMENTS RECOMMENDED IF PRESENT SYSTEM RETAINED

28. It will be evident from pars. 23–26 that the question whether provision can be made for cases in which fault on the part of a driver is not admitted or cannot be proved depends on the basic question whether some form of absolute liability should be adopted. Before coming to that question, however, the Committee will deal with four types of case in respect of which improvements can be made on the assumption that the present system is retained.

Non-fare-paying Passengers

29. All parties appearing before the Committee who had considered the point were agreed that the present indemnity should extend to claims by passengers in private vehicles. The motor unions called this "the most serious practical defect in the present system" and recommended "the compulsory provision of passenger risk insurance, subject to the additional cost thereof being within reasonable limits". The spokesmen for the New Zealand and Auckland Law Societies also urged the abolition of the present exemption in respect of passengers. The insurers' view was that passenger risk insurance should be compulsory, the limit of indemnity for any one passenger being £5,000, with £50,000 for all claims in respect of one accident.

30. The reason for the exclusion of passengers' claims from the original scheme was no doubt the fact that guest passengers would be unlikely to sue their hosts but for their insurance, and also the fear of collusive claims. In the Committee's view, having regard to the numbers of passengers injured as shown in par. 27, the risk of collusion should not be allowed at this stage to exclude passengers from the benefits of compulsory insurance. If the scheme retains its present pattern, the indemnity should therefore be extended without delay to claims for which a voluntary passenger can establish negligence, with the limits suggested by the insurers. In so recommending we take into account experience in Victoria,[1] and the desirability of keeping premiums to a minimum. On the information given the Committee it appears that this extension will result in the present premium of £2 12s. 6d. for the private owner increasing to a sum in the vicinity of £4 10s., though the actual amount will be for the Premiums Advisory Committee to recommend and the Minister of Transport to decide. The special passenger risk which many owners now take out voluntarily in conjunction with a comprehensive policy will no longer be required up to the limit we recommend.

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[1] *Victorian Report*, p. 25.

Fare-paying Passengers

31. The commercial transport operators recommended that the present total limit on the indemnity should be removed. The same suggestion was made by the Auckland Law Society. The original maximum of £20,000 for all claims arising from one accident has been increased by steps through the years to the present limit of £75,000 fixed in 1959. In view of the fact that those who would pay the premiums favour the removal of this limit and the insurers raise no objection, the Committee recommends accordingly. This would not affect the limit of £7,500 in respect of any one claimant.

Claims Between Spouses

32. The Auckland Law Society proposed the abolition of the rule which prevents a wife injured in a vehicle driven by her husband (or vice versa) from obtaining compensation no matter how clearly the injuries resulted from his negligent driving. This reform was supported by the motor unions and by the insurers. The prohibition does not arise from the legislation but from a common law rule which denies each spouse the right to sue the other for damages for tort. The reason for the rule – that the institution of marriage would be weakened if one spouse could recover damages from the other – has been undermined by the requirement of compulsory insurance, and the prohibition has been much criticised.[1] The Law Reform (Husband and Wife) Act 1962 has abrogated the rule in England, and this Committee recommends similar legislation.

Unidentified Vehicles and Uninsured Owners

33. The length of time during which the agreement between the Crown and the insurers has been in operation itself establishes the need for insurance moneys to be payable in respect of the unidentified vehicle and the uninsured vehicle. The Committee is of opinion that the substance of this agreement should now be incorporated in the legislation, and that consideration should be given to extending the time limits within which claims may be made.

ABSOLUTE LIABILITY

34. We now come to the main question of whether or not some form of absolute liability should be adopted. It is first necessary to indicate what that term involves. The basis of the law, as it has always been in New Zealand, is that an action for damages arising out of death or personal injury – whether caused on the road, in the factory, or elsewhere – can only be sustained if negligence on the part

[1]Cf. *Ninth Report of English Law Revision Committee*, 1961 (Cmnd. 1268); *McKinnon* v. *McKinnon* [1955], V.L.R. 81, 85.

of the defendant is proved or admitted. The term "absolute liability" has been used in the context of this inquiry to indicate a system under which damages or some form of compensation can be recovered by all victims of road accidents without the requirement of proving negligence.

35. The motor unions, with whose submissions the commercial operators associated themselves, made lengthy and detailed submissions in which they stated unanimous and complete objection to the abandonment of the fault concept or negligence as the basis for the award of damages. Their principal reasons were that if there were to be a change in the basis of liability then that should operate over all fields of activity where death or personal injury is likely to occur; that the implementation of absolute liability would give rise to a five- or six-fold increase in the third-party premium; that the abrogation of the fault principle would place a premium on carelessness; and that there has been no demand for any such change here or in other Commonwealth countries. The motor unions further stated their view that any scheme of fixed payments analogous to workers' compensation would be impracticable but that, if any scheme were adopted as a social measure, it should provide also for motorists who were themselves injured in the course of using the highway.

36. The motor unions made certain specific suggestions for meeting defects under the present system, including the proposal that where mechanical defect or defective equipment is shown to be a substantial cause of injuries to any person other than the owner there should be an irrebuttable presumption of negligence against the owner; that in the case of inevitable accident, while not supporting, they would not actively oppose a scheme whereby, on a finding by the Unidentified Motorists Committee[1] or a Court that the claim of the injured person arose by reason of an inevitable accident, then that claim should be dealt with under the provisions of the Unidentified Motorists Agreement.[1] In regard to cases where negligence cannot be proved the unions had no recommendation to make. At a later stage they were specially invited to consider and express their views on a scheme on the lines of the system operating in the Canadian province of Saskatchewan. This is a system which does not impose any new legal liability on the motorist but it gives every person injured, and the dependants of every person killed on the road, pedestrian, driver, and passenger alike, a right to a fixed and limited amount of compensation. Intoxicated and unlicensed drivers are excepted. In reply, the motor unions reiterated that fault should be an essential criterion in determining those who deserve to recover compensation and expressed opposition to any scheme which would allow persons who recklessly created

[1]See par. 20 (g).

danger on the roads to recover compensation for injuries for which they were themselves responsible. They submitted that if the problem of compensation is a social rather than a legal problem then the responsibility should be undertaken by the whole community by way of extension of the social security scheme and not merely by a limited section, and they pointed out that any scheme of limited compensation payments would have to be of a most sophisticated nature to do justice to the variety of claimants.

37. The insurance industry, which appointed a special committee to consider the whole matter, expressed its view that the industry was primarily the instrument for carrying into effect any policy laid down in regard to accidents involving vehicles, and it reaffirmed its readiness to accept and operate an insurance scheme based on whatever principles of liability should be determined. It affirmed its support for the statutory compulsory system and, in particular, the right of the owner to select his insurer; for nomination of an insurer and payment of the premium as a prerequisite for licensing of a vehicle; and for the acceptance of premium rates fixed by an approved authority. At the same time the industry pointed out that the considerations that brought about the workers' compensation legislation were not identical with those applicable to the use of a motor vehicle on the road.

38. The New Zealand Law Society explained that it was unable to make any specific submission as a society. It had, however, arranged for the topic to be discussed by district law societies with the result that while there had been, in some cases, unanimous opposition to any change there were in others divided opinions and also recommendations for some change in the present law. The comment offered by the Law Society dealt with all aspects of the problem from the point of view of substantive law and practice and was most helpful.

Nature of Problem

39. In reviewing the present legislation the Committee was impressed by the general agreement that various changes were called for, such as those we have referred to in pars. 28–33. It also became plain that the question of "absolute liability", in the sense of an overall accident insurance, must be considered primarily as a social problem rather than as a legal or insurance question. We are not concerned with a development of principles of law governing the legal relationships of individuals, but with a concept of compulsory motor accident insurance as compared with, and distinct from, the present compulsory insurance of liability for negligence. It is true that the existence of one form of compulsory insurance covering a percentage of accidents on the roads caused by negligence, and an-

other covering accidents in industry, has encouraged the development of the idea that the basis of compensation should be injury, not proof of negligence, but, basically, the idea of compulsory motor accident insurance without proof of negligence arises from the sense of responsibility of the community to provide as adequately as possible for those who suffer misfortune. On analysis of the problem it can readily be seen, first, that the toll of the roads is a very alarming one[1] and, secondly, that many persons who are injured cannot recover under the present system which, after all, was not intended to provide universal compensation for motor accidents but merely a compulsory cover for negligence.

40. There is a case for an accident insurance scheme which would cover all persons who are injured in any way without negligence on their part, provided the community can afford to bear the cost on an equitable basis. Furthermore, it can be said that, if it is practicable, it is better, both from the social and individual point of view, if persons whose misfortunes may be due wholly or partly to their own failure to take reasonable care (as compared perhaps with a reckless disregard for their own safety) should receive compensation simply because they have suffered injury. Similarly, persons who are injured driving their own vehicles without any other human intervention are entitled to the same consideration as those involved in collisions. Death and injury on the road seem to be as inevitable as casualties in war, and it can be fairly argued that the community which has the benefits of modern transport should also bear the responsibility for the harm it causes.

41. The question we have had to consider, therefore, is whether a scheme for adequate compensation for the victims of motor accidents is a practical answer to a social problem. Whether it is attainable is a practical question of cost linked, however, with a question of principle, namely, whether it would be equitable to provide only for the victims of the road. Other practical questions which we have considered are the quantum of compensation; whether compensation should be awarded on principles which apply to damages or whether periodic payments such as are paid under workers' compensation schemes in North America, or for motor accident victims in Saskatchewan, would be suitable; the manner in which such a scheme might be administered by insurers and by a suitable tribunal; and the question whether a form of universal compensation would replace or be in addition to the common law right to claim damages. All these matters were covered in the very helpful evidence and submissions which the Committee has had the advantage of hearing or reading.

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[1]See Appendix D.

42. In order to provide compensation such as is paid in claims for damages a scheme would provide for every casualty on the road, and, to the extent that money can do it, compensate every person so injured by payment of a lump sum for pain and suffering, loss of enjoyment of life and loss of earning capacity. In short, it would be assumed that everyone injured had the same rights as a pedestrian struck down on a pedestrian crossing by a negligently driven car, and in the event of death his dependants would have similar rights.

