NOTES ON

INSURANCE LAW

For

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NATURE AND DEFINITION OF INSURANCE

Prof. K.S.N Murthy in his 'Modern Law of Insurance' quotes the axiomatic truth "yat bhavati tat nashyati", it means whatever is created will be destroyed. However, a person desires to preserve the subject matter for an indefinite length of time and wishes to be free from the clutches of the destruction and hence, he prefers to safeguard/preserve the subject matter from the risk of destruction. Such a desire to preserve forms the basis for the emergence of insurance. The main object of insurance businesses is the coverage of risk by undertaking to indemnify the insured against the loss or damage.

Insurance is an intangible contractual periodical service obtainable/purchasable for price called 'premium'. There are three personalities operating in insurance business namely

i) insurers or insurance companies
ii) insuring public / assured / policy holder
iii) insurance intermediaries / insurance agents, brokers etc.

DEFINITIONS

W. Beveridges says that "collective bearing of risk is insurance".

According to **J.B. Maclean**, "Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual"

Another definition "Insurance means an arrangement by which a company or a state undertakes to provide a guarantee of compensation for a specified loss, damage, illness or death in return of payment of a specified sum that is premium".

The definition of insurance can be seen from two viewpoints:
(a) Functional Definition
(b) Contractual Definition

(a) Functional Definition Insurance is a co-operative device of distributing losses, falling on an individual or his family over large number of persons each bearing a nominal expenditure and feeling secure against heavy loss.

(b) Contractual Definition Insurance may be defined as a contract consisting of one party (the insurer) who agrees to pay to other party (the insured) or his beneficiary, a certain sum upon a given contingency against which insurance is sought.

NATURE OF INSURANCE

1) **Insurance is a contract:** Insurance is a contract entered into between two parties and is governed by the law of contracts. Insurance contract must contain the essentials of contract under section 10 of the contract act 1872. An insurance is a contract in which, one party agrees to pay a sum of money upon the happening of a particular event contingent upon the duration of the policy in exchange of the payment of consideration.
2) **Insurance is a cooperative device:** The most important feature of every insurance plan is the cooperation of large number of persons who, in effect, agree to share the financial loss arising due to a particular risk which is insured.
3) **Sharing of risk:** Insurance is a device to share the financial losses which might befall on an individual or his family on the happening of a specified event. The loss arising from these events if insured are shared by all the insured in the form of premium.
4) **Value of risk:** The risk is evaluated before insuring to charge the amount of share of an insured, i.e. the premium. If there is an expectation of more loss, higher premium may be charged. So, the probability of loss is calculated at the time of insurance.
5) **Payment of contingency:** The payment is made at a certain contingency insured. If the contingency occurs, payment is made, otherwise no payment is given to the policy holder.
6) **Amount of payment:** The amount of payment depends upon the value of loss occurred due to the particular insured risk provided insurance is there upto that amount.
7) **Large number of insured persons:** To spread the loss immediately, smoothly and cheaply, large number of persons should be insured because the lesser would be the cost of insurance and so, the lower would be premium.in order to function successfully, the insurance should be joined by a large number of persons.
8) **Insurance is a business not a charity:** Insurance companies function to get profits and not for social service. The business of insurance is nothing but one of sharing. The insured who suffer loss get relief because his loss is made good.
9) **Contract is 'Aleatory':** The term 'aleatory' is derived a Latin term 'aleator' which means 'dice player'. Insurance contract is a contract of speculation. The insurance contracts considered as depending on uncertain event as to both profit and loss.

HISTORY OF INSURANCE BUSINESS IN INDIA

The origin of insurance is lost in antiquity. The main concept of insurance – that of spreading risk – has arouse since the starting of human existence. Insurance has been an institution of human society for thousands of years, having been practiced by Chinese and Babylonian traders as long as the 2nd millennium BC. The Babylonians developed a system which was recorded in the famous Code of Hammurabi C. 1750 BC, and practiced by early Mediterranean sailing merchants. If the merchant receives a loan to fund his shipment, he would pay the lender an additional sum in exchange for the lender's guarantee to cancel the loan should the shipment be stolen.

Coming to the Indian context, Insurance in its current form has its territory dating back to 1818, when Oriental Life Insurance Company was started in Kolkata to cater the needs of the European community. The pre-independence era in India saw discrimination between lives of foreigners [English] and Indians with higher premiums being charged for the latter. In 1870, Bombay Mutual Life Assurance Society became the first Indian Insurer.

