MEDICAL DISABILITY AND ASSESSMENT OF DAMAGES SEMINAR
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KEYNOTE ADDRESS
PROBLEMS SURROUNDING CLAIMS FOR DAMAGES IN ACCIDENT CASES
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It is nice to have so many doctors and lawyers around you at the same time, especially when the doctors are not treating you and the lawyers are not defending you. Otherwise, you must be in serious trouble. The worst thing that could happen to any person is, after the doctor has messed up his (the patient's) treatment, the lawyer messes up his (the client's) case. That is "double jeopardy" at its worst.

However, today, I am very happy to see doctors and lawyers getting together, sitting together and discussing together, in order to find ways to overcome the problems faced by those unfortunate patients/clients.

When I received the invitation to speak at this Seminar, I searched for the justification for me to do so. Looking at the name of the seminar and the organizers, I thought I had some justifications. First, I am ageing even though I cannot claim to be in the best of health. Secondly, I am disabled, as least I am unable to run and to swim anymore. Thirdly, as a Judge at all levels of court, I did have some experience in assessment of damages in personal injury claims. Fourthly, I have sufficient personal experience as a patient. Fifthly, as a mark of gratitude to Allah s.w.t. who has given me back my voice for the second time, I think I should use it to make whatever little contribution I could, to mankind. Surprisingly, I receive more invitations to speak now than even when I was Chief Justice.

You will be surprised that, in my 40 years in and around the court, I missed medical negligence cases. None came to me, somehow. I do not know whether it is because there were really so few incidents of medical negligence (which is difficult to believe) or that the cases were settled out of court (which is good) or that the cases were "covered up" somehow (which I hope is not the case). I am not talking about risk. Every patient should be aware and accept it when it happens. But, it is a different thing when things turn for the worse because of negligence in the course of the treatment. Imagine, having undergone through untold pain and suffering, inconvenience and hardship for the family especially those with small children, may be losing job and all lifesaving, you end up a vegetable or paralyzed. It is really painful, even to see. Let us pause for a moment and think of them and of what contribution we could make to alleviate their suffering and hardship.

One of the subjects of this Seminar is assessment of damages in claims for personal injuries arising from road accidents. Before going into it, let us look at the main cause of road accidents first. Accidents are accidents. Nobody wants an accident to happen to himself, especially after it has happened. But, are the Malaysian road users doing enough to try to reduce accidents from happening? I am not going to trouble you with statistics. We all see it every day and we all know it.

Look at the attitude of the drivers and the motor cyclists on the road. With newfound

prosperity and handed-down subsidies and gifts (and promises to reduce car prices in the last general Election) many people are now able to buy cars and motor cycles. However, their sense of responsibility does not seem to increase correspondingly. There is a false pride in the newfound status, making them react arrogantly and irresponsibly on the road. Professional drivers seem to care more for their trips than the safety of other road-users. Look around the village or residential area where you live. You will find that, in the afternoon, children as young as eight or nine years, go about in group on their parents' motor cycles, without helmets, without license and without care and attention. What do their parents do? Those children are the ones who would end up as "Mat Rempit", "drug addicts" and what follows. When something goes wrong, they blame the Police and the Government. Unfortunately, in this country, we still do not have the culture of respecting the law that we see in Japan and some Western European countries. Some people even feel that they are "great" and "clever" when they break the law without being apprehended.

But, what can we expect from the common folks when cameras put up by the lawful authority to track traffic offenders are openly vandalised by opposition political supporters? What can we expect from the common folks when an "Honorable" Member of Parliament bites the ear of a Policeman on duty? What can we expect from the common folks when "Honorable" Members of Parliament are instigating the nation to break the law and the citizens to turn lawless? What can we expect from the common folks when self-proclaimed watchdogs of human rights, transparency, rule of law, equality, freedom, justice and so on, show no respect for the law when it suits their purpose?

