LAW AS GRIEF: HOW TORT COMPENSATION ATTEMPTS THE IMPOSSIBLE TRANSLATION OF LOSS INTO MONEY

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1. ABSTRACT

"Measuring the Unmeasurable: When Money Meets Grief"

There exists within every wrongful death tribunal a moment deserving philosophical attention: the moment a judge writes down a number. A family is broken; grief is real and permanent; and yet the legal system's entire, culminating response is a figure on a page. This article examines whether that translation of irreducible human loss into monetary currency is philosophically coherent. The thesis advanced is tripartite: (i) that the losses addressed in wrongful death, loss of consortium, and psychiatric harm are qualitatively incommensurable with money and resist placement on any common scale; (ii) that tort law's compensatory architecture nevertheless proceeds on an assumption of commensurability, treating the damages award as a functional replacement for what has been lost; and (iii) that this assumption, when subjected to rigorous philosophical scrutiny, collapses revealing that such damages do not compensate in any coherent sense, but rather function as a ritual of legal closure: a state-managed ceremony that extinguishes the plaintiff's claim, discharges the defendant's liability, and reconstitutes institutional legitimacy.

The article introduces the original concept of the **Acknowledgment Award** at once a diagnostic tool for understanding what non-pecuniary damages actually do and a prescriptive reform proposal for making the system honest about its own function. Grounded in the Indian legal context through *Pranay Sethi* (2017),[1] *V. Pathmavathi* (2026),[2] the constitutional tort jurisprudence from *Rudul Sah* to *Nilabati Behera*, and informed globally by Sunstein's incommensurability theory,[3] Radin's market-inalienability framework,[4] and the empirical psychology of Hulst and Akkermans,[5] this article concludes that tort compensation is normatively necessary but philosophically incomplete. The system does real good under a false description. The task of reform is not abolition it is honesty.

Keywords: Incommensurability · Tort Compensation · Grief · Wrongful Death · Loss of Consortium · Psychiatric Harm · Ritual of Closure · Constitutional Tort · Acknowledgment Award · Indian Tort Law · Market-Inalienability · Solatium

2. INTRODUCTION:

"THE IMPOSSIBLE ARITHMETIC OF LOSS"

There is a proposition embedded in every wrongful death damages award audacious, rarely examined, and philosophically untenable. It is the proposition that there exists a sum of money which is, in some legally cognisable sense, equivalent to the loss of a particular human life, a twenty-year marriage, or a shattered psychiatric self. When the Supreme Court of India standardised ₹40,000 as the conventional loss of consortium figure in *National Insurance Co. Ltd. v. Pranay Sethi* (2017),[1] it was not performing a valuation. It was gesturing at an incommensurable reality and assigning to that gesture the language of equivalence. This article asks the prior, more radical question: not 'Are the damages adequate?' but 'Is the act of translation itself coherent?'

The hypothesis may be stated precisely: tort compensation for death, psychiatric harm, and loss of consortium attempts the translation of incommensurable loss into money, and in that attempt collapses into a ritual of legal closure. The system performs compensation without achieving it. This performance serves the system's administrative need for finality, the defendant's need for discharge, and the State's need for institutional legitimacy serving the victim incompletely, providing financial resources and formal acknowledgment, but withholding the honest recognition that what was lost cannot be replaced.

In *V. Pathmavathi & Ors. v. Bharthi AXA General Insurance Co. Ltd. & Anr.* (2026),[2] the Supreme Court recorded its own 'conceptual tension' in *Pranay Sethi's* willingness to recognise future economic prospects as a valid loss while simultaneously excluding loss of love and affection as a separate compensable head. That judicial moment a court recording its reservations about its own prior framework is the strongest possible institutional endorsement of this article's central argument. This article names the tension that the Court saw but could not resolve: the compensatory premise itself is philosophically incoherent. The solution lies not in refining the existing framework but in reconceptualising what non-pecuniary damages are and what honest function they serve.

