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Is a Motor Vehicle Accident Compensation Act Advisable

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IS A MOTOR VEHICLE ACCIDENT COMPENSATION ACT ADVISABLE?

THE rapidly expanding volume of motor vehicle accident litigation with its consequent burden upon the courts and its wasteful expense to litigants, suggests the necessity of devising a substitute for the cumbersome process of ordinary jury trials at common law to determine upon whom shall be placed the monetary loss resulting from the destruction of life and property in motor vehicle accidents. Already this kind of litigation has reached such proportions that almost any day one may visit the trial courts of general jurisdiction, safely predicting in advance that he will find nearly half of the judges and juries listening to diametrically opposite stories of witnesses under oath giving their versions of the incidents and causes of automobile accidents in which they are interested as friends of the litigants, often with ambulance-chasing lawyers on one side of the counsel table and still more unscrupulous lawyers for casualty insurance companies on the other side, all befogging the issues and confusing the juries until they are finally obliged to reach their verdicts on the toss of a coin within the secrecy of the jury rooms—well knowing that however they may decide, the lawyers will get more money than would have been required to pay the actual losses to the injured parties if such trials had been avoided.

These conditions, which have sprung up within a decade as a logical result of the immense increase in the number of motor vehicles and the variety of uses therefor, are analogous to the

conditions until recently existing in the domain of industry which caused the enactment of the various workmen's compensation acts; and it is suggested that the application of similar principles to the troublesome problem of motor vehicle accident losses might result in an equally satisfactory solution of the difficulty. The responsibility for suggesting such innovation must be considered as that of the writer alone, without approval or disapproval of the magazine in which this article is published. An outline of possible legislation to accomplish such purposes will be made and some legal authorities therefor will be cited.

With the exceptions as to willful negligence hereinafter mentioned, the general aim should be to eliminate entirely the question of negligence in motor vehicle accidents; to make certain and payable at all events a reasonable compensation for loss of life, limb and property in all cases, spreading the cost of such compensation over all users of motor vehicles on the public highways; and to provide a summary method of determining the amount of such losses.

This result can be accomplished through statutes providing for compulsory, minimum accident compensation insurance under a prescribed standard policy, and for determination of the extent of losses, where the parties cannot agree, by informal trial before a judge without a jury under procedure similar to present-day trials of workmen's compensation cases.

One or several legislative acts might be found desirable. But for the purposes of this article, it will be assumed that everything necessary could be included in a single act, to be known as the Motor Vehicle Accident Compensation Act. The first step should be a provision requiring all motor vehicles[1] to be registered and their owners licensed before such vehicles may be used on the public highways of this state, with the primary requirement that the applicant for such license must take out a policy of accident compensation insurance in a prescribed standard form for a term of the same duration as his license, paying the premiums therefore in advance and as a condition precedent to the issuance of a license to him to use such motor vehicle on the public high-

[1] The term "motor vehicle" has already been defined as including "all vehicles propelled by any other than muscular power, except traction engines, road rollers, fire wagons and engines, police patrol wagons, ambulances, and such vehicles as run only upon rails or tracks." G. S. Minn. 1913, Sec. 2619. See also Id. Sec. 7057.

ways.[2] It is confidently believed that the power inhering in the legislature under which present conditions have been prescribed for registering and licensing motor vehicles is ample for the further requirement of such compensation insurance. "That the state possesses plenary powers over public highways and streets is a proposition well settled."[3] It has been specifically held that the state may entirely prohibit the use of automobiles on *some* of the public highways;[4] a fortiori, the state may prohibit the use of motor vehicles on *all* public highways *unless* the general public is protected by reasonable insurance against loss resulting from the peculiar characteristics of motor vehicles. Such statutory provision, applying to motor vehicles only, would not be unconstitutional as class legislation;[5] and the fact that it applied only to citizens of this state, leaving the highways open to transients from other states without requiring such insurance from them, would not make such statutory provision invalid as denying the equal protection of the laws to our own citizens or infringing any other constitutional right.[6] If there should be any doubt about the power of the legislature to enact such law, practically the same result could be had indirectly by an elective system modeled upon that of the Minnesota workmen's compensation act, and so framed as to make it disastrous for any motor vehicle owner who did not elect to come under the statute.[7]

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[2] There is precedent for making compliance with a regulatory statute a condition precedent to the issuance of a license. See Session Laws Minnesota 1919, Chap. 510, Sec. 1.

