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# Emerging Trends in Compensation for Widespread Losses

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## ABSTRACT

*Tort refers to a civil wrong or infringement of one's civil right. In tort law, the injury suffered by a person is known as damage and the compensation provided for the injury is known as damages. In our day-to-day life, we come across various widespread losses such as gas leaks, industrial blasts, collapsing of buildings, and many such. Under tort law, one has the right to claim compensation for the injuries suffered. This paper specifically talks about the types of compensation awarded under the law of tort and the recent trends in the compensation awarded for widespread losses.*

**Keywords:** Tort law, compensation, widespread losses, damages.

## I. INTRODUCTION

The law of torts is one of the primary branches of civil obligations. Torts put an individual at risk to pay harm to someone else whose lawfully secured intrigue has been attacked, i.e., in simple words, the law of tort refers to the infringement of one's civil rights<sup>2</sup>. Damage under the law of tort is the loss suffered by a person due to the wrong act committed by others against an individual where the individual's civil right has been violated. Damages in torts refer to the compensation paid for the injury suffered by the individual by the tortfeasor or the person who committed the tort.<sup>3</sup> Loss is something that generally causes a significant impact on the human mind and life. Loss can range from a very small magnitude to a massive one. A loss can have a large or widespread impact on people or society where the tort has been committed. The loss of a person puts the loved ones in grief and misery. Damages and compensation have to be rewarded to those who have suffered any loss due to an individual who committed a tort against that person. In *Rudal Shah v. the State of Bihar*<sup>4</sup>, the Supreme Court established the principle that compensation can be awarded when an individual's fundamental rights have been violated and that higher courts have the authority to do so through writ jurisdiction, thus establishing compensatory jurisprudence. Losses in business may cause extreme stress to the entrepreneur

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<sup>2</sup> S.C Thanvi & Vishnu Koonorayar, *Law of Torts*, 631, (2015).

<sup>3</sup> Krishnendra Joshi, *Damages under Tort Law*, (2019).

<sup>4</sup> *Rudal Shah v. the State of Bihar*, (1983), SCC 141, (India).

or management and bring much pain to the victim. Widespread losses are those losses that have a heavy impact on human life and property. Some examples of widespread losses are oil and gas leak tragedies, chemical leaks, consumer frauds, motor vehicle accidents, and such accidents that impact the public at large. Oil and gas leaks cause a tremendous amount of destruction of life and property. They may occur due to negligence, natural leaks, unchecked, or transportation leaks. Chemical leaks are caused when toxic chemicals are released into human habitats. They cause chronic diseases and illnesses in human beings and reduce the life expectancy of humans.

The damages for widespread losses are compensatory damages where the plaintiff injured will be compensated and put back in the situation he was in before the tort was committed<sup>5</sup>. The incident of the Bhopal Gas leak is one of the tragedies that has caused great destruction and loss of life and property to human life, causing widespread loss. *Union Carbide Corporation v. Union of India*<sup>6</sup> is a case of absolute liability where Union Carbide Corporation is an American company involved in manufacturing batteries, chemicals, and other industrial products. In 1970, water seeped into the tanker of highly poisonous gas, causing an exothermic reaction and leading to a blast due to which 20,000 people died, and 60,00,000 people have been injured. <sup>7</sup>The Supreme court ordered Union Carbide Corporation to pay a compensation of Rs. 715 crores or \$470 million, which was initially only \$350 million. However, due to the recent trends in compensation for widespread losses, the survivors have been fighting for compensation adequate to their medical requirements. On January 29 2020, the UCC paid a compensation of \$470 million. Moto vehicle accidents have also caused widespread damages and losses. <sup>8</sup>

The Motor vehicle Act 1988 is a specific authorization concerning the different issues identifying traffic security or safety on roads and minimizing road accidents or street mishaps. A recent amendment made in the year 2019, The Motor Vehicle (Amendment) Act, 2019, targets third-party insurance for the vehicles, compensation for survivors and fatalities of the accident, and vehicles' health condition. The primary compensation in case of a hit and run case has increased from Rs. 12,500 to 50,000 in cases of injuries and has been increased from Rs. 25,000 to Rs. 2,00,000 in case of death due to the recent trends in compensation of the Motor Vehicle Act. Such emerging trends of compensation of widespread losses help the

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<sup>5</sup> Nishith Desai Associates, *Law of Damages in India*, (2017).