At the dawn of the twentieth century, many insurance companies were founded. In the year 1912, the Life Insurance Companies Act and the Provident Fund Act were passed to regulate the insurance business. The Life Insurance Companies Act, 1912 made it necessary that the premium-rate tables and periodical valuations of the companies should be certified by an actuary. However, the disparity still existed as discrimination between Indian and foreign companies. The oldest existing insurance company in India is the National Insurance Company which was founded in 1906.

The government of India issued an Ordinance on 19th January 1956 nationalizing the Life Insurance sector and Life Insurance Corporation came into existence in the same year. In 1972 with the General Insurance Business (Nationalization) Act was passed by the Indian Parliament, and consequently, General Insurance Business was nationalized with effect from 1 January 1973. 107 insurers were amalgamated into four companies namely, National Insurance Company Ltd; the Oriental Insurance Company Ltd; the New India Assurance Company Ltd; and the United India Insurance Company Ltd. The General Insurance Corporation (GIC) of India was incorporated as a company in 1971.

The LIC had monopoly till the late 90s when the Insurance sector was reopened to the private sector. Before that, the industry consisted of only two state insurers: LIC and GIC. Later on with the passing of IRDA Act in 1999, the insurance sector was opened up and private Insurance companies were allowed to enter in Life Insurance as well as General Insurance with the participation of foreign partner as well as with 49% share maximum.

REGULATION OF INSURANCE BUSINESS IN INDIA

At the initial stage, business of insurance in India was in the hands of private parties. After a certain period, the entire business of insurance was nationalized which resulted in the monopoly of the insurance sector by a few public sector giants. Now the government of India has again opened up this sector for private sector participation. The insurance sector plays a very significant role in the economy. There are specific laws in India that regulate the operation of the public sector corporations carrying on Insurance business. The general regulations on Insurance are contained in the Insurance Act, 1938 and the Insurance Rules, 1939. The Insurance Act 1938 was enacted to consolidate and amend the law relating to the business of Insurance in India. It provides for the registration of the insurers, qualification and other requirements for such registration. It also provided that no insurer shall be registered unless he has a paid-up capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance or a paid-up equity capital of rupees two hundred crores in case of a person carrying on exclusively the business as a re-insurer. Certain requirements relating to the structure of capital of an insurer has also been provided under the act.

This millennium has seen insurance come a full circle in a journey extending to nearly 200 years. The process of reopening the sector had begun in the early 1990s and the last decade and more has seen it been opened up substantially. In 1993, the government set up a committee under the Chairmanship of R.N. Malhotra, former Governor of RBI, to propose recommendations for reforms in the insurance sector. The objective was to complement the reforms initiated in the financial sector. The committee submitted its report in 1994 wherein, among other things, it recommended that the other private sector be permitted to enter the insurance industry. They stated that foreign companies be allowed to enter by floating Indian companies, preferably a joint venture with Indian partners.

Following the recommendations of the Malhotra committee report, in 1999, the IRDA was constituted as an autonomous body to regulate and develop the insurance industry. The IRDA was incorporated as a statutory body in April 2000. The key objectives of IRDA include promotion of competition so as to enhance customer satisfaction through increased consumer choice and lower premiums, while ensuring the financial security of the insurance market. The Authority has the power to frame regulations under section 114A of the Insurance Act,1938 and has from 2000 onwards framed various regulations ranging from, registration of companies for carrying on business to protection of policyholder's interests.

The insurance industry of India consists of 57 insurance companies of which 24 are in life insurance business and 33 are non-life insurers. Among the life insurers, Life Insurance Corporation (LIC) is the sole public sector company. Apart from that, among the non-life insurers there are six public sector insurers. In addition to these, there is sole national re-insurer, namely, General Insurance Corporation of India (GIC Re). Other stakeholders in Indian Insurance market include agents (individual and corporate), brokers, surveyors and third-party administrators servicing health insurance claims.

Out of 33 non-life insurance companies, five private sector insurers are registered to underwrite policies exclusively in health, personal accident and travel insurance segments. They are Star Health and Allied Insurance Company Ltd, Apollo Munich Health Insurance Company Ltd, Max Bupa Health Insurance Company Ltd, Religare Health Insurance Company Ltd and Cigna TTK Health Insurance Company Ltd. There are two more specialised insurers belonging to public sector, namely, Export Credit Guarantee Corporation of India for Credit Insurance and Agriculture Insurance Company Ltd for crop insurance.

THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (IRDAI)

The Insurance Regulatory and Development Authority of India (IRDAI) is an autonomous, statutory body tasked with regulating and promoting the insurance and re-insurance industries in India. It was constituted by the Insurance Regulatory and Development Authority Act, 1999, an Act of Parliament passed by the Government of India. The agency's headquarters are in Hyderabad, Telangana, where it moved from Delhi in 2001.