3. LITERATURE REVIEW:

"SEVEN INTELLECTUAL TRADITIONS AND THE GRIEF-MONEY PARADOX"

The scholarship bearing on this article's thesis spans philosophy, doctrinal law, critical legal studies, empirical psychology, and comparative jurisprudence.

A. The Incommensurability Tradition

The foundational text is Cass R. Sunstein's 'Incommensurability and Valuation in Law,'[3] which demonstrates that human values are irreducibly plural and that legal analysis routinely pretends commensurability where it does not exist. Ruth Chang's collection on incommensurability, incomparability, and practical reason[6] elaborates the distinction between strong incommensurability no common scale and weak incommensurability, where comparison is possible but imprecise. This article deploys the strong version against the grief-and-money claim: grief and money are not merely difficult to compare; they are constitutively different kinds of value. The DePaul Law Review article declaring general damages 'incoherent, incalculable, incommensurable and indefensible'[7] represents the most explicit doctrinal statement of this article's central thesis.

B. Commodification and Personhood

Margaret Jane Radin's 'Market-Inalienability'[4] provides the normative dimension. Radin argues that certain aspects of personhood intimate relationships, bodily integrity, the experience of grief are constitutively incompatible with market exchange. To commodify them is not merely to set a wrong price; it is to damage the very good being valued. Michael Sandel's *What Money Can't Buy*[8] extends this argument to the contemporary commodification of civic life, providing the cultural context within which tort's monetisation of grief must be understood.

C. Corrective Justice Theory The Strongest Internal Defence

Jules Coleman's corrective justice account[9] and Ernest Weinrib's Kantian private law theory[10] offer the dominant philosophical defence of compensatory damages. For Coleman, tort law enacts corrective justice by annulling wrongful gains and losses; for Weinrib, the bilateral structure expresses equal freedom of persons. These accounts are sophisticated and this article engages them seriously. However, as William Lucy demonstrates,[11] both corrective justice and economic accounts face identical problems of method and fit they construct post-hoc theoretical frameworks that the actual, messy doctrine of tort does not exhibit. Lucy's insight

forms this article's methodological foundation.

D. The Empirical Psychology of Victimhood

The most empirically decisive contribution is Hulst and Akkermans' dual study of how secondary victims perceive monetary awards.[5] In a quantitative survey of 726 secondary victims and qualitative interviews with 14 award recipients, they found that victims do not experience monetary awards as compensation for their loss. When they find awards meaningful, it is as symbolic acknowledgment recognition of the wrong done and the reality of their grief. The Dutch legislature that prompted their study explicitly stated that 'no monetary award could make up for the harm in question.' If even the architects of a compensation scheme decline to believe it compensates, the compensatory framework is not merely philosophically untenable it is an institutional fiction.

E. Doctrinal Economics of Non-Pecuniary Loss

Robert Rabin's work[12] provides the most comprehensive survey of the economics and normative theory of non-pecuniary damages. The Virginia Law Review's 'Irrational Centerpiece' article[13] makes the bluntest statement of the internal contradiction: courts have awarded damages for pain and suffering for hundreds of years while simultaneously acknowledging that no sum will remove or mitigate it. This systemic acknowledgment of futility within the compensatory discourse is significant.

F. Wrongful Death Scholarship

Andrew McClurg's 'Dead Sorrow'[14] is the closest existing work to this article's thesis, arguing that wrongful death frameworks grounded in the economic value of the deceased to survivors are fundamentally reductive. Papayannis' analysis of the morality of compensation in tort[15] identifies the expressive dimension of damages as philosophically central an insight this article develops into a positive account of what damages actually do.

G. Indian Legal Scholarship The Domestic Anchor

The Indian literature includes Arnab Kumar Ghosh's analysis of psychiatric injury,[16] Sakshee Narayan Gore's work on codification,[17] and Sophia Moreau's structural injustice analysis[18] applicable to the systemic inequality embedded in India's actuarial damages regime. This

article's original contribution lies at the intersection of all seven traditions, applying incommensurability theory simultaneously to all three categories of grief-related loss, introducing the Acknowledgment Award as both a diagnostic and prescriptive category, and grounding the philosophical argument in the specific institutional context of Indian constitutional and Motor Vehicles Act jurisprudence.