The insurance and *takaful* industry has its problems too. I am told that the current motor insurance and *takaful* tariff have remained unchanged for the last 33 years since 1978. It has been a financial pressure to all players in the insurance and *takaful* industry especially from the stakeholders.[1] The industry believes that unless dramatic actions are taken to restructure the motor insurance and *takaful* business in a holistic and comprehensive manner, the motor business itself will become unsustainable. The industry has exhausted many alternative solutions to curb the inadequacy of the existing tariff such as increasing loadings, but yet still continue to suffer poor underwriting results.

Contributing factors affecting the deteriorating results of the motor insurance and *takaful* sector are:

1. The increase of spare parts prices, repair costs, legal fees, adjustors' fees, cost of claims administration, etc.
2. Increase in vehicle thefts. The total number of stolen vehicles has increased significantly from 8,869 cases in 1997 to 40,284 cases in 2009, an increase of 454% in 13 years whilst the quantum of claims escalated from RM135 million to RM606 million in 2009, an increase of 448% in the same 13-year period. You will notice that the percentages of the increase are about the same.

[1] Shareholders want profits; Insured / participants demand accessibility of cover at reasonable cost, claims process efficiency (i.e. turnaround time); Regulator expects financial soundness, operational efficiency and good market conduct. – Azli Munani, CEO/Ececutive Secretary, Malaysia Takaful Association.

3. Fraudulent claims. These are fabricated or inflated claims perpetrated by syndicates or various parties to insurance claims or even ordinary law-abiding citizens who take opportunity to defraud insurers.
4. Risk Based Capital Framework requires that each insurer maintain a capital adequacy level that commensurate with their risk profiles and was implemented from Jan 2009. Insurers are generally required to provide for additional capital or risk charges for their business risks. Inadequacies in premium ratings must be supported by higher capital requirements and this is the scenario that many motor underwriters are experiencing in the light of the deteriorating motor insurance financial performance.[2]

Time does not permit me to dwell more on what is happening in claims for damages to motor vehicles. I strongly urge all of you to read the most shocking revelation of the activities of tow-truck-operators-cum-repairers in the article titled "Accident victims and their plight" by the most authoritative lawyer on accident claims in the country, Mr. K. Siladass published in Infoline January 2011. (For easy access, with Mr. Dass's permission, I have uploaded it on my website www.tunabdulhamid.my as an Appendix to this speech.)

The claim ratios for the third-party bodily injury and death have exceeded 200% since 2006. For the year 2012, the premium received by the insurance and *takaful* industry for third party bodily injury is RM832.6 million while claims amounted to RM2.02 billion which gave the claim ratio of 242.1%.[3]

Under the present system, a victim of road accident is, to a large extent, at the mercy of the lawyers or, more correctly, touts. On touting, I am quoting Mr. K. Siladass who knows best what is happening on the ground:

"In almost more than ninety-nine per cent of accident cases it is the touts who wield extraordinary influence over the accident victims and convince them to appoint solicitors of the tout's choice.

The network to lure accident victims to retain a solicitor is well-oiled and indeed very effective. The touts whether they are acting independently; or, are representing a firm of solicitors calls for a detailed investigation. When an accident occurs and a person is injured, a battery of touts converge on the victim to secure his signature or thumb-print to the warrant to act; meaning, retaining a firm of solicitors to handle his claim for damages.

These touts who purport to have strong links with solicitors' firms carry with them stacks of warrant to act from more than one firm. There is a sinister motive behind this. By securing the accident victim's signature on more than one firm's warrant to act, the tout places himself in a strong bargaining position with the solicitor to reap the best remuneration for himself……..

[2] Azli Munani, CEO/Ececutive Secretary, Malaysia Takaful Association.
[3] Azli Munani, CEO/Ececutive Secretary, Malaysia Takaful Association.

Strictly speaking, the Legal Profession Act 1976 prohibits dividing the professional fee with unauthorized persons……. Rule 52 of the Legal Profession (Practice and Etiquette) Rules, 1978 provides that it is unprofessional and improper conduct to divide costs or profits with an unqualified person.