<sup>6</sup> Union Carbide Corporation v. Union of India, (1989), SCC 584, (India).

<sup>7</sup> Nishith Desai Associates, *Law of Damages in India*, (2017).

<sup>8</sup> Charan Lal Sahu v. Union Carbide Corporation, (1989), SCC 674, (India).

plaintiff for the injury or loss suffered.

### **(A) Research Objectives**

The objectives achieved through this research paper are as follows:

- The concept of damages and compensation in Law of torts
- The types of damages in Law of torts
- The concept of widespread losses
- The compensation for widespread losses and the emerging trends

### **(B) Research Questions**

- Are all the parties affected due to tort on a large scale borne to compensation?
- Who is liable to give compensation in case of a widespread loss?
- What are the compensations given to widespread losses during the time of COVID-19?

### **(C) Literature Review**

'*Law of torts*' by SC Thanvi and Vishnu Koonorayar talks about the evolution of torts and the components under it.

Krishnendra Joshi's '*Damages under tort law*' discusses the damages and how can one claim damages under torts.

'*Law of damages in India*' by Nishith Desai Associates briefs about the damages under tort law and cases related to such.

Ayushi Dubey's '*Right to compensation under the Indian Labour laws*' discusses the types of compensation, its evolution, and the claim of compensation in India.

## **II. WHO IS LIABLE FOR WIDESPREAD LOSSES?**

The two concepts that hold industrial and business operations liable for public harm caused by commercial activities are strict liability and absolute liability. They claim that accountability should exist in some instances, even if there is no intent or negligence.

### **1. Strict Liability**

The principle of strict liability states that if a company's economic operations affect or cause harm to someone, the company must compensate him. Even if it took all reasonable efforts to avoid the injury, it will be held liable.<sup>9</sup> Water from a person's mill infiltrated and ruined his

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<sup>9</sup> Krishnendra Joshi, *Damages under Tort Law*, (2019).

neighbour's mines in *Rylands v. Fletcher*<sup>10</sup>. Although it was his contractor's fault, he was blamed, and the court held the defendant liable. In India, widespread losses were caused due to negligence or fault by Industries and Business Organisations. People at a large scale were affected due to gas leaks, for which compensation had to be given on a large scale.

## 2. Absolute Liability

If a person is held strictly liable, the law allows him to raise various defences. A defendant may claim that the damage was caused by natural disasters which is beyond his control. In absolute liability, on the other hand, he is unable to raise any defence and must pay compensation in all circumstances.<sup>11</sup> This occurs in incidents involving dangerous activities, such as the Bhopal Gas Disaster. With the Bhopal Gas Tragedy, also known as, *M.C Mehta v. Union of India*<sup>12</sup> case, the concept of absolute liability emerged in India. This case is based on the idea of strict liability, with no exceptions, and the individual, i.e., the gas company, is held entirely responsible for its actions<sup>13</sup>. Many people died due to the Bhopal gas leak, and many more are suffering from severe ailments due to the generation. The Supreme Court, after this incident, ruled that if a company is involved in a hazardous or intrinsically risky activity and any harm occurs as a result of an accident while in operation, the firm will be held strictly and entirely liable for compensating all persons who are injured by accident.<sup>14</sup>

## III. WHAT ARE THE DAMAGES UNDER TORT LAW?

For any injury suffered under the law of tort, various remedies are available. However, the most common form of availing a remedy is to award damages. Compensation in tort law is known as damages.<sup>15</sup> Damages under the tort law can be awarded in the case of Injuria Sine Damno and not Damnum Sine Injuria.<sup>16</sup>

Injuria sine Damno refers to where a person has suffered a legal injury without any actual injury. It means a person's civil right has been violated; therefore, he has the right to go to the court of law.<sup>17</sup>

Damnum Sine Injuria refers to where a person has suffered actual damage but no legal injury.

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<sup>10</sup> *Rylands v. Fletcher*, (1868), LR 3 HL 330, (UK).

<sup>11</sup> Adarsh Singh Thakur, *Types of Damages under Tort law*, (2019).