Cost

43. The Committee has investigated the cost factor as far as it is possible to do it. At its request the insurers calculated the cost of "implementing absolute liability in full" – that is, the total sum that would be required to pay damages for death or personal injuries at present levels in respect of all victims of all road accidents involving motor vehicles, irrespective of any question of fault or contributory negligence. They did this by two methods:

(a) *Average Cost per Accident:* They found on examining a sample of 235 claims met on the basis of full liability in a three-month period in 1962 that the average of the damages paid was £1,176. For the 9,031 accidents that were officially recorded in 1961[1] the total cost would therefore nominally be £10,620,456. From this the insurers deducted a 20-per cent allowance for victims who would not claim and for a slight disparity between the insurers' and the official records of numbers of accidents. To the resulting £8,496,365 they added a margin of 15 per cent for administration and profit, producing a total cost of £9,995,723.

(b) *Average Cost per Casualty:* By a similar method, but from a different set of claims, the insurers calculated the average paid on the basis of full liability for each one of 320 casualties examined as £839 which sum, for the 13,189 casualties officially recorded in 1961,[1] and with the same 20 per cent allowance, results in £8,852,457 and, with the same 15 per cent margin, in a total cost of £10,414,655. These figures are slightly higher and probably more reliable than those resulting from calculation (a).

44. This amount of £8,852,457, which is thus the insurers' estimate of what would have been the total payout under absolute liability for 1961, can be compared directly with the total of claims actually paid and the estimated liability on unsettled claims for the corresponding

[1]See Appendix E.

year which, as officially submitted by the insurers to the Premiums Advisory Committee, was £2,136,768. The comparison suggests that "implementing absolute liability in full" would cost about 4·15 times as much as the present system. This figure of 4·15 is confirmed by comparing the insurers' calculation of £839 per casualty on absolute liability with the average cost of each casualty in 1960, after making the same allowance of 20 per cent for non-claiming victims. This average cost for 1960 is $\frac{£2,074,051}{12,817 - 20\%} = £202$. For 1961 the figure is the same: $\frac{£2,136,768}{13,189 - 20\%} = £202$. £839 is about 4·15 times £202. If the full cost of "implementing absolute liability in full" were to be reflected in premiums it would appear, therefore that premiums would increase by four- or five-fold.

45. It will be apparent, however, that should any insurance scheme for all motor vehicle casualties be introduced it would not be equitable for the full cost to be borne only by the owners of motor vehicles. All drivers should contribute, and indeed the whole community should be called on to contribute equitably to the insurance fund, if pure accidents and accidents caused by pedestrians and cyclists and accidents due to such things as slips on roads or wandering cattle are to be covered. In one way or another the community should contribute to the cost, whatever the form of the insurance scheme.

46. It is at this point that the question must be faced whether it is right to introduce a scheme of accident insurance which would benefit only those who suffer accidents in connection with the use of motor vehicles. To illustrate the position, such a scheme would provide compensation for the dependants of a man who is killed while walking on a footpath by a car which went out of control due to some cause over which the driver had no control. Should that man's dependants be placed in a better position than the dependants of a man who is killed by a sudden fall of earth, or those of a man struck down by a sudden heart attack? The equity of the matter becomes even clearer when we compare death from some act of God or disease with death due to a man's own thoughtlessness on the road, where, for example, a person steps out in front of a moving car, the driver of which had no chance whatever of avoiding the resulting accident. It would certainly be impossible to justify a scheme whereby the dependants of the thoughtless pedestrian were in a better position than the victim of a fall of earth or a heart attack unless it could be shown that all persons who might be injured on the road were actual contributors to the insurance premium fund.

Absolute Liability on a Common Law Damages Basis

47. The introduction of a full liability scheme for all motor accidents, as envisaged above, would meet an immediate practical problem in line with the question we have just considered. Although the Committee was called on to consider only the problem of compensation for motor vehicle accidents, we have of necessity had to keep in mind the wider field. In particular, we have had regard to accidents in industry, where compulsory insurance is provided for by the workers' compensation legislation under which there is a form of limited compensation regardless of negligence which stands side by side with rights to bring common law actions for damages in cases where there is negligence. The risk of injury in industry is just as much part and parcel of modern life as the risks of the road, and there are many occupational hazards which can lead to serious disablement and death. In many cases men who are injured, and the dependants of the dead, have no right of action for damages but are restricted to workers' compensation payments for a maximum of six years or to some form of limited lump-sum payment. Therefore it is clear that it would not be logical or acceptable to introduce a system which would mean that persons injured in industrial accidents would be in a much worse position than those injured on the road. The Committee considers that any scheme of accident insurance, in the sense we are now considering it, would have to take into account that a scheme no less adequate would have to be evolved for casualties in industry. That means that the two must really be considered together and of course it introduces an additional cost factor.

48. The Committee is accordingly agreed that it is unable to recommend a system of absolute liability providing for the victims of road accidents on a common law damages basis.

Absolute Liability on a Basis of Limited Compensation

49. The Committee next considered a form of compensation akin to workers' compensation which might be introduced in place of, or alongside, the present right to bring an action at common law where negligence could be established. The Saskatchewan Scheme covering motor accidents is the one example of the latter kind now operating,[1] and there are many workers' compensation schemes in the provinces of Canada and the States of the U.S.A. where workers' compensation schemes have taken the place of actions at common law, schemes which provide for injured employees during the whole period of disablement, and if necessary for life, as compared with the six-year period in New Zealand.

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[1]Though an apparently similar scheme has now been recommended in Ontario: Report of Select Committee of Legislative Assembly: March 1963.

50. Proposed schemes in which periodic payments are provided in cases of severe disability, or for the dependants of the dead, are similar in pattern to the system of benefits and pensions paid under the social security and war pensions legislation, as well as to workers' compensation schemes. Social security benefits already provide a form of basic compensation, and any accident insurance scheme of the kind discussed must be considered in relation to such benefits, particularly if an accident insurance scheme is to be subsidised from State funds.

51. This country has prided itself on being a leader in the field of workers' compensation and motor vehicles third-party insurance, but it may well be that we can now learn from what is being done in North America and again give a lead which would bring joint improvements in both fields. There have been great developments in the last 20 years in many places in the rehabilitation of the disabled and the proper care of dependants of the dead. We have heard and read sufficient to appreciate that there is more to learn, and we recommend that a more detailed investigation of overseas systems should be carried out.

52. The majority of the Committee consider, however, that without a much more extensive investigation it is unsafe to reach conclusions on this matter because it would be unwise to make fundamental changes in our present system until definite recommendations can be made that such changes will bring improvements. It is clear, however, that to meet the social problem of misfortune which follows accident the whole basis of the present system should be reviewed. For example, it is obvious that if actions at common law were to be abolished an alternative scheme based on compensation for all accidents would be on a much more generous scale than if available funds were still required to meet claims for damages based on negligence. On the other hand, such a change could not be introduced unless it could be shown to be adequate, and therefore an equitable alternative. It must always be kept in mind in considering schemes of this nature that persons who are injured through negligence on the roads have a right of action at law, while employees in industry have their rights under the Workers' Compensation Act. The common law right for damages for accidents on the roads as administered in New Zealand is open to serious criticism, but until a detailed scheme is evolved which is clearly more satisfactory we cannot recommend that the common law right should be taken away. If it can be shown that the common law remedy has been abolished in North America in the case of industrial accidents with advantage to employees and their dependants, then the scheme merits

further examination provided it does not detract from what is available under existing rights in New Zealand. Again, without a much more extensive investigation of other systems actually in operation the majority of the Committee are unable to reach a conclusion on the matter.

Mechanical Defect and Inevitable Accident

53. The adoption of the Committee's recommendations for improvements in the present system[1] should result, in the light of the figures given in par. 27, in the percentage of road accident victims who can recover damages on proof of negligence increasing from 30 to 65 per cent. Of the remainder the cases of hardship which were brought before the Committee included accidents caused by mechanical defect[2] and cases of inevitable accident.[3] With regard to the former we have considered the motor unions' suggestion that there should be an irrebuttable presumption of negligence but we cannot see that this is practicable without making a departure from the present basic test of negligence. With regard to cases of inevitable accident the motor unions suggested that these might be referred to the Unidentified Motorists' Committee.[4] The insurance industry recognised the difficulties presented by both these classes of case and we understand that they would be willing, and we recommend that they be asked, to set up a committee to investigate cases in both categories on their merits as they arise.

54. With the recommendations made in this report the majority of the Committee consider that improvements in the present system have been carried as far as present requirements dictate or allow. Perhaps not surprisingly, however, in view of the complexities of the whole problem, and the fact that its members represent different viewpoints and experience, the Committee has not been able to arrive at a completely unanimous view on the questions discussed in the preceding five pars. 49–53 relating more particularly to the implementation now of a scheme of limited compensation which would provide for all victims of road accidents. Since, however, the Committee's function has been "to inquire and report", individual views on this question so far as they differ from the majority conclusion, are set out in Appendix G.

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[1]See pars. 28–33.
[2]See par. 24 (a).
[3]See par. 24 (b).
[4]See par. 20 (g).

INCIDENTAL MATTERS

Premiums Advisory Committee

55. The premiums to be paid are prescribed by regulation,[1] and they are reviewed annually by the Premiums Advisory Committee which makes a recommendation to the Minister of Transport who is responsible for the regulations. The Committee is a non-statutory body comprising the Commissioner of Transport as chairman, the General Manager of the State Fire Insurance Office, a representative of each of the Council of Fire and Accident Underwriters' Associations of New Zealand, the Non-Tariff Insurance Association, the motor unions, the commercial operators, and the Post Office. While accepting that this system had operated reasonably satisfactorily in the past the insurers submitted that, in order to remove the question from political control, the Government Statistician should become the chairman of the Committee which should be given full authority to fix the rates of premiums. We see no objection to the addition of the Government Statistician as a member of the Committee but we do not recommend that he should be chairman. In regard to vesting the Premiums Advisory Committee with final authority to determine premiums, we consider this power should remain with the Government.

Mode of Trial: Juries

56. The insurers recommended that actions for damages arising out of motor accidents should be heard before a Judge alone; that the procedure should enable the question of liability to be determined at the earliest possible moment, and that there should be power to make an interim award of damages, with a final determination when the claimant's medical position is settled and his future economic loss can be finally assessed. The spokesman for the motor unions also supported trial by Judge alone, speaking from his personal experience in practice. On this question the opposing arguments are well known and understood in New Zealand. The Committee found a sharp divergence of opinion amongst its members on the issue and accordingly has no recommendation to make.

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[1]Under section 89, Transport Act 1962.