There is another group of solicitors who see there is lot of money to be made by lending money to accident victims who have signed up as their clients. The size of the loan would depend on the nature of the injuries the client had suffered, and the solicitors' security is the anticipated compensation. They lend money to accident victims from time to time charging exorbitant interest and by the time the claim is settled, the victim will be left with a small amount, the interest having eaten up a large portion of the money received by way of compensation. Not surprisingly, one victim was unsure as to who had suffered the injury; himself or the solicitor; for the solicitor took more than sixty percent of the claim which apparently represented the professional fees, principal lent and the interest added thereon.
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There is indeed a statutory provision which allows interim payments to be made to accident victims especially when the injuries are of very serious nature. Section 25A of the Courts of Judicature Act 1964 is a benevolent provision, the objective of which is to assist accident victims who have suffered severe bodily injuries…... Unfortunately no one seems to be interested in this interim payment provision. This is due to the fact that insurance companies generally do not fancy the interim payment provision as it means paying a sum in advance when liability is undecided or uncertain. Some solicitors do not see this victim-friendly provision as an advantage; because, the solicitor-cum-money lender prefers to lend money to the accident victim on interest which would be more advantageous with better returns. In this kind of a situation the solicitor gets his fee as well as interest on the lending, therefore, going through the cumbersome process of applying for interim payment is not for his own benefit." [4]

I would like to add that the new Rules of Court 2012 which is applicable to the Subordinate Courts where such cases are heard provides for interim payments to be made – see order 22A. It is hoped that lawyers will resort to these provisions instead of practising as illegal money lenders as well.

I hope that the Bar Council will redirect its focus, even for a while, from finding faults of others and preaching good governance, transparency, fairness, human rights, rule of law etc. to others and look inward into the practices of their own members: whether they themselves are practising what they preach to others.

Sad to say, in this industry, there is too much "corruption" and "cheating". (I am using the word "corruption" and "cheating" in the wider sense, not as defined in criminal law.) But, because they are done by business people and professionals in the private sector, not by members of the government and government servants, they are

[4] K. Siladass "Accident victims and their plight", Infoline January 2011

accepted as a “normal part of business”. There is clearly a double standard here.

Lawyers and judges may know the principles of law of tort on negligence. But they do not know what particular act or avoidance is normal, usual or reasonable and which constitutes negligence. Actually, it is only the doctors or the surgeons who really know what particular act or avoidance should or should reasonably be done or avoided. So, the lawyers will have to depend on the doctors to brief them and make them understand for them to submit to the judges to make them understand to enable them to decide. If the lawyers themselves do not understand, they would not be able to make the judges understand. If the judges do not understand, they would not be able to make the correct decision. Expert witnesses, quite often cause more confusion in the minds of the judges. They give evidence according to what is favorable to the party calling them as witnesses. The Judge, at the urging of the lawyers who are equally partisan, are left to try to come to the “correct” judgment, when he himself is not sure what is the correct judgment. The best that he could do is to give his honest judgment based of the evidence before the court and the relevant law, at the same time hoping that if he is right he is clearly right so that he could confirmed and/or followed or if he is wrong he is clearly wrong so that he could be corrected. That is the system we have to work in. It is not perfect but unless someone can produce a better and workable system, we will have to work within the system. Until then, only experience, professionalism and honesty will help.

In an adversarial system, lawyers and witnesses take sides, the side of the party paying them, to put it bluntly. So, even where there is no outright concocting of evidence or misleading of the court, there is always some element of not telling the whole truth, at the very least. Is there a way to improve the situation? Could not the Medical Association come up with some rules of ethics for their members to comply or be made to comply, failing which some form of disciplinary actions could be taken against them, somewhat similar to the Advocates’ and Solicitors Etiquette Rules? I am not saying that lawyers are more ethical than doctors. But, such rules might help.