[3] State v. Lawrence, (1914) 108 Miss. 291, 66 So. 745, quoting with approval Terre Haute v. Kersey, (1902) 159 Ind. 300, 64 N. E. 469, 95 Am. St. Rep. 298.

[4] State v. Phillips, (1910) 107 Me. 249, 78 Atl. 283; Com. v. Kingsbury, (1908) 199 Mass. 542, 85 N. E. 848, 127 Am. St. Rep. 513.

[5] Schaar v. Confroth, (1915) 128 Minn. 460, 151 N. W. 275, State v. Swagerty, (1907) 203 Mo. 517, 102 S. W. 483; In re Hoffert, (1914) 34 S. D. 271, 148 N. W. 20, 52 L. R. A. (N.S.) 949.

[6] In re Hoffert, (1914) 34 S. D. 271, 148 N. W. 20, 52 L. R. A. (N.S.) 949; Com. v. Boyd, (1905) 188 Mass. 79, 74 N. E. 255, 108 Am. St. Rep. 464; Christy v. Elliott, (1905) 216 Ill. 31, 74 N. E. 1035, 108 Am. St. Rep. 196, 1 L. R. A. (N.S.) 215. State v. Unwin, (1907) 75 N. J. L. 500, 68 Atl. 110; Ex parte Bozeman, (1913) 183 Ala. 91, 63 So. 201; Helena v. Dunlap, (1912) 102 Ark. 131, 143 S. W. 138. State v. Cobb, (1905) 113 Mo. App. 156, 87 S. W. 551.

[7] This result could be accomplished by a statutory provision leaving it *optional* with the motor vehicle owner to take out the prescribed insurance or leave it, but providing that if he elected not to carry such insurance, the license plates for display on his motor vehicle should be of a design different from that of persons who had elected to come under the act; that when sued at common law for the recovery of any damages alleged to have been caused by or arising out of the use of his motor vehicle on the public highways (except damages sustained by other motor

The second step should be a provision of law prescribing a standard form of compensation insurance policy covering motor vehicle accidents, and prohibiting the issuance of any other or different form of policy in this state.[8] Such standard compensation policy should unconditionally require payment by the insurer of all damages to the person or property of anyone not himself wilfully negligent, resulting from accidents occurring during the operation or use of the motor vehicle therein specified upon the highways of this state, excepting personal injuries to the policy holder[9] or to his employees[10] or to the driver or operator of such motor vehicle at the time of the accident[11],—with the proviso,

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vehicle owners or operators not under the act and in his own class), the defense of contributory negligence should not be available to him, Mathison v. Mpls. St. Ry. Co., (1917) 126 Minn. 286, 148 N. W. 71, that the burden of proof of non-negligence on his own part should be cast upon him in the trial of such actions, G. S. Minn. 1913, Sec. 4426 and cases there cited, that he should have no homestead or other property exemptions from the payment of such damages, G. S. Minn. 1913, Sec. 6961, Orr v. Box, (1876) 22 Minn. 485, 487, that the injured party should have a specific lien, presumptively good, on such uninsured motor vehicle from the date and hour of the accident with immediate right of possession by the sheriff or other like officer pending judgment and foreclosure, such lien to relate back from the entry of any recovering judgment to the time of the accident and to take priority over all other liens or titles whether prior in time or not, excepting liens or titles created prior to the passage of the act (G. S. Minn. 1913, Sec. 7023-7024); and containing other drastic provisions against the non-insured class, so as practically to compel them to elect to come under the terms of the act requiring standard compensation insurance. The authorities cited in this note, together with the Minnesota workmen's compensation act, furnish the precedents (at least by analogy) for such semi-compulsory election.

[8] The power of the legislature to prescribe a standard form of insurance policy and prohibit the use of any other is well established. Kollitz v. Equitable Co., (1904) 92 Minn. 234, 236, 99 N. W. 892; Wild Rice Lumber Co. v. Royal Ins. Co., (1906) 99 Minn. 190, 108 N. W. 871; Dunnell's Digest, Vol. 2, Sec. 4759 and cases there cited.