<sup>12</sup> *M.C Mehta v. Union of India*, (2006), SCC 399, (India).

<sup>13</sup> Krishnendra Joshi, *Damages under Tort Law*, (2019).

<sup>14</sup> Ayushi Dubey, *Right to compensation under the Indian labour laws*, (2018).

<sup>15</sup> Krishnendra Joshi, *Damages under Tort Law*, (2019).

<sup>16</sup> Modhura Roy, *Quantum of damages under Tort law*, (2016).

<sup>17</sup> Adarsh Singh Thakur, *Types of Damages under Tort law*, (2019).

He cannot go to the court of law in such cases as there was no legal injury.<sup>18</sup>

There is a fine line between damages and damage in the law of tort. Damage refers to the loss suffered by a person due to the wrongful committed by another against him.<sup>19</sup> In contrast, damages refer to the compensation awarded to the person who has suffered the loss or damage done to him/her.<sup>20</sup>

### 1. Liquidated and Unliquidated Damages

When a person suffers loss as a result of another person's unlawful behaviour, both liquidated and unliquidated damages are awarded. However, the damages awarded differ.

Liquidated damages refer to those damages where the amount of compensation that must be paid to the injured person is predetermined.<sup>21</sup> It is typically paid in contracts where both parties already know each other before the damage is produced by one of them, and the courts are merely required to enforce the requirement of such damages.

**Example:** X enters into a contract with Y for selling his house to Y. It is mentioned in the terms and contracts that if the house is defective, X has to pay him Rs.1000. The house turned out to be defective, and Y filed a case against X. As the house was defective and as agreed upon the terms of the contract, X is liable to pay Y a sum of 1000 Rs.

Unliquidated damages refer to those damages that are not predetermined, i.e., the amount that must be paid is not determined before the individual is injured.<sup>22</sup> In tort cases, unliquidated damages are given since the parties typically do not know one other before the tort is committed, making it impossible for them to determine the amount of compensation in advance.<sup>23</sup> Thus, this type of compensation comes under liquidated damages.

**Example:** Z trespasses on Y's property, prompting Y to file a lawsuit against him in court. The amount of compensation that Y will receive will be decided by the Court. Thus, this type of compensation comes under unliquidated damages.

### 2. Damages Awarded Under Tort Law

There are various types of damages rewarded following the tort committed by an individual against another. The different types of damages or compensation under tort law are:

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<sup>18</sup> Krishnendra Joshi, *Damages under Tort Law*, (2019).

<sup>19</sup> Modhura Roy, *Quantum of damages under Tort law*, (2016).

<sup>20</sup> Ibid.,

<sup>21</sup> S.C Thanvi & Vishnu Koonorayar, *Law of Torts*, 631, (2015).

<sup>22</sup> Krishnendra Joshi, *Damages under Tort Law*, (2019).

<sup>23</sup> Ibid.,

### **i. Nominal Damages**

Damages to be paid when the plaintiff had suffered only a legal injury due to the defendant, but no actual damage suffered, i.e., *injuria sine damnum*.<sup>24</sup> In such cases, the plaintiff's right has been violated, but the amount of damages is so trivial or insignificant because the plaintiff has suffered no actual loss.<sup>25</sup> For example, in the landmark case of *Ashby v. White*,<sup>26</sup> the defendant stopped the plaintiff from voting, but the candidate for whom the plaintiff intended to vote won. The plaintiff filed a lawsuit against the defendant. Even though the plaintiff experienced no actual damages, the defendant was held guilty for stopping him from exercising his legal right to vote. Therefore nominal damages were awarded in this instance. In *Constantine v. Imperial London Hotels Ltd.*,<sup>27</sup> the plaintiff was a West Indies cricketer who went to the defendant hotel to stay but was not allowed to stay due to his nationality. As a result, the plaintiff remained at another hotel. The plaintiff did not suffer any actual damage but filed a suit against the defendant as his legal rights were infringed. The court sentenced the defendant to pay a small amount of five guineas as damages for the loss caused to the plaintiff. In such cases, monetary damages are awarded to the plaintiff as the plaintiff can replace the damaged good with the given amount.