Order 40, Rules of the High Court 1980 provided for the appointment of Court experts. Unfortunately, even at the time when the High Court was still hearing personal injury claims arising from road accidents that provision was hardly ever resorted to. Parties and lawyers were too engrossed with the adversarial system and Judges were too busy to intervene at the pre-trial stage. That provision became irrelevant in personal injury claims arising from road accidents when all such cases were transferred to the jurisdiction of the Subordinate Courts as, there was no similar provision in the Subordinate Courts Rules 1980. Now that Order 40 has been re-enacted in the new Rules of Court 2012 and is applicable in the Subordinate Courts as well, with Judges taking more active role in case management, I hope that parties and their lawyers will resort to that provision. Even if they don’t, the Court, on its own motion should direct such an appointment. It does appear that the procedure would reduce costs, speed up trial and reduce the adversaries.

Doctors are busy people. The good ones should be spending their time in the operation theatre or in their clinics, not sitting in the witness room in court waiting to be called as witnesses. As far as possible, parties should agree to dispense with their physical presence. Where, it is unavoidable, there should at least be some arrangement whereby they could be called at short notice, only when they are really

required to be in the witness box, without causing too much disruption to their schedule. I am sure such an arrangement could be made.

We see that the problem is not merely how to determine the fair amount of compensation to be paid to the victims, to ensure that they get what they should get and as soon as possible. It is not merely the issue of the need on the victim. There is a much bigger problem surrounding it. Everything is so inter-connected with each other and a holistic approach is needed.

You cannot solve the problems just in one seminar. Neither can you change the world overnight, especially for the better. During these two days I hope that you will focus on the area that you have set to discuss, while noting that it is not an isolated problem but is a part of a bigger “rot” or “corruption” in a wider sense. Hopefully, you will be able to find a lead to a better system in the limited area that you focus on. If you don’t, I hope you will find some ways to improve the existing system. Still, if you don’t, I hope you will be able to reemphasize the professional ethics in the people involved. Quite often, irrespective of the system, man could make a difference.

Thank you.

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"APPENDIX"

ACCIDENT VICTIMS AND THEIR PLIGHT

by
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Introduction:

Accident victims are the lucrative source of income for some lawyers whose main area of practice is to claim damages for the injuries sustained by their clients in road accidents involving motor vehicles. This lucrative side of the legal practice is not the sole domain of lawyers who hold out to be experts in such cases, but includes touts who excel in their craft to woo accident victims, as a result the touts acquire the authority to decide as to which legal firm should handle the victim's claim for damages.

The tout having selected the legal firm to represent the accident victim, keeps a close watch to ensure that his catch, the accident victim, is not snatched away by an equally crafty tout. The competition is so fierce between touts, so much so the legal firms also get involved in a sort of 'dog fight', over the question as to who should have the right to represent the accident victim.

It is really shocking that solicitors who descend into this kind demeaning conduct do not realise to what extent they have put the legal profession to odium and disrepute; or, could we take it that these solicitors' greed for money is so apparent it prompts one to conclude that insatiable greed is their second nature? Perhaps it is unfair to say that this trend is only seen in cases arising from road accidents, for such a trend is obviously present where monopoly is seen in areas of criminal and conveyancing practices. That would need a separate study.

With the ever increasing motor vehicular population explosion road accidents involving the motorized monsters (motor vehicles) had become frightfully rampant. So far nothing has been done to investigate the actual cause for this growing menace or to find ways and means to minimise the rate of road accidents resulting in severe bodily injuries and deaths. The legislature has never concealed its enthusiasm and urgency in enacting laws to control the quantum of damages to accident victims, but alike sentiment is hardly shown to avert, or at least reduce road accidents, except during festive seasons, certain actions are taken with the hope of controlling the number of accidents. The emphasis is on the numbers but not the accidents themselves.