[9] The term "policy holder" is here used to designate the person usually described as the "assured" or "insured," because the use of the latter terms would not be strictly accurate in a policy where third persons were made the primary beneficiaries as suggested in this article. The policy holder himself should be excluded from the benefits of any *compulsory* clause of the policy, leaving that feature for private agreement between him and the insurer in accordance with the present practice, because to compel such benefits as to him would be in effect to compel him to insure his own life and property against loss in motor vehicle accidents, since the cost of such compulsory provision would certainly be added to the premiums of the insurer on that basis.

[10] Employees should be excluded because they are already provided for by the Minneesota Workmen's Compensation Act. Session Laws Minnesota 1913, Chap. 467 and amendments.

[11] The driver or operator of the motor vehicle should be excluded because he is in position similar to that of the policy holder and *compulsory* insurance against the consequences of his own act would not be desirable. That should be a matter for private agreement.

however, that in the event of accidental collision or other mishap involving two or more motor vehicles each covered by standard compensation policies, the damages resulting to all persons (including damages to person and property of the policy holders themselves, if not willfully negligent) shall be apportioned between and paid by the insurers in proportion to the premiums received by them upon such policies.[12] With these exceptions, the payment of damages (always limited by the maximum stated in the policy[13]) should be made as certain in all cases as

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[12] In case of accident involving two or more motor vehicles each covered by standard compensation policies, damages should be paid to all injured parties *including the policy holders themselves* because the actuaries of the insurers in *each* policy would have calculated (in fixing premiums) the probability of paying damages to all injured persons except their own policy holder, etc., which would therefore include damages to any *other* motor vehicle licensee and his employees involved in the accident. By *apportioning* such damages, each insurer is favored rather than penalized since his liability might be for *all* instead of a *part* only of the damages. Moreover, any other disposition of collision cases would result in the very litigation which it should be the purpose of this act to avoid.

[13] In order to make insurance practical, some limit of liability should be fixed as a basis for determining the cost of such insurance. Automobile accident liability policies now in use by some well known companies fix such limits *in any one accident* as follows: personal injuries or death, $10,000; property injury to persons other than the policy holder, $1,000; collision injury to policy holder, the value of his automobile—which, on the average, is probably $1,500; also *all expenses of litigation arising out of such accidents.* The limit of liability in such policies for *one* accident may, therefore, be roughly estimated at $15,000; and the same limit fixed in the standard compensation policy here suggested would probably cover the actual losses to be paid in ninety-nine cases out of a hundred. True, in the standard compensation policy the losses would be payable absolutely, while in the present private policies such losses are dependent upon negligence or other wrongful act of the policy holder; but the same thing was true as to employer's liability insurance when the change was made from the old common law liability to the present workmen's compensation act. And while it is the opinion of insurance men that the cost to employers under the workmen's compensation act is probably fifty per cent greater than under the old common law liability, yet in various other respects the workmen's compensation act has proved so beneficial that few employers would now vote for a return to the old system. And even if the cost of motor vehicle accident insurance under the standard compensation policy here suggested should also prove to be fifty per cent greater than under the now existing private policies, that additional burden upon motor vehicle owners might prove a welcome substitute for their obligations under now existing liability policies to expend unlimited time and energy in assisting the insurance companies to prove them free from negligence or to prove their unfortunate victims guilty of negligence whenever an accident happens.

As to the hundredth case of an exceptionally bad accident injuring many people and thereby rendering the limited amount fixed in the standard compensation policy inadequate to pay the damages, a statutory provision might be made whereby any of the injured parties after the remedy against the insurer had been exhausted, could petition the district court

the payment of life insurance upon death of the insured. All questions of negligence, unless willful, should be expressly eliminated.[14] The injured party should be made the primary beneficiary of the policy, with a joint and several right of action against the insurer and the policy holder for damages not exceeding the maximum stated in the policy; but in the event of collection from the policy holder separately, the latter should have a right to entry of judgment in his favor and against the insurer in the same action for the amount paid, upon filing an affidavit that he had complied with the terms of the policy.[15] Other provisions, covering details, should be incorporated in the policy.[16]

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setting forth such facts in full and asking for leave, after due notice to all parties in interest and hearing thereon, to bring suit at common law for the recovery of damages from the parties alleged to be responsible for such injuries; and upon such leave being granted by the court (but not otherwise) the uncompensated injured parties might proceed at common law without disabilities, the same as if the motor vehicle accident compensation act did not exist.

