

THE No-Fault system is a safety net that catches all persons who are injured in an accident, regardless of their guilt or innocence.

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Whether a person contributed the least to the accident, or was the main cause, that person would be awarded damages that go towards paying medical and hospital fees, repairing the vehicle, making up for lost income, or, in the instance of death, to pay for funeral costs and the welfare of loved ones left behind.

In this system, no person is abandoned by society. However, in the fault-based system that is practised in Malaysia today, it is only the "innocent" injured person who gets compensation.

This is because innocent victims are covered by third-party insurance from which the victim is entitled to compensation. The "not so innocent" person ♦ the one responsible for causing the accident ♦ does not get anything, even though he, too, might have been injured in the accident. Unless that person has personal accident insurance, the "guilty" person has no safety net. If the guilty party is the breadwinner and dies without insurance, his dependants have lost their source of financial stability as well.

However, even though under the current system things seem weighted towards the innocent party, it is not so easy to claim compensation.

The "victim" has to go to court and prove several things first before he can be awarded damages:

- ♦ his innocence ♦ that he did not contribute to the accident,
- ♦ the guilt of the other party, and,
- ♦ that the guilty party was negligent in his conduct and did not exercise reasonable care.

But the road from the accident to the awarding of damages can be extremely long and tedious. If the accident was serious, the case becomes a criminal matter.

The driver of the offending vehicle would be advised by his lawyer to plead not guilty. The case, thus, goes to court. Criminal trials can take several years. The innocent party must wait because the result of the criminal trial will determine the bargaining power of each side.

The innocent party will then hire a lawyer to take a civil suit against the guilty party. The lawyer for the innocent man and the lawyer for the guilty man exchange many letters. A doctor spends time looking at the injuries to ascertain the damage, and to determine what is needed to "repair" the injury. Both parties wait a few years before their case can be heard in court.

The judge then decides and makes an award. Often, the damages awarded is less than what was demanded. If either party is not happy with the decision or the award, the matter is appealed. And this then adds a few more years to the matter.

By the time the "victim" finally gets his compensation, it is many many years later and a large percentage will go towards paying the lawyer. In the meantime, the injured person still has to pay his hospital bills. And, if he was unable to work as a result of his injury, he has no income and is unable to support himself or his family.

In our current fault-based system, compensation will not be given to the victim if he cannot prove that the injury was caused by the defendant's failure to take reasonable care. And negligence must be "reasonably foreseeable".

As this is often so difficult to prove, at the end of the day, the majority of motor

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vehicle accident victims receive no compensation at all. And they have no other net to fall back on.</p>