IRDAI is a 10-member body including the chairman, five full-time and four part-time members appointed by the government of India.

Objectives of IRDA (Insurance Regulatory and Development Authority of India)

- To aware and promote the policy holders
- To protect the right of policyholders
- To promote and ensure the growth of Insurance sector in India
- To settle out genuine insurance claims as early as possible and prevent malpractices and frauds.
- To provide transparency and orderly conduct of companies in financial markets dealing with insurance business.
- To stop the monopoly of public sector companies and provide healthy competition

Composition of authority (Section 4)

The Authority shall consist of ten members, namely :-

(a) One Chairman/Chairperson
(b) Not more than five whole time members
(c) Not more than four part-time members

The Central Government of India appoints the Chairman/Chairperson and member of IRDA from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the authority.

It is provided that the Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance and actuarial science, respectively.

Tenure (Section 5)

1) The Chairperson and every other whole-time member shall hold office for a term of 5years from the date on which he enters upon his office and shall be eligible for re-appointment. Provided that no person shall hold office as a Chairperson after he has attained the age of 65years. Provided that no person shall hold office as a whole-time member after he has attained the age of 62years

2) A part-time member shall hold office for a term not exceeding 5years from the date on which he enters the office

3) Notwithstanding anything contained in sub-section (1) or sub-section (2) a member may-
   a) Relinquish his office by giving in writing to Central Government notice of not less than 3 months; or
   b) Be removed from office in accordance with the provisions of the section

Removal from Office (Section 6)

1) The Central Government may remove from office any member who-
   a) Is, or at any time has been, adjudged as an insolvent
   b) Has become physically or mentally incapable of acting as a member
   c) Has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude
   d) Has acquired such financial or other interest as is likely to affect prejudicially his functions as a member
   e) Has so abused his position as to render his continuation in office detrimental to the public interest
2) No member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

POWERS /FUNCTIONS OF IRDA

Under Section 14 of the IRDA Act, IRDA has the following powers:

(a) Issue of Certificate of Registration to insurance companies, renew, modify, withdraw, suspend or cancel the certificate of registration
(b) Protection of interests of policyholders in matters concerning assignment of policies, nomination, insurable interest, claim settlement, surrender value and other terms and conditions of insurance contract
(c) Specification of requisite qualifications, practical training and code of conduct for insurance agents and intermediaries
(d) Specification of code of conduct for surveyors and loss assessors
(e) Promoting efficiency in the conduct of insurance business
(f) Promoting and regulating professional organizations connected with insurance and reinsurance business
(g) Levying fees and other charges for carrying out the purposes of the Act
(h) Calling for information from or undertaking inspection of insurance companies, intermediaries and other organisations connected with insurance business
(i) Control and regulation of rates, advantages, terms and conditions that may be offered by general insurance companies
(j) Specifying the form and manner in which books of account shall be maintained by insurance companies and intermediaries
(k) Regulation of investments of funds by insurance companies
(l) Regulation of maintenance of margin of solvency
(m) Adjudication of disputes between insurers and insurance intermediaries
(n) Supervising the functioning of Tariff Advisory Committee
(o) Specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations
(p) Specifying the percentage of insurance business to be undertaken by insurers in rural or social sectors
(q) Such other powers as may be prescribed.

POWER OF CENTRAL GOVERNMENT

- Power of Central Government to issue directions
- Power to supersede IRDA
- Power to direct the authority to furnish returns and other particulars relating to insurance business
- Power to make rules/regulations
- Power to remove difficulties

IRDA FUND

According to section 16 of the Act

1) There shall be constituted a fund to be called 'the Insurance Regulatory and Development Authority Fund' and there shall be credited thereto-

a) All government grants, fees and charges received by the Authority
b) All sums received by the Authority from such other source as may be decided upon by the government

2) The Fund shall be applied for meeting-
   a) The salaries, allowances and other remuneration of the members, officers and other employees of the Authority
   b) The other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act

GENERAL PRINCIPLES OF INSURANCE LAW

Insurance is an important aid to commerce and industry. Every business enterprise involves large number of risks and uncertainties. It may involve risk to premises, plant and machinery, raw material and other things. Goods may be damaged or may be destroyed due to fire or flood. Some risk can be avoided by timely precautions and some are unavoidable and are beyond the control of a business. These unavoidable risks can be protected by insurance. Insurance is one of the devices by which risks may be reduced or eliminated in exchange for premium. "Insurance is a contract in which a sum of money is paid by the assured in consideration of the insurer's incurring the risk of paying larger sum upon a given contingency". In its legal aspects it is a contract whereby one person agrees to indemnify another against a loss which may happen or to pay a sum of money to him on the occurring of a particular event.