[14] Insurance against loss caused by one's own negligence is not contrary to public policy. Mpls. St. Ry. Co. v. Home Ins. Co., (1896) 64 Minn. 61, 69, 66 N. W. 132; Phoenix Ins. Co. v. Erie Transportation Co., (1886) 117 U. S. 312, 29 L. Ed. 873, 6 S. C. R. 750.

[15] Of course, such judgment could be opened by the insurer upon an order to show cause and a hearing establishing prima facie the falsity of the policy holder's affidavit for judgment, to the prejudice of the insurer; but this procedure would place the burden upon the insurer to prove to the satisfaction of the court that such judgment had been improperly entered before there could be any trial or further litigation between insurer and policy holder upon the same state of facts litigated in the action by the injured party against the policy holder, hence the volume of litigation would be reduced to a minimum without sacrificing the substantial rights of any of the parties interested.

[16] The insurer and the policy holder should be permitted, by agreement, to insert in the standard policy any reasonable provision not inconsistent with the requirements of the statute. Among such provisions might be the following: (a) clauses covering fire, burglary and theft insurance, and also insuring the policy holder against any risk of damage to person or property not covered by the standard provisions of the policy and not inconsistent therewith; (b) requiring reasonably prompt notice by the policy holder to the insurer of all accidents, and of all suits for damages at common law, and making the policy holder liable for all losses to the insurer caused by failure to give such notice, but without affecting the insurer's liability to any injured third party; (c) requiring the claimant for compensation to make reasonable proofs of loss to the insurer, in a prescribed form if practical, and allowing the insurer a reasonable time to investigate same and make payment before the claimant should have the right to bring suit; (e) providing for arbitration (if advisable in this class of insurance, which is doubtful) of losses where the parties failed to agree, by procedure similar to that prescribed in standard fire insurance policies or existing automobile insurance policies; (f) providing an exclusive method for cancellation of the policy by the insurer after due notice to the policy holder (and possibly requiring the consent of the insurance commissioner, or an order of court, after hearing); (g) providing penalties or forfeitures for fraud or attempted fraud against

All parties interested should be required to submit the determination of the amount of loss suffered, if unable to agree upon such amount, and also all other matters in dispute, to trial by the court without a jury under a summary procedure provided by the act.[17] Such provision cannot be made *absolute,* so as unconditionally to deprive the injured party of his constitutional right to a common jury trial if he has a common law cause of action. He must have his right of election to proceed either at common law or under the act. But the common law action may be so restricted and made so burdensome for him and the statutory

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the insurer by the policy holder or injured party; (h) providing for the protection of salvage, for subrogation when proper, and against changes in optional clauses of the policy by agents without authority; (i) requiring the policy holder and insurer to submit all controversies between themselves arising under the policy (including liability of the policy holder to the insurer to reimburse for losses caused by willful negligence of the policy holder) to trial by the court without a jury and under pleadings framed by order of the court in the same action, if any, which determined the loss and right of recovery of the injured party; (j) defining the words "motor vehicle," "accident" and "willful negligence" in the terms of the statute; (k) excluding from the operation of the policy railroad crossing accidents and accidents involving instrumentalities of interstate commerce, or accident for any reason under the operation of federal laws; (l) fixing a limitation of time within which actions for compensation under the policy must be brought, unless fixed by act; etc.