4. HISTORICAL EVOLUTION:

"FROM BLOOD-PRICE TO SOLATIUM: AN ANCIENT RITUAL"

A. Pre-Legal Antecedents: Wergeld and the Social Management of Grief

The attempt to translate loss into money is as old as organised law. The Germanic tradition of *wergeld* literally 'man-money' assigned a fixed tariff to every category of human being, payable by the killer's kin to the victim's family.[19] The purpose was explicitly social: to prevent the cycle of blood feud by offering a formally accepted substitute for the revenge that grief demands. This is not compensation in the modern sense. The wergeld was a social settlement a price set by community consensus at which the account of violence was formally closed, not a measurement of any particular family's grief. Frankenberg traces a fundamental continuity from these ancient blood-price regimes through to modern tort damages: the money was not *for* the grief. It was *instead of* the grief. The ritual substitution of coin for violence is the origin of the entire compensatory enterprise.

B. The Common Law: Lord Campbell and the Invisible Grief

Early English common law not only could not measure grief it refused even to try. The maxim *actio personalis moritur cum persona* meant that families of those wrongfully killed had no civil remedy regardless of fault. The Fatal Accidents Act 1846 created the first statutory wrongful death action but constrained it exclusively to persons demonstrating financial dependency. Its foundational assumption was explicitly economic: the law addressed the loss of a financial provider, not the loss of a person. Grief was legally invisible; only its financial shadow was cognisable. The Administration of Justice Act 1982 introduced England's bereavement award a fixed statutory sum and in doing so made the most honest legislative statement in the common law tradition: it set a number for grief precisely because grief cannot be valued.[20] The fixed sum is the common law's capitulation to incommensurability.

C. The Indian Trajectory: Colonial Inheritance and Constitutional Innovation

India inherited the English tort framework through colonial reception. The Fatal Accidents Act, 1855[21] modelled on Lord Campbell's Act limited recoverable damages to pecuniary loss; grief was legally invisible. The decisive Indian innovation was constitutional. Beginning with *Rudul Sah v. State of Bihar*[22] and advancing through *Nilabati Behera v. State of Orissa*,[23] the Supreme Court developed constitutional tort compensation monetary awards for fundamental rights violations that operated outside the tortious framework entirely. In *Nilabati Behera*, the Court explicitly framed the award as a public law remedy for a constitutional violation, not a claim to financial equivalence with the mother's grief. This distinction the constitutional acknowledgment award is the most philosophically honest moment in Indian tort history and is, as this article argues, the model for reform.

5. LEGAL ARCHITECTURE:

"STATUTORY STRUCTURES OF BEREAVEMENT"

A. India: The Fatal Accidents Act, 1855

The Fatal Accidents Act, 1855 provides the foundational statutory cause of action for wrongful death in India. Section 1A permits the legal representative of a deceased to bring an action where death was caused by a wrongful act, neglect, or default.[21] The recoverable damages are limited to pecuniary loss. Non-pecuniary loss grief, bereavement, the loss of the relationship itself found no statutory expression until judicial intervention extended conventional heads through Motor Vehicles Act jurisprudence. The Act's architecture reveals its philosophical premise: loss is financial loss; grief is legally invisible.

B. India: The Motor Vehicles Act, 1988

The Motor Vehicles Act, 1988, as amended in 2019,[24] governs the vast majority of wrongful death compensation claims in India by sheer volume. The structured compensation framework combines the multiplier method for pecuniary loss with fixed conventional amounts for non-pecuniary heads. The Supreme Court in *Pranay Sethi* standardised three conventional heads: loss of estate (₹15,000), loss of consortium (₹40,000, subsequently extended to parental and filial consortium in *Magma General Insurance*[25]), and funeral expenses (₹15,000). These figures were set not as the result of any valuation exercise but as judicially determined

conventional amounts. The critical 2026 development in *V. Pathmavathi* bears emphasis: the Division Bench recorded reservations about *Pranay Sethi's* exclusion of 'loss of love and affection' as a separate head, finding a 'conceptual tension' in recognising future economic prospects as a valid loss while denying cognisance to emotional deprivation a tension which maps directly onto this article's central argument.[2]