1. Principle of Uberrimae fidei (Utmost Good Faith)

Principle of Uberrimae fidei (a Latin phrase), or in simple English words, the Principle of Utmost Good Faith, is a very basic and first primary principle of insurance. According to this principle, the insurance contract must be signed by both parties (i.e. insurer and insured) in an absolute good faith or belief or trust. The insured is of the obligation to declare full and true disclosure of facts to the insurer. The insurance company on the facts declared by the insured will decide the type of insurance and the liability and as well as the premium. So, the true disclosure of all facts is necessary. The insurance company may declare any contract as void, if later found that the facts declared by the insured are not true. So, all contracts of insurance are the contracts "Uberrimae fidei", i.e., the contracts of utmost good faith and therefore non-disclosure of a material fact entitles other party to avoid the contract. A new material fact, which is not material at the time of entering into the contract but later it became material during the course of time on the basis of which the insurer may declare the contract void or not ready to renew the contract, should be declare by the insured to the insurer as soon as he came to know the fact. Any material facts come in the knowledge of the insured subsequently need not to be disclosed.

In Insurance contracts the seller is the insurer and he has no knowledge about the property to be insured. The proposer on the other hand knows or is supposed to know everything about the property. The condition is reverse of ordinary commercial contracts and the seller is entirely dependent upon the buyer to provide the information about the property and hence the need for Utmost Good Faith on the part of the proposer. It may be said here that the insurer has the option of getting the subject matter of Insurance examined before covering the risk. This is true that he can conduct an examination in the case of a property being insured for fire risk or of getting a medical examination done in the case of a health policy. But even then, there will be

facts which only the insured can know e.g., the history of Insurance of the property whether it has been refused earlier for Insurance by another company or whether it is also already insured with another company and the previous claim experience. Similarly, a medical examination may not reveal the previous history i.e. details of past illness, accidents etc. Therefore, Insurance contracts insist on the practice of Utmost Good Faith on the part of the Insured. Secondly, Insurance is an intangible product. It cannot be seen or felt. It is simply a promise on the part of Insurer to make good the loss incurred by the Insured if and when it occurs. Thus, the Insurer is also obliged to practice Utmost Good Faith in his dealings with the Insured. He cannot and should not make false promises during negotiations. He should not withhold information from the Insured such as the discounts available for good features e.g., fire extinguishing Appliances discount in fire policies or that Earthquake risk is not covered under the standard fire policy but can be covered on payment of additional premium. Utmost Good Faith can be defined as "A positive duty to voluntarily disclose, accurately and fully all facts material to the risk being proposed whether requested for or not". In Insurance contracts Utmost Good Faith means that "each party to the proposed contract is legally obliged to disclose to the other all information which can influence the others decision to enter the contract". The following can be inferred from the above two definitions:

(1) Each party is required to tell the other, the truth, the whole truth and nothing but the truth.
(2) Unlike normal contract such an obligation is not limited to any questions asked and
(3) Failure to reveal information even if not asked for gives the aggrieved party the right to regard the contract as void.

Facts, which must be disclosed

(i) Facts, which show that a risk represents a greater exposure than would be expected from its nature e.g., the fact that a part of the building is being used for storage of inflammable materials.
(ii) External factors that make the risk greater than normal e.g. the building is located next to a warehouse storing explosive material.
(iii) Facts, which would make the amount of loss greater than that normally expected e.g. there is no segregation of hazardous goods from non-hazardous goods in the storage facility.
(iv) History of Insurance (a) Details of previous losses and claims (b) if any other Insurance Company has earlier declined to insure the property and the special condition imposed by the other insurers; if any.
(v) The existence of other insurances
(vi) Full facts relating to the description of the subject matter of Insurance.

Some examples of ***material facts*** are:

(a) In Fire Insurance: The construction of the building, the nature of its use i.e. whether it is of concrete or Kucha having thatched roofing and whether it is being used for residential purposes or as a warehouse, whether firefighting equipment is available or not.
(b) In Motor Insurance: The type of vehicle, the purpose of its use, its age (Model), Cubic capacity and the fact that the driver has a consistently bad driving record.

(c) **In Marine Insurance:** Type of packing, mode of carriage, name of carrier, nature of goods, the route.
(d) **In Personal Accident Insurance:** Age, height, weight, occupation, previous medical history if it is likely to increase the choice of an accident, Bad habits such as drinking etc.
(e) **Burglary Insurance:** Nature of stock, value of stock, type of security precautions taken.