### **ii. Compensatory Damages**

Damages rewarded to the plaintiff to put him back in his original position before tort law was committed against him.<sup>28</sup> The purpose of these damages is to return the plaintiff to his actual position, not to reprimand the offender. Compensatory damages are usually given in cases related to Motor Vehicle Accidents, whereby the vehicle is damaged, or a person has lost his life under the MVA Act.<sup>29</sup>

### **iii. Contemptuous Damages**

Damages paid by the court to such cases that are trivial in nature but are brought to the suit by the plaintiff.<sup>30</sup> This is when a court grants a little sum of money as a way of expressing the court's disapproval of the court case being brought at all.<sup>31</sup> Contemptuous damages are similar to nominal damages.<sup>32</sup> However, in nominal damages, the plaintiff suffers no actual loss, but

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<sup>24</sup> Modhura Roy, *Quantum of damages under Tort law*, (2016).

<sup>25</sup> Akshat Tripathi, *Damages under law of torts*, (2016).

<sup>26</sup> *Ashby v. White*, (1703), 92 ER 126, (UK).

<sup>27</sup> *Constantine v. Imperial London Hotels Ltd.*, (1994), KB 693, (UK).

<sup>28</sup> Modhura Roy, *Quantum of damages under Tort law*, (2016).

<sup>29</sup> *Ibid.*,

<sup>30</sup> Krishnendra Joshi, *Damages under Tort Law*, (2019).

<sup>31</sup> Nithish Desai, *Law of damages in India*, (2018).

<sup>32</sup> Modhura Roy, *Quantum of damages under Tort law*, (2016).

in contemptuous damages, the plaintiff suffers actual damage, which is minor and complete compensation is not required.

#### iv. Aggravated Damages

Damages paid to the plaintiff for the extra harm caused, which cannot be compensated in monetary terms such as respect, self-esteem, etc.<sup>33</sup> These are thus additional damages awarded to the plaintiff in addition to the damages awarded for his monetary loss. They are intended to pay the plaintiff, determined by the extent of the plaintiff's suffering.

#### v. Punitive Damages

Damages that are exemplary and punish the defendant for the tort he committed against the plaintiff.<sup>34</sup> As a result, whenever a court believes the defendant's action was particularly egregious, it pays punitive damages. Punitive damages should only be granted when a combination of general and aggravated damages would be insufficient to fulfil the goal of punishment and deterrence.<sup>35</sup> In *Shiv Sagar Tiwari v. Union of India*,<sup>36</sup> Smt. Shiela Kaul's allotments of the stated 52 shops/stalls were arbitrary, discriminatory, and unconstitutional and were likely to be annulled. Hence, punitive damages were awarded.

### IV. WIDESPREAD LOSSES IN INDIA AND COMPENSATIONS

There have been massive industrial tragedies in India in the past few years. Not just the Bhopal Gas leak tragedy but various others. Industries have been negligent with their activities which led to gas leaks, equipment blasts and many more, affecting the lives of people working within such industries as well as people living in such areas. It has costed many lives and generations born with health disorders due to such tragedies. Despite the compensation provided to the families and people affected by such tragedies, it did not put them in a position before the incident. As a result, they still suffer even today.

The gas leak incident in Vizag, Andhra Pradesh, has once again sparked concerns about India's industrial safety regulations. As the country's chemical sector has evolved over the previous four decades, there has been a slew of hazardous chemical leaks, some of which have resulted in significant human casualties, evoking memories of the Bhopal gas tragedy. Gas leaked from the L.G Polymers industry and spread 5 kilometres across the industry, leading to many deaths and injuries.<sup>37</sup> This incident occurred on May 7 2020, during the covid outbreak. The Apex

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<sup>33</sup> Akshat Tripathi, *Damages under law of torts*, (2016).

<sup>34</sup> Adarsh Singh Thakur, *Types of Damages under Tort law*, (2019).

<sup>35</sup> Ibid.,

<sup>36</sup> Shiv Sagar Tiwari v. Union of India, (1977), AIR SC 275, (India).