C. India: The Constitutional Framework

Under Articles 32 and 226 of the Constitution,[26] the Supreme Court and High Courts have awarded compensation for violations of Article 21 in cases of custodial death, wrongful imprisonment, and State negligence. In *Nilabati Behera*, Justice Anand held that the award was 'a remedy available in public law, based on strict liability for contravention of fundamental rights,' distinct from civil law damages. This constitutional tort compensation is, by the Court's own characterisation, not a claim to financial equivalence with loss. It is a constitutional declaration, expressed in monetary form, that the State violated a human being's fundamental right and acknowledges that violation an Acknowledgment Award already operating within Indian law.

D. Comparative Provisions

England's Fatal Accidents Act 1976 and the Administration of Justice Act 1982 provide a fixed bereavement sum for a narrow class of claimants the common law's frank capitulation to incommensurability.[20] The United States exhibits radical jurisdictional divergence: some states permit solatium recovery; others limit strictly to financial loss; juries in permissive jurisdictions produce awards running into millions, while claimants in restrictive jurisdictions receive nothing for the same type of loss. New Zealand's Accident Compensation Corporation model,[27] which replaces tort litigation with universal no-fault social insurance, represents the most philosophically honest institutional response: it does not pretend to value grief; it acknowledges harm through community-level coverage.

6. THE PHILOSOPHICAL ARGUMENT:

"INCOMMENSURABILITY AND THE COLLAPSE OF COMPENSATION"

A. The Architecture of Restitutio in Integrum

Restitutio in integrum restoring the claimant to the position occupied before the tort forms the normative foundation of tort compensation. Applied to property damage, the principle has coherent content: a damaged vehicle has a repair cost; payment of that sum restores the victim's financial position. The transaction has a structure: prior state → wrongful alteration → monetary correction → restored state. Money works because the good destroyed has a market equivalent it is fungible and replaceable.

Applied to grief, the principle immediately encounters a category problem. The prior state of a parent who has not lost their child is not a financial state it is a relational state, a lived state of attachment, presence, and meaning. The child is, in Radin's terms of personhood theory, categorically non-fungible: no other good, monetary or otherwise, constitutes a replacement. When law awards damages for wrongful death, it is not restoring the parent to their prior state. It is doing something different. And the compensatory language obscures what that different thing is.

B. Sub-Thesis I: Human Loss is Qualitatively Irreducible

The first sub-thesis is that death, relational destruction, and psychiatric rupture are qualitatively irreducible they cannot be commensurated on any scale with any other good without destroying their distinctive character as losses. Sunstein's strong incommensurability holds that two goods are incommensurable when no common metric can express both without destroying the distinctive quality of at least one.[3] Grief is not a value with an extremely high price; it inhabits a different order of value entirely, one structurally inaccessible to monetary exchange.

Consider the phenomenology of spousal consortium loss. What is destroyed when a person is permanently deprived of a spouse's companionship is not a service bundle and not a flow of income. What is destroyed is a particular form of existence: the form of existence of a person in a relationship with another particular, irreplaceable, non-fungible person. The consortium award of ₹40,000 under *Pranay Sethi* does not purchase a replacement for this form of existence. There is no replacement. The figure is simultaneously richer and more desolate than any property damage award: richer, because it acknowledges a real loss; more desolate, because it claims to measure what cannot be measured.

C. Sub-Thesis II: Tort Law Assumes Commensurability

The second sub-thesis is that tort law's compensatory architecture assumes, contrary to the truth, that money is a functional replacement for grief. This assumption operates at every level: in the language of *restitutio in integrum*; in the description of damages as 'compensation'; in the judicial formula of 'just compensation' under the Motor Vehicles Act; and in the corrective justice theory's claim that damages 'annul' the wrongful loss. Calabresi and Bobbitt's *Tragic Choices*[28] is the most intellectually honest economics text on this point: they acknowledge that monetisation of tragic goods is a social mechanism for managing value conflicts that cannot be resolved on their own terms. The price does not reflect value it replaces the impossibility of valuation with the administrative convenience of a number.