Facts, which need not be disclosed

(a) **A). Facts of Law:** Everyone is deemed to know the law. Overloading of goods carrying vehicles is legally banned. The transporter cannot take excuse that he was not aware of this provision.
(b) **B). Facts which lessen the Risk:** The existence of a good firefighting system in the building.
(c) **C). Facts of Common Knowledge:** The insurer is expected to know the areas of strife and areas susceptible to riots and of the process followed in a particular trade or Industry.
(d) **D). Facts which could be reasonably discovered:** For e.g. the previous history of claims which the Insurer is supposed to have in his record.
(e) **E). Facts which the insurers representative fails to notice:** In burglary and fire Insurance it is often the practice of Insurance companies to depute surveyors to inspect the premises and in case the surveyor fails to notice hazardous features and provided the details are not withheld by the Insured or concealed by him them the Insured cannot be penalized.
(f) **F). Facts covered by policy condition:** Warranties applied to Insurance policies i.e. there is a warranty that a watchman be deployed during night hours then this circumstance need not be disclosed.

Duration of Duty of Disclosure: The duty of disclosure remains in force throughout the entire negotiation stage and till the contract is finalized. Once the contract is finalized than the contract is subject to ordinary simple good faith. However, when an alteration is to be made in an existing contract then this duty of full disclosure recovers in respect of the proposed alteration. The duty of disclosure also revives at the time of renewal of contract since legally renewal is regarded as a fresh contract. For example: a landlord at the time of proposal has disclosed that the building is rented out and is being used as an office. If during the continuation of the policy the tenants vacate the building and the landlord subsequently rents it out to a person using it as a godown then he is required to disclose this fact to the Insurer as this is a change in material facts and effects the risks. It must be noted that in long term Insurance Business the Insurer is obliged to accept the renewal premium if the Insured wishes to continue the contract and there is no duty of disclosure operating at the time of renewal. Normally Insurer arranges inspection on each renewal.

Breaches of Utmost Good Faith

It occurs in either of 2 ways.

(1) Misrepresentation, which again may be either innocent or intentional. If intentional then they are fraudulent

(2) Non-Disclosure, which may be innocent or fraudulent. If fraudulent then it is called concealment.

Misrepresentation:

(a) Innocent: This occurs when a person states a fact in the belief or expectation that it is right but it turns out to be wrong. While taking out a Marine Insurance Policy the owner states that the ship will leave on a specific date but in fact the ship leaves on a different date.

(b) Intentional: Deliberate misrepresentation arises when the proposer intentionally distorts the known information to defraud the insurer. The selfish objective is somehow to enter the contract or to get a reduction in the premium e.g., If an applicant for motor Insurance stated that no one under 18 would drive the vehicle when in fact his 17 years old son drives frequently. Such a misrepresentation would be material as it would affect the decision of the insurer.

Non-Disclosure

(a) Innocent: This arises when a person is not aware of the facts or when even though being aware of fact does not appreciate its significance e.g. A proposer at the time of effecting the contract has undetected cancer therefore does not disclose it or A proposer had suffered from Rheumatic fever in his childhood but he does not disclose this not knowing that people who have this are susceptible to heart diseases at a later age.

(b) Deliberate: This is done with a deliberate intention to defraud the insurer entering into a contract, which he would not have done had he been aware of that fact. A proposer for fire Insurance hides the fact knowingly by not disclosing that he has an outhouse next to his building, which is used as a store for highly inflammable material.

How to Deal with Breaches

When Breach of Utmost Good Faith occurs, the aggrieved party gets the right to avoid the contract. The contract does not become automatically void and it must decide on the course to be taken. The options available are on case-to-case basis like: -

1) the contract becomes void from the very beginning if deliberate misrepresentation or non-disclosure is resorted to with the intention of misleading the insurer to enter into a contract.
2) To consider the contract void, the bereaved party, must notify the offending party that breach has been noticed and as per the conditions of the contract he is no longer governed with the terms of the contract agreed upon in covering the risk. In case the breach is discovered at the time of claim he will refuse to honour his promise and will not pay the claim. This again occurs when there has been a deliberate breach.
3) When the breach is innocent but it is material to the fact then the insurer may impose a penalty in the form of additional Premium.
4) Where the breach is found to be innocent and is not material the insurer can choose to ignore the breach or waive off the breach.