[17] The section of the act governing procedure, in case of suit for compensation under the policy, should follow generally similar provisions of the workmen's compensation acts. It might be provided that the plaintiff may file a verified complaint, setting forth the names of the insurer and the policy holder, the existence of the standard policy, the time and place of the accident, and a brief description thereof showing that the policy holder's motor vehicle was involved therein, the nature and extent of the damages resulting to the plaintiff, the making of the required proofs of loss to the insurer and lapse of statutory time without payment, and such other special facts in the particular case as might be necessary and proper for the information of the judge; that a copy of said complaint together with a summons in the usual form in civil actions be served upon the defendants; that the defendants be required within the time stated in the summons to file and serve a verified answer, specifically admitting, denying or qualifying each material allegation of the complaint (general denials being prohibited), and stating the contention of the defendant with reference to the matters in dispute, and the ultimate facts relied upon as a defense to the plaintiff's claim; that the plaintiff may serve and file a reply, if so advised, within ten days thereafter; that the case shall then be brought on for trial before the court without a jury by the usual procedure in civil actions in the court where the same is pending; that at the time of trial the judge shall hear such witnesses and receive such evidence as may be properly presented by either party, AND IN A SUMMARY MANNER decide the merits of the controversy; that such determination shall be filed in writing and shall contain a statement of facts as determined by said judge, that judgment shall be entered thereon in the same manner as in the usual court cases and with the same effect; that no appeal may be taken from such judgment, but the jurisdiction of the supreme court to review questions of law by certiorari shall remain as in other cases.

action made so easy that, in actual practice, he will nearly always elect to proceed under the statute. The act should provide that any party suffering injury to person or property in any accident giving rise to any claim or cause of action against any policy holder protected, as to such claim, by standard accident compensation insurance, will be *presumed* to have elected to come under the provisions of the act unless an action at common law be commenced or complaint therein filed by him within thirty days after the occurrence of the accident, and that after such time no action can be brought except under the statute. It should be provided further that if such injured party elects to sue at common law, he shall lose his right of action for such loss against any insurer in any standard accident compensation policy, and shall have none of the benefits of the act; that in such common law action the burden of proof shall be upon him to establish non-negligence on his own part as well as negligence or other actionable wrong by the defendant; that negligence, in connection with the accident, of his agents, servants and employees shall be imputed to him; that violation by him or his agents, servants or employees, at the time of the accident, of any statute or ordinance relating to the use of the public highways, shall constitute negligence by him as a matter of law.[18] These, and other provisions which might be suggested, would solve the problem of election of remedies by the injured party and common law actions would be extremely rare. For such has been the effect of less drastic provisions in the various workmen's compensation acts.

Other provisions of the act should be made to cover numerous details.[19] A schedule of compensation for various definable

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[18] The decisions sustaining the various workmen's compensation acts and the atuhorities cited in the foregoing notes appended to this article are ample to prove the power of the legislature to make the above suggested provisions in the statute.

[19] Such provisions might include: (a) placing the issuance and control of motor vehicle licenses in the office of the insurance commissioner instead of the secretary of state; (b) giving the insurance commissioner a limited control over rates for such insurance, and the same general control over the insurers as is vested by law in him with reference to insurance companies generally; (c) requiring the name and address of the insurer (or its resident agent) and of the policy holder to be filed with the insurance commissioner and also with the register of deeds where the title to the motor vehicle is registered (Session Laws Minnesota 1919, chapter 510), and providing that the same shall be there recorded in a book kept for that exclusive purpose and always open to public inspection; that such record shall also show the serial number and date of the policy and date of expiration thereof, and that a certified copy of such book entry shall be prima facie evidence in any court of the existence of such policy with

injuries is not suggested, as no reason is perceived why insurers should not pay the losses as fixed by the court in each case,—just as they are already doing indirectly under automobile accident insurance policies voluntarily made by them.

The element of willful negligence has been purposely reserved for separate discussion. The standard accident compensation insurance policy should make the insurer liable to innocent persons injured whether by the willful negligence of the policy holder or not; for it is obvious that the benefits to such injured persons should not be lessened by the wrongful acts of the policy holder. Therefore, the weakest feature of the compensation scheme suggested in this article is the danger of intentional or reckless and indifferent destruction of life, limb or property with the protection or benefits of such accident compensation insurance in view. Of course, any *intentional* act directly resulting in such injury is not *accidental,*[20] and, therefore, could not be