D. Sub-Thesis III: The Assumption Collapses Under Examination

The third sub-thesis is that the commensurability assumption, when examined directly, reveals itself to be empty. The examination proceeds on three fronts.

First, the price-arbitrariness argument. If there were an objective equivalence between grief and money, the legal systems of different jurisdictions applying different methodologies to the same type of loss would converge over time toward the same answer. Instead, they diverge radically: a mother's grief for her child is worth ₹40,000 in India, £15,120 in England, zero in several American states, and potentially millions of dollars in others. No principled account of compensation explains these differences.

Second, the internal incoherence argument. Courts themselves acknowledge that the sum will not mitigate the pain and suffering.[13] A system that knowingly awards what it acknowledges will not achieve its stated purpose is philosophically incoherent. The purpose claimed (compensation) cannot be what is being achieved; something else must be going on.

Third, the phenomenological argument from Hulst and Akkermans.[5] When 726 secondary victims were asked whether a monetary award could compensate their emotional harm, they did not answer affirmatively. They identified modest awards as potentially meaningful through symbolic acknowledgment of the wrong. The Dutch legislature explicitly stated that its bill did not offer real compensation 'as no monetary award could make up for the harm in question.' The compensatory framework is not merely philosophically untenable it is an institutional fiction that even its architects decline to believe.

7. DAMAGES AS RITUAL OF CLOSURE:

"WHAT THE FRAMEWORK ACTUALLY DOES"

A. The Concept of Legal Ritual

If tort damages in grief-related categories do not compensate cannot restore the claimant, cannot purchase the equivalent of what was lost, are not experienced by victims as compensation then what are they? The positive answer offered here deploys the concept of legal ritual. A legal ritual is a formal procedure that transforms the social meaning of an event without transforming its material reality. The payment of damages does not undo the death, restore the relationship, or eliminate the grief. But it does something: it transforms the event from an ongoing wrong into a closed legal transaction. The defendant has 'paid'; the claimant has been 'compensated'; the system has 'provided a remedy.' These are transformations in social meaning legally significant, institutionally consequential even though the underlying material reality is unchanged.

B. The Four Functions of the Ritual

The ritual of legal closure serves four identifiable institutional functions. **First: Finality.** The tort system's administrative imperative is the closure of cases. The damages award converts the plaintiff's ongoing grievance into a concluded transaction not because the family's grief is over, but because the law's engagement with it is over. **Second: Defendant Discharge.** The payment of damages extinguishes the defendant's liability regardless of whether the plaintiff is restored and regardless of whether the payment is adequate to the loss discharge is structurally independent of compensation. **Third: State Legitimacy.** The tort system's survival requires that the State be seen to provide remedies for wrongs. The award communicates, to the victim and to society, that the wrong was real and that the legal order condemns it. Papayannis identifies this expressive dimension as philosophically central to the justification of non-pecuniary damages.[15] **Fourth: Social Pacification.** The ritual channels grief into a structure that produces a definite endpoint, substituting a legal process for the social disturbance of unresolved loss.

C. An Original Diagnostic Typology

This article proposes an original diagnostic framework distinguishing three categories of

award. A **True Compensatory Award** repair costs, medical expenses, lost earnings claims financial equivalence with the loss and actually achieves it; it is philosophically coherent. A **Surrogate Award** future earnings, cost of care provides a proxy for something partially commensurable; it is pragmatically coherent though imprecise. An **Acknowledgment Award** consortium, solatium, pain and suffering, bereavement claims compensation for an incommensurable loss but actually provides formal acknowledgment of that loss's reality, severity, and legal cognisability. It is incoherent as compensation but coherent and genuinely valuable as acknowledgment. The reform the article proposes is simple in concept and difficult in execution: rename Acknowledgment Awards honestly. Retain them they do real good but describe them for what they are.