LIC v. G.M.C Hannabsemma, (AIR 1991 SC 392) - In a landmark decision the SC has held that the onus of proving that the policy holder has failed to disclose information on material facts lies on the corporation. In this case the assured who suffered from tuberculosis and died a few months after the taking of the policy, the court observed that it is well settled that a contract of insurance is contract uberrimae fides, but the burden of proving that the insured had made false representation or suppressed the material facts is undoubtedly on the corporation.

New India Insurance Company v. Raghava Reddy (AIR1961 AP 295) - It was held that a policy cannot be avoided on the ground of misrepresentation unless the following are established by the insurer namely, a. The statement was inaccurate or false. b. Such statement was on a material matter or that the statement suppressed facts which it was material to disclose. c. The statement was fraudulently made d. The policy holder knew at the time of making the statement that it was false or that fact which ought to be disclosed has been suppressed.

LIC v. Janaki Ammal (AIR 1968 Mad 324) – it was held that if a period of two years has expired from the date on which the policy of life insurance was effected, that policy cannot be called in question by an insurer on the ground that a statement made in the proposal for insurance or on any report of a medical officer or referee, or a friend of the insured, or in any other document leading to the assure of the policy, was inaccurate or false.

2. Principle of Insurable Interest

One of the essential ingredients of an Insurance contract is that the insured must have an insurable interest in the subject matter of the contract. Insurance without insurable interest would be a mere wager and as such unenforceable in the eyes of law. The subject matter of the Insurance contract may be a property, or an event that may create a liability but it is not the property or the potential liability which is insured but it is the pecuniary interest of the insured in that property or liability which is insured.

Insurable Interest is defined as "The legal right to insure arising out of a financial relationship recognized under the law between the insured and the subject matter of Insurance". There are four essential components of Insurable Interests

1) there must be some property, right, interest, life, limb or potential liability capable of being insured.
2) Any of these above i.e. property, right, interest etc. must be the subject matter of Insurance.
3) The insured must stand in a formal or legal relationship with the subject matter of the Insurance. Whereby he benefits from its safety, well-being or freedom from liability and would be adversely affected by its loss, damage existence of liability.
4) The relationship between the insured and the subject matter must be recognized by law.

For example: - The owner of a taxicab has insurable interest in the taxicab because he is getting income from it. But, if he sells it, he will not have an insurable interest left in that taxicab. From above example, we can conclude that, ownership plays a very crucial role in evaluating insurable interest. Every person has an insurable interest in his own life. A merchant has insurable interest in his business of trading. Similarly, a creditor has insurable interest in his debtor.

How is Insurable Interest Created?

There are a number of ways by which Insurable Interest arises or is restricted.

(a) By Common Law: Cases where the essential elements are automatically present can be described as Insurable Interest having arisen by common law. Ownership of a building, car etc., gives the owner the right to insure the property.

(b) By Contract: In some cases a person will agree to be liable for something which he would not be ordinarily for. A lease deed for a house for example may make the tenant responsible for the repair and maintenance of the building. Such a contract places the tenant in a legally recognized relationship with the house or the potential liability and this gives him the insurable interest.

(c) By Statute: Sometimes an Act of the Parliament may create an insurable interest by granting some benefit or imposing a duty and at times removing a liability may restrict the Insurable Interest. Insurable Interest is applicable in the Insurance of property, life and liability. In case of property Insurance, insurable interest arises out of ownership where the owner is the insured but it can arise due to other situations & financial interests which gives a person who is not an owner, insurable interest in the property and some of the situations are listed below.

(i) Mortgagee and Mortgagers: The practice of Mortgage is common in the area of house & vehicle purchase. The mortgagee is the lender normally a bank or a financial institution, and the mortgager is the purchaser. Both have an insurable interest; the mortgager because he is the owner and the mortgagee as a creditor with insurable interest limited to the extent of the loan.

(ii) Bailee: Bailee is person legally holding the goods of another, may be for payment or other reason. Motors garages and watch repairers have a responsibility to take care of the items in their custody and this gives them an insurable interest even though he is not owner.

(iii) Trustees: They are legally responsible for the property under their charge and it is this responsibility which gives rise to insurable interest.

(iv) Part Ownership: Even though a person may have only part interest in a property he can insure the entire property. He shall be treated as a trustee or the co-owners; and in the event of a claim he will hold the money received by him in excess of his financial interest in trust for the others.

(v) Agents: When the principal has an insurable interest then his agent can insure the property.

(vi) Husband & Wife: Each has unlimited interest in each other's life and hence they have an insurable interest in each other's property. These parties can insure each other's lives as they stand to lose in the event of death of any of them.