Position as Between Workers' Compensation and Transport Act Insurers

57. An insurer under the Workers' Compensation Act 1956 who pays compensation to a worker in respect of an injury for which the worker could claim damages against a vehicle-owner other than his employer is entitled[1] to recover from that owner who is in turn indemnified under the Transport Act 1962. It has also been held by the Court of Appeal[2] that a driver liable to his employer in respect of damages payable to a fellow employee arising out of the driver's negligent driving is entitled pursuant to section 82 (5) to be indemnified by the employer's insurers under the Transport Act 1962. In this situation most of the insurers who conduct both Workers' Compensation and Transport Act insurance business have made a "stand-still" agreement under which no recovery is in fact made between them. The parties to the agreement do not include all insurers nor employers exempted under section 84 of the Workers' Compensation Act 1956 from the obligation to insure. In respect of those cases, and in respect of all cases if the "stand-still" agreement were terminated at any time, the recovery would fall back upon the Transport Act insurer with a consequential increase in claims cost. Though this could be regarded as a domestic matter for the insurers and does not in any way affect an injured person's rights, the Committee draws the attention of the Government to the unsatisfactory state of the law as laid down in the Court of Appeal's decision.

Insurance Practice

58. In addition to examining and reporting on the existing law and procedure the Committee was asked to report on insurance practice in regard to motor accidents causing death or personal injury. Despite the width of our inquiry there was on this issue only one criticism which came from an accident victim who had been unable to recover damages. We are satisfied from inquiry, however, that it was inability to prove negligence that made this claim untenable. No suggestion whatever of malpractice or impropriety on the part of insurers or their employees was made to the Committee. On the contrary, the Committee is satisfied that the insurers carry on business in this field with integrity and efficiency and with due regard for the public interest.

Personal

59. Finally, the Committee desires to record its indebtedness to its secretary, Mr R. G. Montagu, of the Department of Justice, and to the reporters who recorded the proceedings of its public sittings.

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[1]Section 125.
[2]*Collinson* v. *Wairarapa A.A. Mutual Insurance Company* [1958] N.Z.L.R. 1.

SUMMARY OF RECOMMENDATIONS

1. Extension of compulsory insurance to cover claims by non-fare-paying passengers up to £5,000 for any one passenger in the vehicle to which the insurance relates and up to £50,000 for all such passengers (pars. 29–30).
2. Removal of limit of £75,000 in respect of all claims by passengers in any vehicle plying for hire or carrying passengers for hire (par. 31).
3. Abolition of the common law rule which denies each spouse the right to sue the other for damages for tort (par. 32).
4. Incorporation in the legislation of the substance of the agreement between the Crown and insurers relating to claims in respect of unidentified vehicles and uninsured owners (par. 33).
5. Addition to Premiums Advisory Committee of Government Statistician (par. 55).
6. Consideration by Government of legal position resulting from *Collinson* v. *Wairarapa A.A. Mutual Insurance Company* [1958] N.Z.L.R. 1 (par. 57).
7. No form of absolute liability providing for victims of road accidents on a common law damages basis (par. 48).
8. (Majority) No form of absolute liability providing compensation for victims of road accidents on a basis akin to workers' compensation (par. 52).
9. Detailed investigation of overseas systems relating to workers' compensation and compensation for road accident victims (par. 51).
10. Establishment of committee to investigate on their merits claims arising from road accidents due to mechanical defects or inevitable accident (par. 53).

H. R. C. WILD, Chairman.
E. C. CHAMPION
K. R. CONGREVE
L. A. HADLEY
R. J. A. MUIR
J. C. WHITE
} Members.

APPENDICES

Appendix A

REPORTS

1. Report to the Columbia University Council for Research in the Social Sciences of Committee to Study Compensation for Automobile Accidents, 1932.
2. Report of the Select Committee (House of Lords) on Road Traffic (Compensation for Accidents) Bill 1932. (1933, H.M.S.O., No. 134.)
3. Report on the Study of Compensation for Victims of Automobile Accidents. (Saskatchewan, February 1947.)
4. Report of the Royal Commission on Automobile Insurance. (Nova Scotia, September 1957.)
5. Report of the Royal Commission on Motor Car Third-Party Compulsory Insurance. (Victoria, December 1959.)
6. Report of the Commission of Enquiry into Compulsory Motor Vehicle Insurance. (Pretoria, South Africa, April 1962.)
7. Report of Select Committee of Legislative Assembly. (Ontario, March 1963.)

BOOKS

1. The Automobile Compensation Plan. French. (Columbia University Press, 1933.)
2. Negligence on the Highway (1st ed.) (Chap. XI). Mazengarb. (Butterworths (Aust.), 1942.)
3. Report on the Problem of Providing Compensation for Victims of Motor Accidents with Particular Reference to Compulsory Insurance and the Financial Responsibility of Motorists. Robinette (1943).
4. Negligence in the Civil Law. Lawson. (Clarendon Press, 1950.)
5. Negligence without Fault. Ehrenzweig. (University of California Press, 1951.)
6. Some Aspects of Automobile Liability Insurance. Murphy (1954).
7. "Full Aid" Insurance for the Traffic Victim – a Voluntary Compensation Plan. Ehrenzweig. (University of California Press, 1954.)
8. The Facts about Compulsory Automobile Liability Insurance. Association of Casualty and Surety Cos. (1954).
9. Traffic Victims. Green. (Northwestern University Press, 1958.)
10. Road Safety and Insurance in Sweden. A. G. Boyd, (1962).

ARTICLES

1932, 32. Columbia Law Review, 785 (Compensation for Automobile Accidents: Symposium). Smith.
Ibid., 803 (Criticism of the Proposed Solution). Lilly.

1932, 14. Journal of Comparative Legislation and International Law 189 (Road Accidents: the Compensation Problem). Sir Alexander Butterworth.

1936, 3. Law and Contemporary Problems, 579. A Note of the Automobile Accident Compensation Plan.

Ibid., 583 (The Merits of the Automobile Accident Compensation Plan). Lewis.
Ibid., 598 (Grounds for Opposing the Automobile Accident Compensation Plan). Sherman.
Nineteenth Century, 365 (Compensation for Road Accidents). Sir Alexander Butterworth.
1938, 14. N.Z. Law Journal, 124 (The Principle of Absolute Liability in Motor Collision Cases). Sim.
1939, 7. Cambridge Law Journal, 111 (The Foundation of Tortious Liability).
1940, 16. N.Z. Law Journal, 89 (Liability in Motor Collision Cases). Heller.
1948, 57. Yale Law Journal, 549 (Accident Liability Reconsidered; the Impact of Liability Insurance). James.
1949, 58. Yale Law Journal, 667 (Functions of Judge and Jury in Negligence Cases). James.
63. Harvard Law Review, 241 (Social Insurance and the Principles of Tort Liability). Friedmann.
31. Journal of Comparative Legislation and International Law, 39 (Automobile Accident Insurance Legislation in the Province of Saskatchewan). Green.
1950, 15. Law and Contemporary Problems, 445 (Assurance Oblige). Ehrenzweig.
50. Columbia Law Review, 300 (Recent Developments in Automobile Accident Compensation). Grad.
1951, 37. Virginia Law Review, 359 (Trespass to Negligence to Absolute Liability). Gregory.
4. Current Legal Problems, 137 (The Aims of the Law of Torts.) Williams.
1952, 27. New York University Law Review, 585 (Automobile Accident Prevention and Compensation). McNiece and Thornton.
1953, 2. American Journal of Comparative Law, 232 (Establishment of "Fonds de Garantie" to Compensate Victims of Motor Vehicle Accidents). Tunc.
Ibid., 156 (Liability in French Law for Damages Caused by Motor Vehicles Accidents). Esmein.
Insurance Law Journal, 14 (Insured to Kill: the Influence of Insurance). Oppenheimer.
18. Law and Contemporary Problems, 219 (Damages for Personal Injury: the Impact of Insurance). Jaffe.
1954, 15. Ohio State Law Journal, 134 (Compensation Insurance for Automobile Accident Victims). Marx.
Ibid., 150 (The Case Against Compulsory Automobile Insurance).
1954. Ibid., 159 (Reply to Case Against Compulsory Automobile Compensation Insurance). Marx.
28. Australian Law Journal, 74 (Negligence and Social Security). Hutley. See also 29, Australian Law Journal, 552.
1955, 43. California Law Review, 1 ("Full Aid" Insurance for the Traffic Victim). Ehrenzweig.
72. South African Law Journal, 374 (Motor-vehicle Accidents: Proposals for a System of Collective Responsibility Irrespective of Fault). Suzman.

3. University of Western Australia Annual Law Review, 201 (Death and Injury on the Roads; the Compensation of Victims in Western Australia). Parsons.
1956, 41. Massachusetts Law Quarterly, 23 (Workmen's Compensation Type of Automobile Accident Insurance no Longer an Idle Dream). Kenney.
106. Law Journal, 356 (*Res ipsa loquitur* and Motor Vehicles). Cockayne.
1957. The Plain View, 205 (Compensation for Road Injuries). Pollard.
107. Law Journal, 659 (Strict Liability in the Law of Torts). Munkman.
1958. American Bar Association, Section Insurance, Negligence, and Compensation Law, 27 (Compensation Without Fault – a Symposium).
102. Solicitors Journal, 729, 749, 765, 783 (Compensation for Accidents). D.R.H.
1959, 26. Insurance Counsel Journal, 420 (Fallacies of a Compensation Plan for Automobile Accident Litigation). Kramer.
59. Columbia Law Review, 408 (Columbia Study of Compensation for Automobile Accidents: an Unanswered Challenge). James.
26. Insurance Counsel Journal, 247 (Doctrine of "Liability without Fault" Should Not be Extended to Automobile Accident Cases). Greene.
Scandinavian Studies in Law (Tort Liability and Insurance).
1960. Current Legal Problems, 85 (Compensating the Accident Victim). Payne.
44. Journal American Judicature Society, 6 (Saskatchewan Automobile Insurance Act). Leslie.
1961, 39. Canadian Bar Review, 107 (Legislation – State Compulsory Insurance Act – an Appraisal). Shumiatcher.
Willamette Law Journal, Summer and Fall issues.
Insurance Law Journal, 334 (Critique of Plans for Auto Accident Compensation). Kuvin.
1962, 110. University of Pennsylvania Law Review, 913 (Financial Impact of Automobile Accidents). Morris and Paul.
5. Canadian Bar Journal, 357 (The Motorists' Compensation Board). Somerville.
1962, 14. University of Florida Law Review, 321 (The Nature and Potential of the Saskatchewan Insurance Experiment). Lang.
N.Z. Law Journal, 193 (The Principle of Absolute Liability). Irvine.
36 Australian Law Journal, 119 (The Secret Chamber of the Law: Some Comments on Civil Jury Trial). Campbell.
1963. N.Z. Law Journal 171 (The Law of Torts and the Welfare State). Harris.