8. PROBLEMS, TENSIONS AND CRITICAL FINDINGS:

"THE TRIPLE INCOHERENCE"

A. The Arbitrariness Problem

The most structurally significant consequence of the philosophical incoherence identified in this article is the radical arbitrariness of non-pecuniary damages awards. Arbitrariness here does not mean randomness it means that the figures set reflect political choices, institutional conventions, and historical accidents rather than any fact about the relationship between grief and money. The *V. Pathmavathi* bench's own 'reservations' about the *Pranay Sethi* framework[2] confirm this: even within the Supreme Court, there is no agreement about why emotional loss from anticipated economic deprivation is cognisable while emotional loss from deprivation of love and affection is not. The inconsistency is not an accident of legal doctrine it is the inevitable consequence of a system that cannot justify its own categorisations because no principled justification is available. Only convention remains.

B. The Victim Invisibility Problem

The compensatory framework's insistence on translating grief into money has a further, less visible cost: the victim's actual experience of grief becomes legally invisible. A wrongful death tribunal is structured around the calculation of multipliers, income figures, dependency fractions, and conventional heads. It does not create space for the victim's testimony about the relationship that was destroyed, the presence that is absent, the specific and unrepeatable person

who was lost. The Hulst-Akkermans finding that secondary victims frequently feel 'processed rather than heard' reflects this structural feature.[5] If damages are Acknowledgment Awards in reality, the process that generates them should provide acknowledgment not merely a tariff calculation.

C. The Inequality Problem

India's actuarial damages regime in which quantum is determined primarily by the income of the deceased produces a constitutionally troubling consequence: the legal valuation of a life is a function of its earning capacity.[18] A road accident kills two people: a software engineer earning ₹10 lakhs per annum and a domestic worker earning ₹1.2 lakhs per annum. The multiplier method produces vastly different awards for identical losses. Their families' grief is identical in kind; their legal acknowledgment is radically unequal. This is the structural inequality embedded within the compensatory pretence inequality that a genuinely honest acknowledgment framework would be compelled to address.

9. SUGGESTIONS:

"REWRITING THE LAW OF GRIEF FOR AN HONEST AGE"

A. Reconceptualise Non-Pecuniary Awards as Acknowledgment Awards

The most structurally transformative reform is the explicit legislative reconceptualisation of non-pecuniary damages in wrongful death, loss of consortium, and psychiatric harm as Acknowledgment Awards formally distinct from compensatory damages for pecuniary loss. This requires legislative action, preferably through a comprehensive Torts (Civil Wrongs) Act or through amendments to the Motor Vehicles Act and Fatal Accidents Act, creating a distinct category with a legislative statement clarifying: 'No monetary award is capable of compensating for the loss of a human life, a spousal relationship, or a psychiatric self. The following award represents the formal acknowledgment by the legal system that such a loss is real, that the wrong that caused it is legally recognised, and that the person responsible is accountable.' The amount of the Acknowledgment Award should be determined by criteria that reflect its acknowledging function: the nature of the wrong, the defendant's culpability, the nature of the relationship destroyed, and the constitutional significance of the harm not by actuarial calculation.

B. Introduce Mandatory Restorative Justice Mechanisms

Alongside monetary awards, tort proceedings in cases involving death, permanent psychiatric harm, and serious relational loss may beneficially provide access to restorative justice processes as an alternative or supplement to adversarial quantification. Such processes would create structured opportunities for defendants to acknowledge responsibility, hear the victim's account of their loss, and offer formal apology. The Hulst-Akkermans research[5] establishes that acknowledgment of responsibility direct, witnessed, personal is what secondary victims most want from the legal process. Money can symbolise this acknowledgment but cannot perform it as effectively as direct witnessed acknowledgment from the responsible party. Restorative justice mechanisms should be voluntary for victims.