<sup>37</sup> J.P Krishna, *Past major gas leaks in India*, Deccan Chronicle, ( May. 7, 2020. 4:24 PM).



court demanded that compensation had to be given to the victims of the disaster. Y.S Jagan Mohan Reddy, the Chief Minister of Andhra Pradesh, deposited Rs. 10000 to the victims affected due to the gas leak.<sup>38</sup> A total of 19983 people living in the nearby villages received a compensation of Rs. 10000 each.<sup>39</sup> The government provided health cards to treat those families affected by the gas leak. Though the compensation demanded for the deceased's family was Rs 1 crore, only Rs. 5lac was given. Rs. 10lacs was given to those members who were treated on a ventilator and Rs. 1lac. Rs. 25000 was given to those who suffered minor injuries.<sup>40</sup>

A blast in the underground gas pipeline maintained by the Gas Authority of India Limited (GAIL) at Nagaram, East Godavari district of Andhra Pradesh, resulted in a large conflagration on June 27, 2014.<sup>41</sup> At least 15 individuals were killed in the tragedy, with more than 40 more injured. In *the State of Andhra Pradesh v. Gas Authority of India Ltd*<sup>42</sup>, compensation of Rs. 25 lacs was awarded to the families of the deceased.<sup>43</sup> However, the Gas Authority was held liable to pay compensation to the injured and deceased due to the negligence of the Gas Company that led to the incident.

In another incident of Chattisgarh's Durg district, six members died, and nearly 40 others were injured in a methane gas pipeline leak at a water pump house at Bhilai Steel Plant in June 2014.<sup>44</sup> The six people killed were all workers of the state-owned SAIL facility, including two deputy managers. The Company decided to give a compensation of Rs 30 lac each to the deceased's family.<sup>45</sup> The families of the deceased were also awarded a statutory compensation of 33 lacs to 90 lacs. In addition, rs. 15 lacs were awarded to those who suffered severe treatment each, and Rs. 2 lacs were given to each member who suffered minor injuries in the accident.<sup>46</sup>

In 2018, a blast at the Bhilai Steel Plant of state-owned SAIL killed nine people and injured 14.<sup>47</sup> According to SAIL, the blast occurred when a fire broke out in a gas conduit at Coke Oven Battery Complex No 11 during routine maintenance. The family of the dead were compensated with Rs. 5alcs each thought request for compensation was Rs. 25lacs each. The injured were given a compensation of Rs. 25000. The blast occurred due to the poor

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<sup>38</sup> Ramanakanth, *Compensation paid to people affected by Viazg leak*, The Hindu, (May. 19, 2020. 7:28 AM).

<sup>39</sup> Ibid.,

<sup>40</sup> Ibid.,

<sup>41</sup> J.P Krishna, *Past major gas leaks in India*, Deccan Chronicle, ( May. 7, 2020. 4:24 PM).

<sup>42</sup> State of A.P v. GAIL, (2014).

<sup>43</sup> Satish K, *AP police files fresh case against GAIL*, Business Line, (November. 25, 2014 3:20 PM).

<sup>44</sup> J.P Krishna, *Past major gas leaks in India*, Deccan Chronicle, ( May. 7, 2020. 4:24 PM).

<sup>45</sup> Ibid.,

<sup>46</sup> Simran Chaudhary, *Bhilai Steel Plant blast: families get compensation*, Economic Times, (October. 10, 2014. 5:50 PM).

<sup>47</sup> J.P Krishna, *Past major gas leaks in India*, Deccan Chronicle, ( May. 7, 2020. 4:24 PM).

maintenance and the negligence of the workers at the Steel Plant.<sup>48</sup>

## V. COMPENSATION FOR WIDESPREAD LOSSES DURING THE TIME OF COVID

The unprecedented coronavirus pandemic outburst in India in January 2020. A nationwide lockdown was imposed on March 22 2020. The world was brought to a halt with lockdowns imposed in almost all nations around the world. The lockdown led many businesses and firms to shut down their operations. Due to the downfall in sales in most business sectors, salary payments to the employees were cut down to half. Firms had to lay off most of their employees as they were unable to pay them salaries. The health sector was working throughout the year over hours as the cases gradually kept increasing in the country. Most of the population was affected by the virus and were hospitalized. Many of them lost their lives due to the pandemic. The earning member of the family could not make it due to the virus, and many people lost their jobs. Children lost their parents, and the nation was helpless.