(vii) Creditor: Similarly a creditor may lose financially if a debtor dies before paying the loan so the creditor gets an Insurable Interest in the life of the debtor to the extent of the loan amount.

(viii) Liability: In Liability Insurance a person has insurable interest to the extent of any potential liability which may be incurred due to damages and other costs. It is not possible to foretell how much liability or how often a person may incur liability and in what form or shape it arises. In this way Insurable Interest in Liability Insurance is different than Insurable Interest in life & property - where it is possible to predetermine the extent of Insurable Interest. Therefore, in liability assurance the insured is asked to choose the amount of sum insured as the maximum figure that he estimates is ever likely to be required to settle the liability claims.

When Insurable Interest should exist

(i) **In Life Insurance** Insurable Interest must exist at the time of inception of Insurance and it is not required at the time of claim

(ii) **In Marine Insurance** Insurable Interest must exist at the time of loss / claim and it is not required at the time of inception.

(iii) **In Property** and other Insurance Insurable Interest must exist at the time of inception as well as at the time of loss/ claims.

A factory owner has insurable interest in the factory or if a person has a car has insurable interest in the car. Suppose Mr. A has car and the car cannot insured by Mr. B, since Mr. B has no insurable interest in Mr. A's car.

Other Salient Features of Insurable Interest

(i) Insurable Interest of Insurers: Once the Insurers have accepted the liability they derive an insurable interest, which arises from that liability thus they are free to insure a part or whole of the risk with another insurer. This is done by reinsurance.

(ii) Legally Enforceable: the Insurable Interest must be legally enforceable. The mere expectation that one may acquire insurable interest in the future is not sufficient to create insurable interest.

(iii) Possession: Lawful possession of property together with its responsibility creates an insurable interest.

(iv) Criminal Acts: A person cannot avail benefits from Insurance to cover penalties because of a criminal act but insurance to take care of civil consequences arising out of his criminal act can be done. This is applicable in the case of motor Insurance where a driver found guilty of an offence which is involved in an accident receives the claim for damage to his own car and also liability incurred due to damage to another's property but he shall not be insured for the amount of penalty that was imposed for his offense.

(v) Financial Value: Insurable interest must be capable of financial evaluation. In the case of property and liability incurred it is easily evaluated but in life it is difficult to put a value on the life of a person or his spouse and this depends on the amount of premium the individual can bear. However, in cases where lives of others is involved a value on life can be placed i.e. creditor can put a value on the life of debtor restricted to the extent of the loan.

Employers have an insurable interest in the lives of their employees because if the employee dies there will be cost on training of the replacement and in the case of death of a key employee there may be loss of income as well. The amount of insurable interest cannot be exactly determined but it should be reasonable and proportionally related with salary of an employee; contribution level of a key personal or equity contribution in case of partners. Assignment of policies is possible but normally not without the permission of the Insurer because it can mean a change in the underwriting consideration as the new policyholder may not have the same insurable interest. Fire and other Misc. policies are not freely assignable as the Insurer at the time of underwriting has satisfied himself about the Insureds attitude or treatment of the subject matter and its loss causing capability. This would however change in the case of an assignee and it is reasonable to give the insurer a chance to consider the credentials of the new proposer. When the Insurer gives his consent to the assignment of the policy a new contract is in fact being entered into and this is called **NOVATION.**

In some cases, only the proceeds of the policy are assigned. There is normally no objection to such assignments as the assured is still a party to the contract with the insurer and he has to

continue to comply with all the terms and conditions of the policy with the only difference being that in event of a claim the insurer is directed to pay the amount to the Assignee. Insurers protect themselves by taking a receipt from the person receiving the amount discharging the Insurer from any further liability. This condition arises often in motor claims when bills of repair are directly paid to the garage and not the owner of the vehicle. In these cases, the garage owners obtain a letter of satisfaction from the owner and submit his bills to the Insurer directly for payment.

Principle of Indemnity

In Insurance the word indemnity is defined as "financial compensation sufficient to place the insured in the same financial position after a loss as he enjoyed immediately before the loss occurred." Indemnity thus prevents the insured from recovering more than the amount of his pecuniary loss. It is undesirable that an insured should make a profit out of an event like a fire or a motor accident because if he was able to make a profit there might well be more fires and more vehicle accidents. As in the case of Insurable Interest, the principle of indemnity also relies heavily on the financial evaluation of the loss but in the case of life and disablement it is not possible to be precise in terms of money. An Insurance may be for less than a complete indemnity but it may not be for more than it. To illustrate let us take the example of a person who insures his car for Rs.4 lacs and it meets with an accident and is a total loss. It is not certain that he will get Rs.4 lacs. He may have over valued the car or may be the prices of cars have fallen since the policy was taken. The Insurer will only pay an amount equal to the value of the car at the time of loss. If he finds that a car of the same make and model is available in the market for Rs.3 lac then he is not liable to pay more than this sum and payment of Rs.3 lacs will indemnify the Insured. Similarly, in the case of partial loss if some part of the car needs to be replaced the Insurer will not pay the full value of the new part. He shall assess how much the old part had run and after deduction of a proportionate sum he shall pay the balance amount. An insured is not entitled to new for old as otherwise he would be making a profit from the accident.