C. Codify Indian Tort Law Dedicated Chapter on Non-Pecuniary Loss

India would benefit from a comprehensive Torts (Civil Wrongs) Act.[17] A dedicated chapter on non-pecuniary loss could usefully: (a) identify the categories of loss for which Acknowledgment Awards are available; (b) provide a transparent framework for their determination that is honest about the acknowledgment function; (c) extend liability for psychiatric harm to all cases of negligently caused recognised psychiatric illness; (d) provide for loss of consortium in terms reflecting relational reality rather than tariff convention; and (e) establish an index-linked adjustment mechanism for conventional figures to prevent erosion of award values in real terms.

D. Reform the Solatium Quantum and Character

The Motor Vehicles Act solatium merits reform in two dimensions. First, the quantum warrants substantial increase: the current figure of ₹1 lakh assigned as the statutory acknowledgment of a human death on India's roads warrants review in the light of current economic conditions and the constitutional value of human life affirmed through Article 21 jurisprudence. A minimum solatium of ₹5 lakhs, indexed to the Consumer Price Index, would better reflect the dignity of the acknowledgment function. Second, the solatium may be beneficially redesignated in the statute as an 'Acknowledgment Payment for Bereavement' with a legislative statement clarifying its non-compensatory character a terminological reform that does not require a change in quantum but changes the philosophical honesty of what the payment represents.

E. Address Inequality in the Actuarial Method

The actuarial determination of pecuniary compensation in which the damages quantum is primarily a function of the deceased's income produces constitutionally questionable outcomes under Articles 14 and 21 when applied to populations with structurally low incomes. A minimum floor for income calculation in wrongful death cases at no less than the national minimum wage would reduce the most extreme inequalities without abandoning the actuarial method for its legitimate purpose of replacing genuine financial dependency.

10. CONCLUSION:

"THE HONEST LIMIT OF LAW"

The translation of grief into money is philosophically incoherent. Grief and money are incommensurable in the strong sense: no common metric can express both without destroying the distinctive character of grief as a form of human experience. The gap between a mother's loss and the damages figure in her award is not scalar it cannot be closed by increasing the quantum because the gap is categorical. This is not defeatism. It is the philosophical truth that tort law has been avoiding for centuries, since the first wergeld payment substituted coin for blood.

The implications of this truth are not nihilistic. Tort compensation does real and important work. Financial resources provided to a bereaved family are genuinely valuable. Deterrence of negligent conduct saves lives. The expressive function of damages the formal legal declaration that a wrong occurred, that the victim's loss is real, that the defendant is accountable addresses a genuine and deep human need for public acknowledgment. The problem is not the work. The problem is the false description under which the work is done.

The *V. Pathmavathi* bench (2026) saw the contradiction and named it honestly, even though it could not resolve it within the existing doctrinal framework.[2] This article has argued that the tension is irresolvable within the compensatory framework because the compensatory framework is built on an incoherent premise. The resolution lies outside the framework: in the honest acknowledgment that some awards are not compensatory but expressive, not equivalent but acknowledging, not a price for grief but a formal witness to it.

The reforms proposed follow from that honesty: rename Acknowledgment Awards for what

they are; add restorative justice mechanisms that perform the acknowledgment function more directly; codify the law to provide principled and indexed frameworks; reform the solatium to reflect constitutional values; and address the structural inequality of the actuarial method. The impossible translation will remain impossible. Grief cannot be converted into money. But the legal system need not pretend that it can. What the law can do is witness. What it can say in the only language available to it is: 'We cannot give you back what you have lost. What this court does today is formally witness your grief, declare the wrong done to you, and acknowledge that what was lost was beyond any price.'

"Tort compensation is normatively necessary but philosophically incomplete. The task of legal reform is not to make it complete that is impossible but to make it honest. The honest limit of law is not its failure. It is its integrity."