No Fault Liability

Some four decades ago New Zealand opted for the No Fault liability system, whereby the question of liability ceased to be the dominant feature in assessment of damages. The Accident Compensation Commission (which is now called the Accident Compensation Corporation) became the sole body to determine the amount

of compensation payable to an accident victim. The Commission did not confine itself to the question of compensation, but looked deeper to discover the causes for accidents, including rehabilitation. Thus, it conducts continual research with multiple aims to identify the causes and to reduce the accidental risks not only on roads but also in other areas where human error is prone to cause injuries, including medical injuries in consequence of alleged medical negligence. In fact, it is an on-going safety education to disseminate the message that accidental injuries are real but avoidable; thus, caution is the better part of valour. The proverb: "Accident is commonly the parent of disorder" seems to hold good. It is the temporary disorderly frame of mind at the spur of the moment that results in an accident. The disorder of mind referred to here is not related to mental illness, whether it be temporary or permanent in nature, but a transient loss of control of the mind which fails to respond spontaneously when suddenly a difficult situation springs up when being in control of the mechanised monster (motor vehicle).

The late Tun Suffian, the former Lord President, found the New Zealand No Fault Liability system useful and suggested that it should be introduced in Malaysia. After some years of study, the proposal was abandoned. Now Bank Negara has proposed a scheme, the full details are yet to be disclosed. However, from little that could be gathered is that, there will be a body to deal with compensation for accident victims but there will be a ceiling on the awards in respect of loss of earnings and nursing care. The Bar Council has submitted a memorandum opposing the Bank Negara scheme. Even if the scheme is implemented as proposed by Bank Negara liability will still be an important element featuring in the assessment of damages.

The Bank Negara's proposals when implemented will not see the back of the current solicitor-tout-alliance but will continue to operate without any impediment, and the road accident victims will continue to face endless problems.

Mainly there are two types of claims that arise in consequence of road accidents involving motor vehicles. One is the claim arising from injuries sustained by a person, and the other is a claim related to damage to the vehicle.

Damage to vehicles

When it is only a vehicle damage, one could see tow-trucks speeding to the scene of the accident, like vultures, offering their services to tow the damaged vehicle to a workshop which could invariably belong to the very tow-truck operator. The disturbing question is: how did the truck-operator come to know about the accident? unless there is someone going about on patrol expecting an accident to occur. The reasonable inference is that the tow-truck operators are informed by someone who has the first knowledge, excepting the car owner who has no contact with the tow-truck operators. And it is still a mystery how the tow-truck operators get the information about the accident.

Anyway, the tow-truck operator and the repairer, if they are different entities, may have an understanding to work together on accident-to-accident basis. A question comes to mind: should the tow-truck operator and the repairer be the same person? Or, would it be better that tow-truck operator and the repairer are different persons? Similarly, should motor vehicle repairer be licenced to operate tow-truck business? Since the tow-truck operator is also the repairer there is ample room for

abuse. One way to avoid this abuse would be not to licence the repairers as tow-truck operators and vice versa.

In normal circumstances when a vehicle is damaged in an accident and the car owner is minded to carry out the repairs at a workshop of his choice, the insurers would not agree to such a course unless the repairers are, in the language of the insurers, “authorised repairers.” This high-sounding phrase is a mere fanciful description to please the insured car owner lulling him into a false sense of security or confidence, inspiring the insured car-owner that the insurers have selected, appointed competent, efficient and honest repairer. To say the least this is a myth.

Therefore, ten thousand ringgit worth of repairs could swell up to anything between thirty and forty thousand ringgit when tow-truck operators are involved in towing the vehicle to a repairer of his choice, the insurers’ authorized repairers, the car owner having no say at all. Everyone will benefit along the line except the poor car owner, who, in his anxiety to get his car back will sign away all the papers presented to him, including a confirmation that the repairs had been carried out to his satisfaction, which, in large number of cases had shown to be the contrary. The car owner usually ends up paying from his own pocket to have his car back in a good condition and to his satisfaction.

The repairers adopt a very sinister ploy to mislead the car owner. They will deliver the repaired vehicle after sun-set, and hurry the car owner to inspect, test drive, with a promise that if there be any defect they would be remedied to the car owner’s satisfaction. The repairers hardly keep-up their promise, and this scandal is wide-spread. Insurance companies have not arrested this problem although they claim that they have appointed their own authorized repairers, which appears to have not relieved the vehicle owner from anxiety.