PART VI OF THE TRANSPORT ACT 1962

79. Owners of motor vehicles required to insure—(1) Every person being the owner of a motor vehicle shall, in accordance with this Part of this Act, at the time and in the manner provided by section 81 of this Act, and subject to the exceptions and limitations specified in section 82 of this Act, insure against his liability to pay damages on account of the death of any person or of bodily injury to any person in the event of the death or bodily injury being caused by or through or in connection with the use of that motor vehicle in New Zealand.

(2) For the purposes of this Part of this Act and of every contract of insurance thereunder, every person other than the owner who is at any time in charge of a motor vehicle, whether with the authority of the owner or not, shall be deemed to be the authorised agent of the owner acting within the scope of his authority in relation to the vehicle.

(3) If at the time of any accident affecting a motor vehicle any person other than the owner is in charge thereof with the authority of the owner, that person shall, if he is the holder of a driver's licence in force under Part III of this Act, be indemnified to the same extent as if he were the owner in respect of his liability (if any) to pay damages on account of the accident.

(4) Every contract of insurance entered into under this section shall be made in accordance with this Part of this Act with a company carrying on in New Zealand the business of accident insurance.

(5) For the purposes of this Part of this Act, the term "company" has the same meaning as in the Accident Insurance Companies Act 1908, and the State Fire Insurance Office shall be deemed to be a company carrying on business in New Zealand.

Cf. 1949, No. 7, s. 67

80. Companies willing to undertake business to notify Registrar—(1) Every insurance company willing to undertake insurance business in terms of this Part of this Act may at any time give to the Registrar notice in the prescribed form of that fact, if it has made the deposit (if any) required to be made by it in respect of that class of business under the Insurance Companies' Deposits Act 1953. Every such notice shall take effect on the first day of July following the date of its delivery to the Registrar:

Provided that any such notice delivered to the Registrar after the thirty-first day of March and before the first day of July in any year shall take effect on the first day of July of the next succeeding year.

(2) Every notice given by a company as aforesaid to the effect that it is willing to undertake business in terms of this Part of this Act shall continue to have effect and to bind the company until a notice in writing revoking the former notice has been given to the Registrar and has begun to take effect as hereinafter provided. A notice revoking a former notice as aforesaid is hereinafter referred to as a notice of revocation.

(3) A notice of revocation given by any company as aforesaid shall not affect any contract of insurance theretofore entered into by that company, or deemed in accordance with this Part of this Act to have been so entered into.

(4) Except as provided in subsection (3) of this section, a notice of revocation given by an insurance company shall, as from the date on which it takes effect, relieve the insurance company from its obligations under this Part of this Act. A notice of revocation shall take effect as follows:

(a) Where no date is specified therein as the date on which it shall take effect, the notice shall take effect on the eighth day after the date of its delivery to the Registrar:

(b) If the notice is expressed to take effect on a date earlier than the eighth day after the date of its delivery to the Registrar, it shall not take effect on the date specified therein, but shall take effect on the said eighth day after the date of its delivery:

(c) In all other cases the notice shall take effect on such date as is specified in the notice in that behalf.

(5) The Registrar shall from time to time as occasion requires notify in the *Gazette* the name of every company that has given notice as hereinbefore provided of its willingness to undertake insurance business in terms of this Part of this Act, and shall also notify the name of every company that has given a notice of revocation as aforesaid, and the date on which the notice of revocation takes effect.

Cf. 1949, No. 7, s. 68

81. Owners to pay insurance premiums with annual licence fees—(1) Every owner of a motor vehicle, on making application for a licence for that vehicle pursuant to Part II of this Act, shall pay to the Deputy Registrar the insurance premium in respect of that motor vehicle prescribed pursuant to the provisions hereinafter contained, and shall, in the prescribed form, nominate the insurance company with which the contract of insurance is to be made, being in every case an insurance company then bound in accordance with the foregoing provisions of this Part of this Act to undertake insurance business in terms of this Part of this Act.

(2) If in respect of any motor vehicle any person other than the owner pays the insurance premium and nominates an insurance company as herein provided, that person shall be deemed to be duly authorised by the owner to make the nomination.

(3) No licence shall be issued for any period in respect of any motor vehicle unless and until the owner or his agent as aforesaid has paid the prescribed insurance premium for that period in accordance with this Part of this Act and has nominated in the prescribed manner the insurance company with which the contract of insurance is to be made.

(4) Where—

(a) The owner or any person on his behalf has nominated an insurance company with which the contract of insurance is to be made; and

(b) Either—

(i) The Deputy Registrar is satisfied that by reason of the nomination form being incomplete or otherwise defective the name of the insurance company intended cannot be ascertained; or

(ii) The insurance company so nominated does not undertake insurance business in terms of this Part of this Act,—

then, for the purposes of this Part of this Act, if the motor vehicle had previously been licensed under this Act, and the company with which the contract of insurance was last made is still undertaking insurance business in terms of this Part of this Act, he shall be deemed to have duly nominated that company, but otherwise he shall be deemed to have duly nominated the State Fire Insurance Office.

(5) This section shall apply equally whether application is made for an ordinary licence under section 12 of this Act or for a dealer's licence under section 22 of this Act.

Cf. 1949, No. 7, s. 69; 1953, No. 24, s. 16; 1958, No. 53, s. 7

82. Contract of insurance to be complete on payment of premium—(1) On payment of the insurance premium in respect of any motor vehicle as aforesaid, the insurance company nominated by the owner shall be deemed to have contracted to indemnify him to the extent hereinafter provided from liability (including any extension of liability incurred by reason of the operation of subsection (2) or subsection (3) of section 79 of this Act) to pay damages (inclusive of costs) on account of the death of or bodily injury to any person, where the death or bodily injury is the result of an accident happening at any time during the period in respect of which the insurance premium has been paid, and is sustained or caused by or through or in connection with the use of the motor vehicle in New Zealand.

(2) The liability of an insurance company under any contract of insurance as aforesaid shall be limited to seven thousand five hundred pounds for any claim made by or in respect of any passenger in the motor vehicle to which the contract of insurance relates, and to seventy-five thousand pounds for all claims made by or in respect of such passengers. The amounts herein specified shall be inclusive of all costs incidental to any such claim or claims.

(3) Except as provided in subsection (2) of this section, the liability of an insurance company for claims under the contract of insurance shall be unlimited as to amount.

(4) Subject to subsection (5) of this section, the liability of an insurance company under any contract of insurance as aforesaid shall not extend to indemnify the owner against—

(a) Any claim made in respect of the death of or bodily injury suffered by any person in the service of the owner at the time of the accident, being an accident arising in the course of his employment:

(b) Any claim against the owner of a motor vehicle (not being a motor vehicle plying for hire or used in the course of the business of carrying passengers for hire) made in respect of the death of or bodily injury suffered by any person who was at the time of the accident in respect of which the claim has arisen being conveyed in the motor vehicle, or was driving, or entering, or alighting from, or about to enter or alight from, the motor vehicle:

(c) Any claim against the owner of a motor vehicle plying for hire or used in the course of the business of carrying passengers for hire, made in respect of the death of or bodily injury suffered by any person who (not being a passenger for hire) was at the time of the accident in respect of which the claim has arisen being conveyed in the motor vehicle, or was driving, or entering, or alighting from, or about to enter or alight from, the motor vehicle.

(5) Subject to subsection (2) of this section, the liability of an insurance company under any contract of insurance as aforesaid shall extend to indemnify the owner against all claims for contribution under section 17 of the Law Reform Act 1936 in respect of any such liability as is mentioned in subsection (1) of this section.

Cf. 1949, No. 7, s. 70; 1950, No. 51, s. 24; 1955, No. 102, s. 13; 1959, No. 105, s. 6 (1)

83. Special provisions in respect of change of ownership—Every contract of insurance entered into for the purposes of this Part of this Act in respect of any motor vehicle shall enure in favour of the owner for the time being, notwithstanding any change in the ownership of the motor vehicle.

Cf. 1949, No. 7, s. 71

84. Making false statement for purpose of effecting a contract of insurance—(1) If any person for the purpose of effecting a contract of insurance under this Part of this Act makes any statement that is false or misleading in any respect, he commits an offence, and is liable to a fine not exceeding one hundred pounds, but the contract of insurance shall not thereby be avoided.

(2) Nothing in subsection (1) of this section shall take away or limit any right of action or other remedy that the insurance company may have against the owner or any other person in respect of any false statement as aforesaid.

Cf. 1949, No. 7, s. 72

85. Owner to give to insurance company notice of accidents, etc.—(1) On the happening of any accident affecting a motor vehicle and resulting in the death of or bodily injury to any person, it shall be the duty of the owner forthwith after the accident, or if the owner was not in charge of the motor vehicle at the time of the accident, forthwith after he first becomes aware of the accident, to give notice in writing to the insurance company of the fact of the accident, with particulars as to the date, nature, and circumstances thereof, and thereafter to give all such other information and to take all such steps as the insurance company may reasonably require in relation thereto, whether or not any claims have actually been made against the owner on account of the accident.

(2) Notice in writing of every claim made or action brought against the owner, or to the knowledge of the owner made or brought against any other person, on account of any accident as aforesaid, shall be forthwith thereafter given by the owner to the insurance company, with such particulars as the insurance company may require.

(3) The owner or any other person whom the insurance company is liable to indemnify under a contract of insurance under this Part of this Act shall not, without the written consent of the insurance company, enter upon or incur the expense of litigation as to any matter or thing in respect of which he is so indemnified, nor shall he without such consent make any offer, promise, payment, or settlement, or any admission of liability as to any such matter.

(4) If the owner fails to give any notice or otherwise fails to comply with the requirements of this section in respect of any matter, the insurance company shall be entitled to recover from him as a debt due to it such amount as the Court, having regard to all the circumstances of the case, thinks fit, not exceeding an amount equal to the total amount, including costs, paid by the insurance company in respect of any claim in relation to the matter.