all the standard provisions in force within the dates specified; (d) providing that service of summons, notice or process in any action may be made upon the insurer through the insurance commissioner, or upon the resident agent of the insurer, if any, and that all proofs of loss or other notices preceding the commencement of any action may be made upon the insurance commissioner as agent of the insurer, if the claimant so elects, or upon any resident agent of the insurer in this state, by mail in the ordinary course; (e) stipulating that both the insurer and the policy holder are presumed to have consented to all the terms, conditions and requirements of the act by entering into the compensation insurance contract therein provided; (f) providing that immediately upon insolvency or bankruptcy of the insurer (of which condition, for the purposes of this act, the opinion of the insurance commissioner shall be prima facie evidence) the policy holder's motor vehicle license shall expire, and until reinsured, he shall have the same status as if he voluntarily failed to register and procure a license; (g) providing that all settlements of accident compensation claims or controversies out of court shall be presumptively fair and valid, and that any attempt to alter or modify or set aside such settlements shall be tried by the court without a jury and under the same summary procedure provided by the act for the trial of cases where no settlement was agreed upon; (h) providing that any person accepting compensation or other benefits of the act out of court, or bringing any action or proceeding in court under the act, shall be conclusively presumed to have waived his common law right of action, if any, and shall be forever barred from bringing any action or asserting any claim except under the act; (i) excluding from the operation of the act railroad crossing accidents and all accidents giving rise to claims or causes of action under federal statutes; (j) either excluding street railways from the operation of the act, or making special provision relative thereto; (k) defining the words "motor vehicle," "accident" and other terms; and so on.

[20] A legislative definition of the word "accident" is contained in Sec. 34h of the Minnesota Workmen's Compensation Act (General Laws of Minnesota 1913, Chap. 467), and with slight modification it could be adapted to the statute here suggested and made to read as follows: The word "accident" shall be construed to mean an *unexpected* or *unforeseen* event, happening suddenly and violently, with or without human fault, and producing at the time injury to the person or property of any one.

brought within any accident compensation act. Collection of accident compensation by any person after *intentional* injury, self-inflicted or to which he was a party, would amount to obtaining money by false pretense which is statutory larceny. The relative losses to accident compensation insurers from that source would not be as great as the present losses to fire insurance companies from arson; for the acts constituting the crime could not be as easily concealed.

But the element of willful negligence without crime would still require careful attention; and effective safeguards against it should be provided. Willful negligence has been judicially defined as follows:[21]

"By willful negligence is meant not strictly negligence at all, to speak exactly, since negligence implies inadvertence and whenever there is an exercise of the will in a particular direction there is an end of inadvertence, but rather *an intentional failure to perform a manifest duty which is important to the person injured in prevening the injury, in reckless disregard of the consequences as affecting the life or property of another.*"

A legislative definition in precise language would be highly desirable in any act of the nature here suggested; and it should be provided further that violation, occurring at the time of accident, of any penal statute or ordinance relating to the use of the public highways, if a misdemeanor, shall be prima facie evidence of willful negligence on the part of the offender, and, if a gross misdemeanor or felony, that it shall be willful negligence within the meaning of the act. Such violation, if only a misdemeanor, should be proved as any other fact in a civil action, but if a gross misdemeanor or felony, then only by the record of a criminal conviction thereof in some court; and when the fact of such willful negligence was established it should be conclusively presumed to have caused or contributed to the accident. The statute should then provide that persons willfully negligent shall have no recovery themselves of any damages from any source in any accident occurring at the time of commission of the acts within the duration of the conditions constituting such willful negligence; that all other persons injured in such accidents shall have their common law right of action against the willfully negligent offenders for all damages suffered in excess of insurance benefits under the statute; that all insurers shall have a right of action against them

[21] Holwerson v. St. Louis, etc. Ry. Co., (1900) 157 Mo. 216, 57 S. W. 777, 50 L. R. A. 850.

for the recovery of all losses paid to others and all expenses incurred as a result of such accidents; that the liability in damages of such willfully negligent offenders under the act shall be absolute, notwithstanding any exemption statutes or state insolvency laws to the contrary,[22] and that all their property of whatever nature or kind shall be subject to execution and sale to satisfy such debts; and that all provisions in any standard compensation policy which otherwise would have been for the benefit of the persons willfully negligent shall be 'rendered' inoperative by such willful negligence.

