

There is, therefore, the problem of reconciling and evaluating the conflicting versions of an occurrence. These activities are carried on not only by the insurer, but also on behalf of the injured party, and one is arrayed against the other to resolve the question whether reparations should be made. In most instances, these disputes are resolved by compromise, but when it cannot be, it goes into litigation. There again the litigation procedures necessarily involve delay. Civil procedure today permits protracted discovery proceedings, depositions, interrogatories, physical examinations, production of documents, pre-trial conferences, and eventually, jury trials, perhaps followed by appellate procedures.

To the extent that we depend in the main upon the settlement of these disputes through compromise, since the best compromise is one in which neither party is fully sustained, there is some dissatisfaction on each side of any result.

The fact that there is this adverse relationship and the consequent delay, does not necessarily condemn a fault system of reparations. It is, however, important to recognize that reasonable delay is a necessary incident of the system. One may well conclude that in an orderly system of society there should be some form of retribution accorded against the wrongdoer through our civil courts, and that this is the principle which should guide our automobile reparation system; but if it is, the undesirable but necessary incidence of that form of system, must be weighted against the desirability of adhering to a fault concept. This is one of the questions which we think deserves a careful and thorough objective study.

2. The rules of damages which have been adopted under our tort liability system permit the recovery not only of economic losses, that is, expenses and earnings loss, and other things which can be measured in dollars and cents, but in addition, permits the recovery of a completely non-economic form of damage, an award for dignitary harm, such as pain and suffering. There is no standard for measuring this form of damages. It is left to the fact-finder to apply a theoretical rule of reasonableness. Thus, in the main, it reflects the conscience of a jury. A necessary consequence of this fact is that one who seeks the maximum recovery must, in some way, dramatize his injury to impress the fact-finder with the pain and suffering he has endured. Expert physicians, X-ray films, and other demonstrative evidence are resorted to, to impress the fact-finder. There is, therefore, necessarily involved, more expense and more time, but this is an incident of the nature of the rule of damages inherent in the tort liability system. It produces, by its very nature, variations in recovery by different claimants without relation to any necessary differences in their injuries or losses. But, if we are going to undertake to attempt with dollar awards to compensate for purely dignitary harms, we must recognize that there are going to be variations in the awards received, and that the process of determination of the amount of an award will be delayed. Here, again, it seems appropriate to determine whether society does demand protection, not only against its economic losses, but also some redress for purely dignitary harms, which can never, in fact, be relieved by the dollar award.

We are conscious of an apparent changing public attitude. There seems to be a public feeling that any person injured in an automobile accident should, in some way, be relieved of the consequences of his injuries. Working within the framework of our existing reparation system, the insurance industry has endeavored to respond to this apparent public desire. It introduced into its policies medical payments coverage providing immediate payment to an insured and occupants of his car without regard to fault. In addition, companies in their adjustment practices are following the procedure of making preliminary payments for out-of-pocket expenses and loss of earnings, without making a final determination of fault, and reserving for later determination the final adjustment of the claim. If these are the courses society wants to follow, the question is presented, "Why do we do this, while still preserving the form of a different form of a system of reparations?"

In summary, our present system, by its very nature, denies a remedy to many victims, and awards others varying relief which may be viewed as inequitable to some. It is a system which necessarily involves time, expense, and creates social frictions. It is also a system which attempts to replace non-economic losses by money awards, thus adding to the cost of the system. We think it is appropriate to determine whether these necessary incidents of our present system, which might be considered as defects, are out-weighted by the advantages of the present system. Costs can be reduced if dignitary harms are not compensated; time can be saved if reparation is not dependent upon fault; but do we introduce into our society other evils, if we abandon these long-established principles? It is the