If the vehicle owner having collected it after sun-set complains about any defect he had subsequently discovered the repairer will not attend to them promptly or would do something to please the car owner. And to his shock the car owner will have the car back with the same defect or defects. Any complaint to the insurers will be countered with the letter of confirmation of the vehicle having been delivered to the owner’s satisfaction, which in most cases will turn out to be absolutely false.

The better course would be to regulate that there must not be any delivery of the repaired vehicle after six o-clock in the evening. Besides, there has to be a grace period of at least two weeks so that the vehicle owner could go back to the repairer should some further repairs are needed, and there must be a law to compel the repairer to carry out the repairs to the satisfaction of the owner, failing which the owner should be entitled to have the car repaired by another repairer the costs of which to be borne by the insurers’ authorised repairer, or, the insurers themselves be liable to reimburse the insured of the extra costs he had incurred.

Personal Injury Cases

Ambulance chasers (touts) are the linch-pins in road accident cases in creating a relationship between the solicitor and the client. Hardly an accident victim approaches a solicitor on his own accord; unless the victim has a solicitor friend or

had previous dealings with a solicitor, or his relatives have some acquaintance with a solicitor. In almost more than ninety-nine per cent of accident cases it is the touts who wield extraordinary influence over the accident victims and convince them to appoint solicitors of the tout's choice.

The network to lure accident victims to retain a solicitor is well-oiled and indeed very effective. The touts whether they are acting independently; or, are representing a firm of solicitors calls for a detailed investigation. When an accident occurs and a person is injured, a battery of touts converge on the victim to secure his signature or thumb-print to the warrant to act; meaning, retaining a firm of solicitors to handle his claim for damages.

These touts who purport to have strong links with solicitors' firms carry with them stacks of warrant to act from more than one firm. There is a sinister motive behind this. By securing the accident victim's signature on more than one firm's warrant to act, the tout places himself in a strong bargaining position with the solicitor to reap the best remuneration for himself. The accident victim's signature is obtained by influencing the best deals he could get eg. the solicitor is an expert, he has the means to support the victim financially etc. Even the close family members of the accident victims are not spared. All these unsavoury acts are carried out while the accident victim is under pain and lying in the hospital bed.

Assuming the accident victim slips out of the net cast by the touts at their usual places of operation, their next target will be the victim's residence. Here the modus operandi is subtle. The village elder (leader) where the victims lives, or the close relatives or close friends of the victim will be approached by the tout offering some incentives, through whom he gets access to the victim. On seeing the victim he would shed crocodile tears, express unctuous concern over the victim's welfare and his family. He would offer cash advances.

If it is a fatal case the din and bustle by the touts could also be very pronounced as they demonstrate their sympathy to the dependants. A phoney sympathy borne out by monetary benefits, which reminds us of Shakepearers' Henry II:

"And cry 'content' to that which grieves my heart,
and wet my cheek with artificial tears."

It is like wolf befriending the lamb and what the result would be does not need educated guess. The solicitor who offers the tout the initial best financial reward gets the accident victim. There are also touts who are well organized and well-equipped. They run their own offices and employ solicitors and split the fees between them.

Strictly speaking, the Legal Profession Act 1976 prohibits dividing the professional fee with unauthorized persons. Thus the pertinent question arises whether adequate steps have been taken to arrest this problem. Rule 52 of the Legal Profession (Practice and Etiquette) Rules, 1978 provides that it is unprofessional and improper conduct to divide costs or profits with an unqualified person.

There is another group of solicitors who see there is lot of money to be made by lending money to accident victims who have signed up as their clients. The size of

the loan would depend on the nature of the injuries the client had suffered, and the solicitors' security is the anticipated compensation. They lend money to accident victims from time to time charging exorbitant interest and by the time the claim is settled, the victim will be left with a small amount, the interest having eaten up a large portion of the money received by way of compensation. Not surprisingly, one victim was unsure as to who had suffered the injury; himself or the solicitor; for the solicitor took more than sixty percent of the claim which apparently represented the professional fees, principal lent and the interest added thereon.