It is believed that the foregoing, and other drastic provisions which might be added, would be a sufficient deterrent against the tendency of dishonest or reckless persons to cause injuries, through willful negligence, because of the protection or benefits of such accident compensation insurance. This belief is strengthened by the fact that willful negligence in motor vehicle accidents is of necessity linked with personal danger to the offenders and is opposed to their natural instincts of self-preservation. For many years ordinary accident insurance has indemnified for personal injuries irrespective of negligence of the assured, and life insurance has compensated for suicidal death; yet both accident and life insurance have proved practical. Fire insurance also compensates for negligent fire losses, barring exceptions expressly stated. But it has never been demonstrated that either accident, life or fire insurance has made the assured more negligent than persons not insured. And with the advent of nation-wide prohibition and its consequent elimination of intoxicated persons, perhaps it may now be safely assumed that insurance losses from willfully reckless destruction of life and property, successfully concealed, would not be so great as to render impracticable the above outlined plan of insurance covering motor vehicle accidents.

If all insurance companies should decline to issue standard accident compensation policies, state insurance for the same purpose would not be impossible—particularly when modeled upon

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[22] It is possible that the federal bankruptcy act, as now existing, would not discharge a debtor from his obligation to pay a judgment against him in favor of the insurer and based upon his willful negligence. Flanders v. Mullin, (1905) 80 Vt. 124, 66 Atl. 789, 18 Am. Bank Rep. 708; Tinker v. Colwell, (1904) 193 U. S. 473, 485, 48 L. Ed. 754, 24 S. C. R. 505, 11 Am. Bank Rep. 568; U. S. ex rel. Kelly v. Peters (C.C.A. 7th Cir. 1910) 24 Am. Bank Rep. 206, 177 Fed. 885; McChristal v. Chisbee, (1906) 190 Mass. 120, 76 N. E. 511, 16 Am. Bank Rep. 838, Sec. 17 of the federal bankruptcy act.

state insurance under workmen's compensation acts already in force in many states.

The public is entitled to some protection. Much is said by motorists about the carelessness of the public, but their comments are not entirely justified. Before the advent of motor vehicles, death or serious personal injury in accidents on the public highway was a rarity; now it is a commonplace. But the people are not more careless now than then; in fact they are more careful, because more fearful. The increase in accidents is due to the danger *inherent* in the operation of motor vehicles by and among people of average human frailty. It is not preventable by any practical means yet devised. But perhaps the resulting monetary loss may be spread over the motoring class most responsible therefor, partially for their own benefit but with some corresponding benefits to the non-motoring class least responsible. It may be argued that such arrangement would place an unjust burden upon the motorists, while relieving the non-motorists of the consequences of their own negligence. The same argument was made with reference to workmen's compensation acts; and it is even more fallacious here than there. People who motor have an *equal* right of user of the public highways with people who do not motor. But motorists as a class do not necessarily have an unrestricted right to a user of the public highways *inherently more dangerous* than the user in fact enjoyed by all other classes of people; for that is *inequality* in fact, whatever the theory. The more dangerous user enjoyed by the motoring class justifies the imposition upon it of reasonable burdens, such as the cost of accident compensation insurance for the benefit of all the people including those enjoying the less dangerous user. Negligence is a relative term, being the lack of due care under all the circumstances. Due care on the public highways today is much more burdensome to all classes than it was before the appearance of motor vehicles, or would now be in their absence. The motoring class has placed this added burden of care upon the public without bestowing any corresponding benefits. Would the expense of accident compensation insurance, placed upon the motoring class for the benefit of the public, be any more than a fair offset? For this burden of added care on the public will remain, notwithstanding the elimination of negligence in any accident compensation scheme, because the public will not sacrifice itself for the uncertain benefits of a partially adequate money compen-

sation. The motoring class has voluntarily assumed the lesser burden of accident liability insurance, which is a long step in the direction of accident compensation insurance. The writer perceives no elements of natural justice opposed to such compensation plan; and no serious legal obstacles have appeared from this little study of the subject. A motor vehicle accident compensation act seems desirable *if it can be made workable*; but can it?

The suggestion of an accident compensation act to the readers of this magazine will doubtless meet with harsh criticism, if not with ridicule. Such is the fate of any innovation among lawyers. But the world moves. Doubtless many just criticisms can be made and many improvements suggested upon the plan here outlined. It is not pretended that this article is all-comprehensive or exhaustive; it is merely suggestive. The writer has ventured a little way out upon an uncharted sea, leaving the reader to think it over and find his own way back or on.

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