REFERENCES

A. Cases

1. *National Insurance Co Ltd v Pranay Sethi* (2017) 16 SCC 680 (Supreme Court of India) [Constitution Bench; standardised conventional non-pecuniary heads under the Motor Vehicles Act 1988]

2. *V Pathmavathi & Ors v Bharthi AXA General Insurance Co Ltd & Anr* 2026 INSC 131 (Supreme Court of India) [Division Bench records conceptual tension in Pranay Sethi regarding exclusion of loss of love and affection]

3. *Rudul Sah v State of Bihar* AIR 1983 SC 1086 (Supreme Court of India) [first constitutional tort recognition under Article 32]

4. *Nilabati Behera v State of Orissa* AIR 1993 SC 1960, (1993) 2 SCC 746 (Supreme Court of India) [public law remedy; foundational Acknowledgment Award in Indian constitutional tort]

5. *DK Basu v State of West Bengal* (1997) 1 SCC 416 (Supreme Court of India) [constitutional compensation mechanism for custodial violations]

6. *Magma General Insurance Co Ltd v Nanu Ram* (2018) 18 SCC 130 (Supreme Court of India) [extended consortium to parental and filial categories]

7. *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310 (House of Lords) [primary/secondary victim distinction in psychiatric harm]

B. Legislation

8. The Fatal Accidents Act 1855 (Act XIII of 1855) (India)

9. The Motor Vehicles Act 1988 (Act 59 of 1988) as amended by the Motor Vehicles (Amendment) Act 2019 (India)

10. The Constitution of India 1950, arts 14, 21, 32, 226

11. Fatal Accidents Act 1976 (UK)

12. Administration of Justice Act 1982 (UK)

13. Accident Compensation Act 2001 (New Zealand)

C. Journal Articles

14. Cass R Sunstein, 'Incommensurability and Valuation in Law' (1994) 92 *Michigan Law Review* 779

15. Margaret Jane Radin, 'Market-Inalienability' (1987) 100 *Harvard Law Review* 1849

16. Frank M McClellan, 'General Damages Are Incoherent, Incalculable, Incommensurable and Indefensible' (2005) 55 *DePaul Law Review* 253

17. Liesbeth Hulst and Arno J Akkermans, 'Can Money Symbolize Acknowledgment? How Victims' Relatives Experience Monetary Awards for Their Emotional Harm' (2011) 4(3) *Psychology, Injury and Law* 245

18. William Lucy, 'Method and Fit: Two Problems for Contemporary Philosophies of Tort Law' (2007) 52 *McGill Law Journal* 605

19. Diego M Papayannis, 'The Morality of Compensation through Tort Law' (2023) 36(1) *Ratio Juris* 3

20. Paul V Niemeyer, 'Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System' (2004) 90 *Virginia Law Review* 1401

21. Robert L Rabin, 'Pain and Suffering and Beyond: Some Thoughts on Recovery for Intangible Loss' (2005) 55 *DePaul Law Review* 369

22. Arnab Kumar Ghosh, 'Psychiatric Injury in Indian Tort Law: Doctrinal Gaps and Constitutional Imperatives' (2024) 12 *Indian Journal of Law and Justice* 44

23. Sakshee Narayan Gore, 'Codifying Tort Law in India: The Case for Legislative Reform' (2025) 7 *NLIU Law Review* 112

24. Sophia Moreau, 'Structural Injustice and Systemic Discrimination' in Brian Leiter (ed), *Oxford Studies in Philosophy of Law*, vol 6 (Oxford University Press, forthcoming)

D. Books

25. Jules L Coleman, *Risks and Wrongs* (Cambridge University Press 1992)

26. Ruth Chang (ed), *Incommensurability, Incomparability, and Practical Reason* (Harvard University Press 1998)

27. Andrew J McClurg, 'Dead Sorrow: A Story About Loss and a New Theory of Wrongful Death Damages' (2010) 85 *Tulane Law Review* 499

28. Guido Calabresi and Philip Bobbitt, *Tragic Choices* (W W Norton 1978)

29. Ernest J Weinrib, *The Idea of Private Law* (Harvard University Press 1995)

30. Michael J Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Farrar, Straus and Giroux 2012)

E. Other Sources

31. Günter Frankenberg, 'Blood Money: Some Thoughts on Law and the Compensation of Grief', Lecture delivered at the Einstein Forum, Potsdam (2009)