Cf. 1949, No. 7, s. 73

86. Insurance company may settle claims—(1) An insurance company that is a party to a contract of insurance under this Part of this Act—

(a) May for the purposes of the contract undertake the settlement of any claim against the owner or against any other person that the company is liable to indemnify under the contract; and

(b) May take over during such period as it thinks proper the conduct and control on behalf of the owner or other person of any proceedings taken or had to enforce any such claim, or for the settlement of any question arising with reference thereto; and

(c) May defend or conduct any such proceedings in the name of the owner or other person and on his behalf; and

(d) Shall indemnify the owner or other person against all costs and expenses of and incidental to any such proceedings while the company retains the conduct and control thereof.

(2) The owner or other person shall sign all such warrants and authorities as the company may require for the purpose of enabling the company to have the conduct and control of any such proceedings.

Cf. 1949, No. 7, s. 74

87. Passengers for hire not to contract themselves out of benefits—In any action brought against the owner or person in charge of a motor vehicle, or against an insurance company under or for the purposes of this Part of this Act, in respect of an accident causing the death of or bodily injury to any person being at the time of the accident a passenger for hire in the vehicle, it shall not be a defence that the contract of carriage had excluded or modified the liability of the owner or of any other person to pay damages in respect of accidents due to the negligence or wilful default of the owner, his servants, or agents.

Cf. 1949, No. 7, s. 75

88. Application of money received by way of premiums—(1) All premiums received by a Deputy Registrar under this Part of this Act shall be paid into the Post Office Account.

(2) From the amount of every premium so received there shall be deducted such proportion or amount as may be from time to time prescribed in respect of administration expenses, and the residue shall, without further appropriation than this section, be paid to the insurance company nominated by the owner in accordance with the foregoing provisions of this Part of this Act.

(3) With every payment made to an insurance company under this section the Registrar shall supply a schedule of particulars in the prescribed form sufficient to inform the company, in relation to every contract of insurance represented by the payment, of the following matters:

(a) The registered number and the class of the motor vehicle to which the contract of insurance relates:

(b) The premium paid in respect thereof:

(c) The date of payment of the premium and the period for which the payment was made:

(d) The name, address, and description of the owner:

(e) Any other prescribed matters.

Cf. 1949, No. 7, s. 77

89. Regulations as to third-party risks insurance—(1) Without limiting the general power to make regulations conferred by section 199 of this Act, regulations may be made under that section for all or any of the following purposes:

(a) Prescribing the amount of the premiums to be paid in respect of motor vehicles under this Part of this Act:

(b) Prescribing forms for the nomination of insurance companies for the purposes of this Part of this Act by the owners of motor vehicles:

(c) Prescribing forms of notices to be given for the purposes of this Part of this Act.

(2) Regulations prescribing premiums payable for the purposes of this Part of this Act may differentiate between different classes of motor vehicles, and may differentiate between other vehicles, having regard to the purposes for which they are used or intended to be used.

Cf. 1949, No. 7, s. 78

90. Provisions applicable where a premium less than the proper premium is paid—(1) If in accordance with the authority conferred by section 89 of this Act differential rates of insurance premiums are prescribed in respect of different classes of motor vehicles, or in respect of different purposes for which motor vehicles may be used, it shall not be lawful for the owner of any such vehicle to use it or permit it to be used unless the full amount of the insurance premium payable in respect thereof has been paid, but failure by an owner to comply with the requirements of this subsection shall not affect the contract of insurance.

(2) Every owner commits an offence who uses any motor vehicle or permits any motor vehicle to be used in contravention of subsection (1) of this section.

(3) Where an owner uses any motor vehicle or permits any motor vehicle to be used in contravention of subsection (1) of this section, the insurance company shall be entitled to recover from him as a debt due to it an amount equal to three times the difference between the premium paid and the premium properly payable, but in no case shall the amount recoverable be less than five pounds nor more than fifty pounds.

(4) Where after an insurance premium has been paid in respect of any motor vehicle an additional premium becomes payable in respect thereof, the additional premium shall be paid to the Deputy Registrar.

Cf. 1949, No. 7, s. 79

Appendix C

MOTOR VEHICLES AND POPULATION

TABLE SHOWING THE NUMBER OF MOTOR VEHICLES LICENSED IN RELATION TO POPULATION

As at 31 March	Population	Number of Cars Licensed (Including Dealers' Cars)	Number of Persons in Population per Car	Total Number of Motor Vehicles Licensed (Excluding Trailers)	Number of Persons in Population per Motor Vehicle
1925[1] ..	1,401,230	81,662	17·2	122,907	11·4
1930 ..	1,489,203	148,090	10·1	218,309	6·8
1935 ..	1,560,992	137,134	11·4	206,157	7·6
1940 ..	1,640,901	221,799	7·4	306,008	5·4
1945 ..	1,679,972	199,418	8·4	284,090	5·9
1950 ..	1,902,883	235,463	8·1	380,503	5·0
1955 ..	2,130,927	358,937	5·9	570,183	3·7
1956 ..	2,175,373	396,379	5·5	616,612	3·5
1957 ..	2,221,169	428,097	5·2	655,668	3·4
1958 ..	2,246,093	465,714	4·8	692,715	3·2
1959 ..	2,326,129	483,602	4·8	716,916	3·2
1960 ..	2,370,166	505,628	4·7	767,788	3·1
1961 ..	2,414,296	526,982	4·6	807,137	3·0
1962 ..	2,477,297	556,445	4·6	827,160	3·0
1963 ..	2,533,419	587,103	4·3	866,289	2·9

[1]As at 31 December 1925. The Motor Vehicles Act 1924 came into force on 1 January 1925 and figures are not available prior to 31 December 1925.

Appendix D

ROAD ACCIDENTS

TABLE SHOWING THE NUMBER OF ROAD CASUALTIES PER 10,000 VEHICLES

Calendar Year	Killed		Injured		Total Casualties	
	Number	Per 10,000 Vehicles	Number	Per 10,000 Vehicles	Number	Per 10,000 Vehicles
1937 ..	248	8·77	5,649	199·8	5,897	208·6
1947 ..	206	6·64	4,762	153·4	4,968	160·0
1948 ..	196	5·80	4,706	139·2	4,902	145·0
1949 ..	218	6·06	5,317	147·9	5,535	154·0
1950 ..	232	6·03	6,314	164·0	6,546	170·0
1951 ..	292	6·93	6,938	164·6	7,230	171·5
1952 ..	272	5·74	7,448	157·2	7,720	162·9
1953 ..	313	6·19	7,686	152·2	7,999	158·2
1954 ..	360	6·76	7,875	147·8	8,235	154·6
1955 ..	333	5·78	8,976	155·7	9,309	161·5
1956 ..	329	5·32	9,758	157·7	10,087	163·0
1957 ..	384	5·86	11,053	168·6	11,437	174·5
1958 ..	379	5·48	11,408	165·0	11,787	170·5
1959 ..	349	4·88	11,703	163·5	12,052	168·4
1960 ..	374	5·02	12,443	167·1	12,817	172·1
1961 ..	393	5·00	12,796	162·9	13,189	167·9
1962 ..	398	4·80	13,776	166·1	14,174	170·9

Appendix E

TABLE SHOWING THE TYPES OF ROAD ACCIDENTS AND THE NUMBER OF PERSONS

Types of Accidents	Number of Accidents					Number of Casualties									
						Killed					Serious				
	1958	1959	1960	1961	1962	1958	1959	1960	1961	1962	1958	1959	1960	1961	1962
Collisions															
Motor vehicle collided with–															
Another motor vehicle ..	3,467	3,532	3,886	4,088	4,248	116	86	94	110	118	2,308	2,222	2,558	2,659	2,795
A railway train ..	49	56	42	46	53	10	13	16	8	11	33	33	28	39	56
A tram	8	8	13	5	5	..	..	..	..	..	3	4	6	2	2
A cyclist	1,331	1,259	1,279	1,331	1,364	37	26	30	30	31	561	514	500	495	531
A pedestrian	1,294	1,310	1,346	1,330	1,422	87	92	89	95	85	679	694	660	668	720
Bank at side of road ..	149	160	175	153	181	9	6	5	5	7	150	165	172	133	167
An animal	54	53	52	56	51	..	2	..	4	..	39	29	38	42	28
A power pole ..	397	389	460	436	498	24	22	26	18	32	327	341	415	373	394
A fixed object ..	108	93	100	132	115	8	16	7	13	10	118	106	97	96	104
Other collisions	188	221	226	199	255	10	10	14	12	14	128	171	149	130	170
Total collisions ..	7,045	7,081	7,579	7,776	8,192	301	273	281	295	308	4,346	4,279	4,621	4,637	4,967
Non- collisions															
Overturned on road ..	461	475	510	505	600	19	27	20	24	19	424	404	423	431	463
Person fell from vehicle ..	132	116	138	121	145	7	6	14	10	9	88	78	72	72	86
Over bank	295	291	330	326	342	40	37	48	47	40	298	267	311	305	297
Run off roadway ..	228	264	244	267	326	12	6	9	16	21	205	238	224	227	300
Other non-collisions ..	33	38	43	36	39	..	..	2	1	1	11	10	10	9	12
Total non-collisions ..	1,149	1,184	1,265	1,255	1,452	78	76	93	98	90	1,026	997	1,040	1,044	1,158
Total accidents and casualties ..	8,194	8,265	8,844	9,031	9,644	379	349	374	393	398	5,372	5,276	5,661	5,681	6,125

Classification of Bodily Injuries—

Serious: Fractures, concussion, internal injuries, crushings, severe cuts and lacerations, severe general shock necessitating medical treatment, and any other injury involving removal to and detention in hospital.

Minor: Injuries of a minor character such as sprains and bruises.