More than half of the population fell under poverty due to a lack of employment and earnings. The government decided to compensate for this widespread loss during covid. The Centre proposed welfare measures, including a pension for families whose earning members had died due to the Covid-19. The government has expanded the benefit of the Employees State Insurance Corporation (ESIC) pension programme for employment-related death cases to include those who have died due to Covid to enable families to live a life of dignity and maintain a good level of living.<sup>49</sup> The Employees Provident Fund Organization-Employees' Deposit Linked Insurance (EDLI) scheme's insurance benefits have been improved and liberalized.<sup>50</sup> The maximum insurance benefit amount has been raised from Rs 6 lakh to Rs 7 lakh.<sup>51</sup> In a bold gesture to protect people's jobs, the government would cover the wages of employees who are unable to work due to the coronavirus outbreak. PM Modi proposes a Rs 10 lakh fund, free schooling, and other incentives for children who have lost both parents to covid.<sup>52</sup> All children would be enrolled under Ayushman Bharat Scheme (PM-JAY) beneficiaries, with a health insurance cover of Rs. 5 lakh<sup>53</sup>. The Centre announced that kids who lost both their parents or a legal guardian due to the pandemic would be compensated under the PM CARES Fund. The Centre has extended the Rs 50 lakh insurance coverage scheme for healthcare workers who died while working during Covid19 across India.<sup>54</sup> The

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<sup>48</sup> Harsha Singh, *Bhilai Blast: SteelMin announces compensation*, Economic Times, (June 9, 2018. 4:19 PM).

<sup>49</sup> Mansi Jaswal, *PM Announces relief packages and compensation*, India Today, (June. 30, 2020. 5:29 AM).

<sup>50</sup> *Ibid.*,

<sup>51</sup> *Ibid.*,

<sup>52</sup> Ruthika R, *Government to support kids who lose their parents due to Covid*, (May. 30, 2021. 6:14 PM).

<sup>53</sup> *Ibid.*,

<sup>54</sup> *India to offer unemployment benefits to workers during Covid*, Times of India, (9. July, 2020. 3:20 PM).

finance minister announced rs. 20 lakh crore relief pack to compensate the small business and rural families whose business has been affected due to Covid.<sup>55</sup> The Centre announced various compensations and schemes to help those during the tough times of the pandemic.

## **VI. ANALYSIS AND CONCLUSION**

Victims can sue for compensation for their injuries or losses under the Tort Law. The concept of restitution for crime victims has recently gained much traction. Modern welfare governments have recognized the importance of providing compensation to crime victims as part of their responsibility to safeguard their citizens and their overall wellbeing. Many countries have embraced this concept of victim compensation payment; for example, Canada, Australia, New Zealand, and the United Kingdom have established a fund to provide compensation to crime victims. Not just in criminal law but also in constitutional law, environmental law, and other areas, compensation is now a right. As societies became more organised, the responsibility for safeguarding citizens from crime and punishing criminals fell into the hands of governmental authorities. The right to compensation is a relatively recent addition to Indian constitutional law. This concept began to gain traction in India under constitutional law only in the late 1980s. The Indian judiciary came up with this novel notion for ensuring justice. The compensation given is usually based on the claimant's entitlement. Compensation law is still relatively new, but it has made substantial progress since the Rudul Shah case. Many people have found the new remedy to be a godsend, and it has given the courts a significant boost in their duty as custodians of human rights. To a large extent, the flaws in the common law of torts have been addressed. However, compensation is not always provided to the victims of widespread losses. The government often delays compensation, due to which the affected families are put in tough times. The compensation provided to widespread losses does not do justice to the families. A trivial amount is awarded as compensation for the loss borne by the family. Apart from monetary compensation, the government and the companies must provide other beneficiaries such as educating the kids of the family, providing groceries and basic needs to the families. It is the responsibility of the government to develop mechanisms that ensure the safety and security of the public. However, certain things being inevitable, it is necessary to design appropriate compensation policies. In a consumer society where large-scale losses are expected, the methods and procedures for compensating large groups of claimants are critical. Hence, the government and lawmakers should make necessary changes and implement new laws to award compensation during widespread losses that benefit the families.

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<sup>55</sup> Ibid.,

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