This writer was also reminded that there are cases where the accident victims think that their lawyers are cash-cows who will be able to advance money, especially when the schools re-open and the children have to buy new uniforms, shoes etc. or, there is the festival to celebrate; or there is a wedding in the family. The solicitors give interest free loans and they are in a way blackmailed; for, if no advance is made the victims will threaten that they will go to another solicitor who is willing to make such advances.

One might be appalled to learn all these unethical dealings; but no one seems bothered about what is going on in actuality. The distraught victims because of their dire financial straits, thus fall prey to the unscrupulous solicitors and their touts, and this is very real. And unfair clients taking advantage of fair-minded solicitors is also true.

It will require the Bar Council to look into the problem very deeply, including the often repeated complaints that solicitors are in the habit of "hijacking" accident victims from another legal firm through unethical means and breach of etiquette. The common and daring mode is to file the change of solicitors without the consent of the solicitor on record. The Bar Council must take stern action against this type of recalcitrant solicitors before the abuse becomes widespread and gets out of control.

The Bar Council should consider the rights of an accident victim to choose his client and do so without any undue influence from any quarter. And it would be desirable that the solicitor so appointed, especially when the accident victim client is hospitalized and who is under treatment should not act until the client had been discharged from hospital and is able and is fit to affirm or revoke the appointment.

Interim payments

There is indeed a statutory provision which allows interim payments to be made to accident victims especially when the injuries are of very serious nature. Section 25A of the Courts of Judicature Act 1964 is a benevolent provision, the objective of which is to assist accident victims who have suffered severe bodily injuries. It could be described as a piece of social legislation aimed at assisting deserving victims. Unfortunately no one seems to be interested in this interim payment provision. This is due to the fact that insurance companies generally do not fancy the interim payment provision as it means paying a sum in advance when liability is undecided or uncertain. Some solicitors do not see this victim-friendly provision as an advantage; because, the solicitor-cum-money lender prefers to lend money to the accident victim on interest which would be more advantageous with better returns. In this kind of a situation the solicitor gets his fee as well as interest on

the lending, therefore, going through the cumbersome process of applying for interim payment is not for his own benefit. He would rather enjoy the reward from the victim's cup of sorrows.

Although the Sessions Courts are now flooded with claims for damages arising from road accidents, they have not the jurisdiction to order interim payments, as the Subordinate Courts Act 1948 now stands. Even the amendments to the Act of 1948 which had been tabled in Parliament* does not contain any provision for interim payment as is available under the Courts of Judicature Act 1964.

It is submitted that in the light of the exclusive jurisdiction of the Sessions Courts in road accident cases it would be appropriate and useful that the provisions of section 25A of the Courts of Judicature Act 1964 be incorporated into the Subordinate Courts Act 1948, thereby conferring the Sessions Courts with jurisdiction and power to make an order for interim payment in suitable cases. This will also require the incorporation of Order 22A of the Rules of the High Court 1980 into the Subordinate Court Rules, 1980 thus enabling the Sessions Court to order interim payments.

While no one denies that the insurance companies are profit orientated, yet it will be anticipated of them to play an effective societal role. The growing number of accidents and the horrible injuries the victims suffer do create social problems, for example, if he is the sole bread winner and he suffers loss of earnings, or is compelled to rely on reduced earnings, which eventually leads to multitude of difficulties, and other dilemmas relating children, their education and their welfare. These are the harsh realities in a society where one has to fend for himself in difficult circumstances for which he may not be the sole author. No doubt there are social security laws but the point is, not all accident victims qualify for reliefs under those laws.

Insurance companies should be sensitive to the social problems that surface as a result of shattered lives of accident victims and their dependants. In this context they have to balance the interest of their shareholders and that of the accident victims. It is lack of commitment to effect quick settlement that cause unscrupulous gelled solicitor-tout relationship like leeches sticking to the body sucking the blood of accident victims.

* At the time of writing this article the amendment Bill was before the Dewan Negara.