KILLED, SERIOUSLY AND SLIGHTLY INJURED CALENDAR YEARS 1958–62 (INCLUSIVE

Types of Accidents	Number of Casualties										Total Excluding Minor				
	Minor					Total									
	1958	1959	1960	1961	1962	1958	1959	1960	1961	1962	1958	1959	1960	1961	1962
Collisions															
Motor vehicle collided with—															
Another motor vehicle	3,218	3,367	3,668	3,953	4,136	5,642	5,675	6,320	6,722	7,049	2,424	2,308	2,652	2,769	2,913
A railway train ..	27	32	16	21	28	70	78	60	68	95	43	46	44	47	67
A tram ..	7	4	10	3	5	10	8	16	5	7	3	4	6	2	2
A cyclist ..	805	793	816	879	893	1,403	1,333	1,346	1,404	1,455	598	540	530	525	562
A pedestrian ..	593	621	666	675	711	1,359	1,407	1,415	1,438	1,516	766	786	749	763	805
Bank at side of road	102	121	114	105	133	261	292	291	243	307	159	171	177	138	174
An animal ..	36	50	29	42	48	75	81	65	88	76	39	31	36	46	28
A power pole ..	295	288	314	315	377	646	651	755	706	803	351	363	441	391	426
A fixed object ..	70	51	58	91	75	196	173	162	200	189	126	122	104	109	114
Other collisions ..	128	166	179	152	216	266	347	342	294	400	138	181	163	142	184
Total collisions	5,281	5,493	5,870	6,236	6,622	9,928	10,045	10,772	11,168	11,897	4,647	4,552	4,902	4,932	5,275
Non-collisions															
Overturned on road	321	390	410	380	470	764	821	853	835	952	443	431	443	455	482
Person fell from vehicle	45	42	64	50	56	140	126	150	132	151	95	84	86	82	95
Over bank ..	205	266	229	224	253	543	570	588	576	590	338	304	359	352	337
Ran off roadway ..	160	203	175	194	222	377	447	408	437	543	217	244	233	243	321
Other non-collisions	24	33	34	31	28	35	43	46	41	41	11	10	12	10	13
Total non-collisions	755	934	912	879	1,029	1,859	2,007	2,045	2,021	2,277	1,104	1,073	1,133	1,142	1,248
Total accidents and casualties	6,036	6,427	6,782	7,115	7,651	11,787	12,052	12,817	13,189	14,174	5,751	5,625	6,035	6,074	6,523

	Percentages				
	1958	1959	1960	1961	1962
Killed	3·22	2·89	2·92	2·98	2·81
Seriously injured	45·57	43·78	44·17	43·07	43·21
Minor injuries	51·21	53·33	52·91	53·95	53·98
Total	100·00	100·00	100·00	100·00	100·00

Appendix F

TABLE SHOWING THE TYPES OF ROAD USER INVOLVED IN ROAD ACCIDENTS AND

Type of Road User	Severity of Injury									
	Killed					Serious				
	1958	1959	1960	1961	1962	1958	1959	1960	1961	1962
Drivers	101	93	92	103	124	1,367	1,375	1,579	1,658	1,786
Passengers	104	99	123	113	108	1,863	1,827	2,046	2,069	2,177
Motor cyclists ..	37	34	27	33	43	686	644	641	591	643
Pillion riders ..	4	3	5	5	1	131	115	104	92	139
Power cyclists ..	5	..	4	5	2	79	89	109	79	94
Cyclists	38	27	30	32	31	544	509	491	493	523
Pedestrians	89	93	92	101	88	685	702	683	680	737
Other	1	..	1	1	1	17	15	8	19	26
Total	379	349	374	393	398	5,372	5,276	5,661	5,681	6,125

THE SEVERITY OF THE INJURIES RECEIVED CALENDAR YEARS 1958–62 (INCLUSIVE)

Type of Road User	Severity of Injury									
	Minor					Total				
	1958	1959	1960	1961	1962	1958	1959	1960	1961	1962
Drivers	1,625	1,701	1,899	2,021	2,252	3,093	3,169	3,570	3,782	4,162
Passengers	2,285	2,480	2,639	2,688	2,910	4,252	4,406	4,808	4,870	5,195
Motor cyclists ..	527	575	565	645	639	1,250	1,253	1,233	1,269	1,325
Pillion riders ..	127	154	133	117	137	262	272	242	214	277
Power cyclists ..	79	96	73	105	97	163	185	186	189	193
Cyclists	785	782	790	860	878	1,367	1,318	1,311	1,385	1,432
Pedestrians	587	611	664	662	710	1,361	1,406	1,439	1,443	1,535
Other	21	28	19	17	28	39	43	28	37	55
Total	6,036	6,427	6,782	7,115	7,651	11,787	12,052	12,817	13,189	14,174

Total accidents—

1958	8,194
1959	8,265
1960	8,844
1961	9,031
1962	9,644

Classification of Bodily Injuries—

Serious: Fractures, concussion, internal injuries, crushings, severe cuts and lacerations, severe general shock necessitating medical treatment, and any other injury involving removal to and detention in hospital.

Minor: Injuries of a minor character such as sprains and bruises.

Appendix G

INDIVIDUAL VIEWS[1]

The Report discusses the possibility of the institution of a scheme of compensation for all accidents which would be accompanied by the removal of the present common law right to seek damages in cases where injury was the result of the negligence of another person. No such change should be made unless it was clearly evident that all injured people would receive more generous compensation under the scheme to be introduced, and even then it appears doubtful whether the principle is desirable. At the present time, people injured as a result of another's negligence have the right to claim an amount which they consider to be adequate compensation. Under such a scheme they would presumably receive an amount assessed by the body which administered the funds available. With regard to the method of trying accident cases it seems to me to be preferable in principle to put such claims before a jury, which will be moved by considerations of social obligation and humanity as well as by legal precedent. The consideration of the claim by a jury has wider implications than just the application of a scale of compensation payments to meet the type of injury, and in my view this is desirable.

Submissions made to the Committee have pointed out the inequity of a scheme which would require motorists to pay for what would be essentially a form of insurance for people who are injured in motor accidents which occur through no fault of the motorist concerned in the accident. It should also be borne in mind that the cost of any such insurance would be reflected in prices paid by the general public, and would tend to multiply itself as far as the private motorist is concerned. Owners of motor vehicles who are in a position to recover the cost of such insurance by adding it to the cost of goods or charges for services provided by them, would do so. Other motorists and the public in general would then be in the position of paying the charges which had been added to prices or costs, and owners of motor vehicles who are able to pass on the cost of this insurance would benefit from it without paying for it.

L. A. HADLEY.

Although considerable efforts were made by those who made submissions, and also by the Committee, in the time available, I think it will be agreed that the picture in regard to absolute liability is still incomplete. I feel, therefore, that more information should be sought before any decision is arrived at. I consider this is wise not only as a precaution against making recommendations too hastily, but also because a more complete investigation of systems in operation elsewhere might well lead to a worth-while advance in accident insurance. In New Zealand we have the advantage of having compulsory insurance machinery available for both motor vehicle and industrial accidents so that both fields can be considered at the same time. The problems which arise through the limitations of the present system are in the main common to both and if both motor accident insurance and industrial accident insurance can be dealt with together advances might be made without producing anomalies. In my view, therefore, we should not miss the opportunity of investigating at this stage a scheme which might be

[1]See Report, par. 54.

applied to both. I repeat that there are two reasons for this, first to check on the actual operation of existing schemes in North America, and, secondly, to apply the results of that investigation to the question whether a broader concept might be evolved for New Zealand.

J. C. WHITE.

1. It is in their final conclusions in pars. 49–53 that nothing should be done at this stage to implement even a limited form of absolute liability that I differ from the majority of the Committee. In my view injustices occur under our present system and the fundamental reason is that the notion of "no liability without fault" which is at its root is not a sound foundation for dealing with the problem of road accidents. For this view there are several reasons.

2. In the first place, though out task has been a practical problem and not a legal study, it may be observed that the general rule that fault is the criterion of liability in tort, though firmly entrenched in our present law, is not the ancient and immutable concept that many of our practising lawyers assume it to be. Learned writers describe its development in the Courts little more than a century ago. In early times the law allowed damages as a remedy primarily to prevent the victim from seeking private vengeance, and it imposed liability merely because a man caused injury and not because of fault. Liability was strict, depending on cause, not blameworthiness. Gradually, however, the notion developed that civil liability, like criminal, should normally depend not on cause alone but on moral responsibility towards others. In this way reasonable conduct became the standard required and intentional or negligent conduct causing harm to others the basis of and reason for civil liability.[1] Thus it was that the fault concept became so important. Fault in the sense of wrongful intent or culpable negligence was, the New Zealand writer Salmond said in 1907, the justification for punishing the wrongdoer, since "the ultimate purpose of the law in imposing liability on those who do harm to others is to prevent such harm by punishing the doer of it".[2] In his view pecuniary compensation was not the ultimate object or even a sufficient justification of legal liability. Normally a loss should lie where it falls and in general the only purpose in changing its incidence was that of punishing wrongful intent or negligence. Compensation therefore was no more than "the instrument by which the law fulfilled its purpose of penal coercion".[2] But the vast changes of 50 years have led many modern writers to regard compensation as the main purpose of the law of torts, and the punishment of the wrongdoer as the concern of the criminal law.

3. The basis of the fault principle, then, was that the wrongdoer should pay. But where there is insurance against liability the wrongdoer does not pay. It is indeed through the increase in insurance that the inroads on the fault concept have been most wide and decisive. By spreading the damages over the community insurance has taken the burden from the wrongdoer's shoulders and the punitive element out of liability for negligence. And where the insurance has become compulsory, as it did in New Zealand in 1928, the phrase "no liability without fault" has entirely lost its meaning.

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[1] *Fleming*, Law of Torts (2nd ed.) Ch. 6 and 13.
[2] *Salmond*, Law of Torts (1st ed.) p. 10.

4. As a mere matter of logic the notion of negligence as the basis of liability is inappropriate in road accident cases. Though based on moral blameworthiness it takes no account of an individual's inherent physical misfortunes, such as poor eyesight or natural slowness, requiring conduct to be judged by the objective standard of the ordinary reasonable man. Nor is liability related in extent to the harm done. In theory the worse his negligence the more the motorist should pay: in fact, however, the damages depend not on the degree of negligence but on the seriousness of the injuries. The grossest negligence may do no harm: the slightest may cause death.

5. Irrespective of whether the trial is before a jury (as in New Zealand) or a Judge alone, the rules of negligence developed in the days of the horse and buggy are not suited to the situations produced by speedy modern traffic. The fallibility of witnesses asked months afterwards to relate the events of split seconds is too great. The sheer amount of time and money spent by assessors and lawyers in seeking to reconstruct the course of a collision illustrates the difficulty of attributing fault and apportioning blame. It is too difficult to be sure of the truth.

6. Since insurance became compulsory in New Zealand the retention of negligence as the basis of liability has been bad for one aspect of the administration of justice. The artificiality produced at a jury trial by the fiction that the defendant is the person named as such rather than his insurer would be merely ludicrous if it were not for its tendency to distort the path of justice according to law. A strain is put upon the conscience of jurors. A system under which the true identity of one of the parties is concealed at the risk of aborting the trial[1] is hardly worthy of the judicial process with its tradition of integrity and candour.

7. Though the sympathy of juries is overwhelmingly with plaintiffs, there are nevertheless some verdicts that leave serious misgivings. Two examples may be given from instances put before the Committee. A four-year-old boy, despite reasonably careful training and guarding, suddenly ran out on a road and was gravely and permanently injured. The child could not give evidence and his counsel had to depend entirely on deductions from a plan as to what had occurred. Skidmarks veering to the right suggested that the car driver must have seen the child at an early stage but the driver claimed that he had no chance. The jury disagreed and judgment was subsequently entered for the defendant. No doubt this result was right in law but is it satisfactory? In another case a parked car suddenly made a "U" turn without warning. A student motor cyclist coming behind took evasive action but was struck slightly over the centre line and severely injured, involving nearly a year in hospital and a 30–40 per cent permanent disability. Upon their investigation of the facts the Police decided to prosecute the car driver who pleaded guilty to driving without due care and attention. The defendant's counsel on his view of the merits paid £5,000 into Court with a formal denial of liability. The plaintiff's counsel thought this insufficient and the case therefore went to trial largely on the issue of quantum, but the jury, who, of course, knew nothing of the payment into Court, decided there was no negligence, their conclusion probably being influenced by their dislike of motor cyclists. Lawyers may dispute the wisdom of the decision not to accept the payment into Court but the real point lies in the jury's total exculpation of a driver whom Police,

[1] *Horne* v. *the King* [1947] N.Z.L.R. 538, 569.

insurers, and counsel all thought to blame. Cases of this kind show that recovery of damages can depend not on the true facts but on quite irrelevant matters such as the availability of evidence, the impressiveness of a witness, the prejudices of the jury, and sheer good luck. The element of chance plays too great a part.

8. Although Police, assessors, and Courts may labour to ascertain personal blameworthiness in individual cases the real cause of road accidents is surely the pace and pressure of life. The modern motor vehicle in hands that are only human is a lethal instrument and there is surely no driver who is never guility of a moment of inadvertence or misjudgment that may kill or maim. Nor is any one of us entirely free from the risks of the road. Death or injury on the road is a hazard brought to modern life by the advance of motor transport and it calls for a new basis of compensation just as urgently as the development of machinery led to the evolution of the workers' compensation legislation.

9. What of public opinion? The main question before the Committee is one about which, because of its technical insurance and legal aspects, the average citizen is understandably somewhat vague. But the opinion of the man in the street is seen when he comes face to face with the problem in the jury room. It is my view that since insurance became compulsory in 1928 public opinion, as reflected in juries' verdicts, has leaned heavily towards an assurance of compensation for the victim. Despite appearances and the conspiracy of silence about insurance at every trial, it was not long before juries demonstrated their knowledge of who the true contestants were and their view of what the consequences should be. The chances of defendants getting justice according to law lessened through the early thirties. The ablest counsel were regularly retained to defend claims and by 1937 it was officially estimated that one-third of the time of the Supreme Court was occupied in running-down cases. At length the spectacle of the running-down trial became such a farce that both the Government and the legal profession were moved to action. The Attorney-General proposed legislation for a form of absolute liability and the Dominion Legal Conference, prompted less by an urge for social reform than by an abhorrence of what was happening in the Courts, adopted a resolution to the same effect.[1]

10. Before anything resulted the war intervened and soon after it there followed the Contributory Negligence Act 1947 passed to abrogate the much criticised common law rule[2] that barred a plaintiff whose negligence was held to contribute in however small a degree to the accident. During the debate on the Bill it was argued from both sides of the House that the law as to compensation for road accidents would remain unsatisfactory so long as liability was based on fault. One Government member said[3] that the concept of fault or wrongful conduct as the basis for liability "has less and less a place in modern society . . . and no place at all in a society which accepts responsibility for the well-being of all its citizens", and that "One principle we should aim at . . . is to compensate people for harm caused to them without cognizance of how the harm is caused". An Opposition member[4] also said that consideration should be given to the "doctrine of absolute liability in motor accidents".

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[1]See Report, pars. 12–13.
[2]See, for example, *Sparks* v. *Edward Ash Ltd.* [1943] 1 All E.R., 1, 10; *Report of English Law Revision Committee,* 1939.
[3]276, *N.Z. Parl. Debates,* 787.
[4]Loc. cit. 796.

11. The Contributory Negligence Act 1947, as the Law Society pointed out to this Committee, was a "long step in reducing criticism of juries' verdicts contrary to the evidence". It enabled them, in a case where negligence on the part of the plaintiff was plainly established, still to give him a verdict in accordance with their view of the substantial justice of the case without having to close their minds to the Judge's directions on the law. Moreover, since a plaintiff's negligence could be taken into account to reduce the damages, insurers were better able to settle. Among counsel and insurance men there soon developed broad lines of agreement on methods of computing damages and assessing contribution, and the number of cases going to trial fell away.[1] Nowadays 98 per cent of all claims are settled.

12. On the face of it this seems very satisfactory: nearly everyone must be content with a system under which only one claim in 50 goes to Court. But the truth is that the other 49 claims are settled not on a strict balancing of the respective degrees of fault as contemplated by the law but on a shrewd appraisal of what experience has shown a jury would decide on seeing and hearing the witnesses. And no one knows better than those arranging the settlements that on a normal claim a jury is almost certain to find for the plaintiff. Settlements are made "not on the basis of the merits but on the recognised risk the defendant will run on a jury trial".[2] And, despite the formality of the trial, the carefully drawn issues, and the Judge's explanation of the law, the jury's verdict is too often based in the end less on a careful assessment of degrees of fault than on the two plain and substantial facts that the plaintiff has been injured and the defendant is fully insured. If claims were tried by Judges sitting alone conscientiously applying the strict requirements of the law a demand for some form of absolute liability in motor accidents would soon be heard. This is not a criticism of the jury system. On the contrary, it is only the juries' instinctive sense of social justice and the virtual inviolability of their verdicts that prevents that demand from manifesting itself now. Apart, indeed, from the deduction that may now be made for contributory negligence, it is questionable whether we have moved forward from the position in 1938 when the Legal Conference was told that we had "one law written in the books and another applied by juries"[3] and it was argued that "to declare absolute liability" was only "to declare truly the law as it is being practically administered".[3] If this is substantially true we should change the law to accord with what the public conscience, as reflected by juries' verdicts, indicates it should be.

13. The deficiencies of the present position are shown statistically by the numbers of victims who recover nothing either because they cannot establish negligence against an owner or because his indemnity does not extend to their cases. The figures given[4] may prove somewhat startling to the man in the street. Can a system which covers only about 30 per cent of accidents be called adequate?

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[1]There were 27 claims tried in the Supreme Court at Auckland in 1938 but only seven in 1961 despite the fact that there were probably three times as many casualties (see Appendix D). The Wellington figures were 38 for 1938 and 12 for 1961.

[2]30, *N.Z. Law Journal,* 141.

[3]14, *N.Z. Law Journal,* 125.

[4]Report, par. 27.

14. The motor unions proposed that in an accident due to a mechanical defect there should be an irrebuttable presumption of negligence on the part of the owner, and that cases of inevitable accident might be referred to the Unidentified Motorists Committee.[1] A similar suggestion made was that a claimant who had no evidence of negligence sufficient to justify Court action should be entitled to refer his claim to a body similar to the Workers' Compensation Board. The first of these proposals involves the contradiction of applying absolute liability against an owner for the kind of harm he is least likely to be able to foresee. The others amount to little more than appeals to goodwill and are fair neither to victims nor insurers. None of these proposals is practicable: they merely tinker with the problem and their only value is in reflecting an awareness that all is not well with the present system.

15. In my view the satisfactoriness of the present system is merely superficial. A new approach is needed, viewing the matter as a social question and not as a legal contest, facing the fact that the toll of the roads, despite our best endeavours, will remain a permanent feature of life. The problem calls for compensation for misfortune rather than damages for an individual wrong. Under the conditions of modern traffic an accident is an accident and the real responsibility rests on society. Just as society has had the benefits of modern transport so it should provide for the harm that it causes. It is better both from the social and the individual point of view that everyone suffering loss by road accidents should be compensated than that compensation should depend on the chance that a motorist can be made legally accountable.

16. The practicability of any scheme to achieve this depends primarily on cost. It appears that "implementing absolute liability in full" might involve over four times as great a sum as now.[2] The insurers' estimate of £839 per casualty was based, however, on an examination of only 320 casualties – less than 3 per cent of the 1961 total of 13,189 – so that there is a wide area for statistical error. Moreover, their allowance of 20 per cent for victims who would not claim is quite arbitrary. Having regard to the fact that of the 1961 total of 13,189 victims, 7,115,[3] or 54 per cent, suffered only minor injuries (sprains and bruises), and that that percentage is fairly constant,[3] the allowance seems very conservative. This impression is strengthened by the fact that of the 320 cases of full liability examined by the insurers, 27·5 per cent were claims under £50, 50 per cent under £200, and 70 per cent under £500. If the allowance for cases where the victim would not claim at all is increased to 25 per cent, the calculations[2] would show the cost of "implementing absolute liability in full" to be less than four times, and if to 30 per cent then about three and a half times, the present cost in premiums to vehicle owners.

17. But it would not be reasonable that the full cost should fall on the vehicle owners. The cause of many accidents which involve motor vehicles is the negligence of drivers who are not premium-paying owners, of pedestrians, cyclists, and other road users, defects in the road surface, weather conditions and other non-human agencies and community responsibilities. If the victims of these accidents are to be compensated it should be at the expense of the community at large.

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[1]Report, par. 20 (g).
[2]Report, pars. 43–44.
[3]Appendix E.

18. It must not be forgotten that the State already contributes largely to the cost of road accidents through social security benefits paid and hospital treatment provided for injured passengers whose claims are not indemnified, and for other victims who cannot prove negligence. Unfortunately, official records do not enable the measure of this cost to be reliably ascertained but the Social Security Department, on the basis of a check made of its Christchurch figures for 1962, covering approximately one-eighth of New Zealand, estimates £100,000 as the annual New Zealand total of benefits not recovered from damages paid by insurers.[1] The cost of hospital treatment is also uncertain, but a departmental estimate put the number of beds fully occupied during 1961 at 240 at £1,450 each. Of the total of £338,000, probably less than one-third is recovered. The State's present full annual contribution can therefore be roughly assessed at £300,000 to £350,000, and it would seem right that if absolute liability were introduced this should be increased to meet the cases mentioned in the preceding paragraph.

19. The State could bear all hospital and medical expenses and pay as well a subsidy on premiums, which could come from general taxation or be levied specifically by a tax on petrol in order to spread the charge on all who benefit from motor transport. Allocation to the funds of a proportion of fines inflicted for driving offences would carry a deterrent effect as well as placing a larger share of the burden in the right place. In this connection there would undoubtedly be a case for substantially increasing fines for offences that actually cause accidents or endanger other road users. As well, since not all drivers are owners but all would have the benefit of the scheme, a charge could be added to the annual driving licence fee.

20. "Implementing absolute liability in full" in the sense discussed involves paying lump-sum compensation to *all* victims in the same measure and manner as damages are now paid in the cases in which full liability is proved or admitted. In this context the term "absolute liability" is therefore a misnomer in that the method of achieving the result contemplated would be to abandon liability insurance in favour of accident insurance and to adopt a system which, instead of imposing liability for negligence on motorists, confers a cover against accident on every citizen. The elimination of negligence as the basis of liability would entirely remove the difficult problems of liability and hardship that now arise in cases of mechanical defect, inevitable accident and lack of evidence, and in accidents due to the fault of pedestrians, cyclists, the acts of animals, or defects in the road.[2] All passengers would of course, be entitled. The possibility of fraudulent claims, which is already present under the workers' compensation and social security legislation, should not be allowed to exclude drivers injured either by their own fault or by other cause. Contributory negligence, like negligence, would have no place in the system. Suitable provision could and should be made, however, to disentitle persons wilfully intending to harm themselves or others and to meet the case of serious misconduct[3] such as intoxication.

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[1]See section 74, Social Security Act 1938.
[2]Report, pars. 24–26.
[3]Cf. section 34, Workers' Compensation Act 1956.

21. Can this be done? The answer is that it can certainly be done if vehicle owners and the State will meet the cost. The estimates in par. 16 above[1] take no account of any State subsidy or the saving of expense now incurred in investigating and contesting liability, but let it be supposed the cost would increase fourfold. The private owner's premium which is now £2 12s. 6d. and which is estimated to go to £4 10s. with the compulsory passenger insurance recommended,[2] would then increase to £10 10s. To this the average owner would no doubt object even though, curiously enough, he probably now pays a comparable sum for a comprehensive policy covering his own car, damage to other property, and passenger risk. But if he could overcome his objection and pay that £10 10s. – which is less than 4s. per week and which would be reduced as far as the State would subsidise it – he would get in exchange not only a full indemnity against all personal injury claims (including passengers) made on him as owner, but also, in effect, a complete personal injury cover for his wife, his family, his friends, and himself, in respect of all accidents involving motor transport however sustained, whether driving, riding or walking.

22. On every accident the only issue would be the damages, and there seems no reason why the number of settlements should not remain as high as 98 per cent. Contested claims could still go to a Judge and jury though, with the issue of negligence eliminated, the resistance to change from trial by jury would lose much of its force and time and money would be further saved if damages were assessed by a Judge alone as in England. Another course would be to establish a special Court, or to confer jurisdiction on the Compensation Court where, if it were desired to retain some element of the jury system, the Judge could sit with two lay assessors.

23. Such a scheme would provide for all victims without departing from the present well-understood system of damages. But the objection which would make it unacceptable lies in the advantage the absolute right to damages would give the road accident victim over the industrial accident victim whose absolute right is limited to workers' compensation scales and whose right to damages depends on proof of negligence. A worker losing his leg in a car accident through his own negligence outside the factory gate might get £6,000: for the same loss through his own fault inside the factory he would recover little more than a third of that sum. And it is not a satisfying answer to point to the anomaly that at present, though assured of compensation inside the factory, he recovers nothing from such an accident outside the gate.

24. The alternative, the cost of which should be appreciably less, is a scheme of compensation according to a scale of payments related broadly to workers' compensation scales. At this stage it seems unprofitable to attempt any detailed consideration but the following general principles could be the basis of the scheme:

(a) Compensation for temporary incapacity by way of periodic payments related as closely as possible to actual loss of earnings or income, with fixed rates for housewives, students, and others not receiving regular earnings.

(b) Lump sums for lesser permanent disabilities, for loss of enjoyment of life, and for pain and suffering.

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[1]See also Report, pars. 43–44.
[2]Report, par. 30.

(c) For major permanent disabilities and for dependants of persons killed, compensation by pension payments based principally on economic loss and unlimited in point of time.

(d) The pattern of the workers' compensation legislation could be followed as to medical examination and reduction of compensation on unreasonable refusal to accept treatment.[1]

(e) Provision for review of pensions according to changing personal and economic circumstances, and for commuting future entitlement in appropriate cases.

25. Although it could be expected that, as with workers' compensation, the vast majority of claims under this scheme would be settled there would be need of a tribunal to decide contested cases involving attributability and loss of income. This would be a specialist jurisdiction which would best be removed from the ordinary Courts, and the machinery and procedures of the Compensation Court would be readily adaptable.

26. Administration of the scheme would present no insuperable difficulty, but the question of control – by Government, the insurance industry, or a combined organisation – would become a major question for decision. Obviously enough, a central insurance fund administered by the State, as in Saskatchewan, has certain advantages (and also disadvantages) but, on the other hand, the insurance industry has served us well and has at hand long experience in workers' compensation as well as motor vehicle insurance. In New Zealand we are not without experience of the problem of administering a universal insurance scheme and the history and present control of workers' compensation and the establishment of the Earthquake and War Damage Commission would serve as useful guides. The whole question would necessarily involve detailed consideration and negotiation by insurers and Government as well as the motor unions and would depend in the end on a political decision.

27. A scheme of this kind has operated in Saskatchewan since 1947 and has just been unanimously recommended for Ontario.[2] Fundamentally, it is not very different from our war pensions scheme, which should be adaptable, with appropriate modifications, as a means of meeting the heaviest class of losses in peacetime life. With our experience in workers' compensation, war pensions, and social security, and the example of what has been done in compensation for industrial accidents in North America, the task of devising an appropriate scale of benefits should not be beyond us. This would put the victims of road and industrial accidents on a comparable footing.

28. Of major importance would be the question whether, on the adoption of such a scheme providing compensation irrespective of negligence, the common law remedy for damages based on negligence should be preserved. After 35 years of compulsory insurance the action for damages could hardly be retained as an effective remedy unless compulsory insurance also remained. But this, depending on the method of administration adopted, would quite possibly involve duplicated investigation and administration expenses, and would obviously require additional premiums. On the other hand, abolition of the action for negligence could be expected to save administration, investigation, and legal expenses, and all premiums would then go with the State subsidy

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[1]Cf. sections 28, 35, Workers' Compensation Act 1956.
[2]Report of Select Committee of Legislative Assembly: March 1963.

to swell a more substantial scale of benefits. The common law remedy survives in Saskatchewan but has disappeared under the workers' compensation schemes of many Canadian provinces and American States where its abandonment was presumably regarded by the trade union movement as compensated for by the much higher scales of benefits thereby made possible. Under those jurisdictions it appears that a man can sue for negligence if he is hurt on the road but not if he is injured in his employment. It would be no more anomalous to reverse that position in New Zealand, but a situation under which the road accident victim had an absolute right to compensation but no common law remedy, while the industrial victim had both, would be just as unacceptable here as a situation where the road victim had an absolute right to damages and the industrial victim had to prove negligence.[1] As a matter of what is practicable it therefore seems that, if such a scheme of limited compensation were adopted in New Zealand, the common law remedy should be retained in respect of both industrial and road accidents until abolished in favour of more generous scales of compensation irrespective of fault in both fields. That would be the next logical step.

29. Abolition of the right to claim damages for negligence causing death or personal injuries would encounter strong objection in this country, but there are serious shortcomings in the present law. First and obviously, a jury can only guess at the future with all the uncertainties of economic loss, chances of recovery or deterioration, remarriage, early death, and the like. Every assessment of damages therefore carries the seeds of grave injustice to one side or the other, and a system of pensions which provided for review and variation according to changing circumstances would eliminate the imponderables of the future. Secondly, for some reason the policy of our social security legislation is that even substantial awards based on future economic loss from permanent incapacity do not disentitle a person who otherwise qualifies for an invalid's benefit – so that a claimant can have his damages and his State benefit too – both covering the same loss. Again, since the Court has no power, except in the case of infants and persons of unsound mind, to order control of even the largest awards, a claimant can squander his damages and then throw himself on the State. And it must always be remembered that the right to damages, though available to all victims, can be availed of only by those of them who can establish negligence. There is a limit to the expense that both industry and motor transport can carry by way of premiums and, accordingly, to the total funds that can be provided for compensation. If it is just that the community should undertake and spread the burden of compensating all victims is it not also just that all should share in the total fund available in an equitable manner according to individual loss and not according to the chance of being able to prove negligence?

30. In opposition to any scheme that eliminates the fault concept several arguments have been put. It is said that "it is wrong in principle to make the innocent motorist liable". The Constitutional Society submitted that "it is a fundamental principle that a person should be penalised only for his own wrongdoing". Such arguments overlook the fact that since the introduction of compulsory insurance no motorist has been personally penalised or made liable. Insurance has relieved him in the past in exactly the same way as any compensation scheme independent

[1]See par. 23 above.

of fault would relieve him in the future. Then there is the slogan that elimination of the fault concept would "put a premium on carelessness". This was the cry when workers' compensation was introduced but it was not borne out. The fact that a pedestrian is assured of compensation is not likely to make him any less careful to avoid an accident the injurious extent of which he can neither forecast nor control. Similarly, the care a driver takes depends on his thought for his own or other people's safety or the fear of penal consequences rather than any thought of compensation or liability.

31. The strongest argument is that there is no sufficient justification for providing for the victims of the roads without also providing for those who suffer accidental injury in other departments of everyday life. What of the home gardener who falls off his ladder; the housewife who suffers severe burns from an electric appliance; the sportsman who permanently cripples a leg? These people normally have no right of action whatever. If fault is to be rejected as the basis of liability on the road and the aim is to be compensation for misfortune, is there not an equal claim to entitlement in these cases? To this there is no easy answer. But if the basic aim is sound then the fact that all categories of misadventure cannot be provided for at once is not a ground for doing nothing. And, if we are to make a beginning, where better than in that class of accident from which none of us however careful is immune, for which at present probably only three in 10 victims recover, and by which by far the heaviest toll of accidental death and injury is caused in every year?

H. R. C. WILD.

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