However, there are two modern types of policy where there is a deviation from the application of this principle. One is the agreed value policy where the insurer agrees at the outset that they will accept the value of the insured property stated in the policy (sum insured) as the true value and will indemnify the insured to this extent in case of total loss. Such policies are obtained on valuable pieces of Art, Curious, Jewellery, Antiques, Vintage cars etc. The other type of policy where the principle of strict indemnity is not applied is the Reinstatement policy issued in Fire Insurance. Here the Insured is required to insure the property for its current replacement value and the Insurer agrees that in the event of a total loss he shall replace the damaged property with a new one or shall pay for the replacement in full. Other than these there are Life and Personal Accident policies where no financial evaluation can be made. All other Insurance policies are subjected to the principle of strict Indemnity. In most policy documents the word indemnity may not be used but the courts will follow this principle in case of any dispute coming before them.

The Insurers normally provide indemnity in the following manner and the choice is entirely of the insurer

1. Cash Payment: In majority of the cases the claims will be settled by cash payment (through cheques) to the assured. In liability claims the cheques are made directly in the name of the

third party thus avoiding the cumbersome process of the Insurer first paying the Insured and he in turn paying to the third party.

2. Repair: This is a method of Indemnity used frequently by insurer to settle claims. Motor Insurance is the best example of this where garages are authorized to carry out the repairs of damaged vehicles. In some countries Insurance companies even own garages and Insurance companies spend a lot on Research on motor repair to arrive at better methods of repair to bring down the costs.

3. Replacement: This method of Indemnity is normally not preferred by Insurance companies and is mostly used in glass Insurance where the insurers get the glass replaced by firms with whom they have arrangements and because of the volume of business they get considerable discounts. In some cases of Jewellery loss, this system is used specially when there is no agreement on the true value of the lost item.

4. Reinstatement: This method of Indemnity applies to Property Insurance where an insurer undertakes to restore the building or the machinery damaged substantially to the same condition as before the loss. Sometimes the policy specifically gives the right to the insurer to pay money instead of restoration of building or machinery

Reinstatement as a method of Indemnity is rarely used because of its inherent difficulties e.g., if the property after restoration fails to meet the specifications of the original in any material way or performance level then the Insurer will be liable to pay damages. Secondly, the expenditure involved in restoration may be much more than the sum Insured as once they have agreed to reinstate they have to do so irrespective of the cost.

Limitations on Insurers Liability

1. The maximum amount recoverable under any policy is the sum insured, which is mentioned on the policy. The amount is not the agreed value of the property (except in Valued policies) nor is it the amount, which will be paid automatically on occurrence of loss. What will be paid is the actual loss or sum insured whichever is less.

2. Property Insurance is subjected to the Condition of Average. The underlying principle behind this condition is that Insurers are the trustees of a pool of premiums from which they meet the losses of the few who suffer damage, so it is reasonable to conclude that every Insured should bring a proper contribution to the pool by way of premium. Therefore, if an insured deliberately or otherwise underinsures his property thus making a lower contribution to the pool, he is not entitled to receive the full benefits. The application of this principle makes the insured his own Insurer to the extent of under-insurance i.e. the pro-rata difference between the Actual Value and the sum insured. The amount of loss will be shared between the Insurer and the insured in the proportion of sum insured and the amount underinsured.

Example: Mr. Sudhir Kumar has insured his house for Rs.5 lacs and suffers a loss of Rs.1 lac due to fire. At the time of loss, the surveyor finds that the actual market value of the house is Rs.10 lacs. In this case applying the above formula the claim will be as under:

Loss = 1 lac sum insured = 5 lacs Market Value = 10 lacs Therefore, 1 lac X 5 lacs / 10 lacs = 50,000/- Claim = Rs 50,000

Corollaries of Indemnity

There are two corollaries to the principle of Indemnity and these are **(a) Subrogation and (b) Contribution.**

(a) Subrogation

It has already been established that the purpose of Indemnity is to ensure that the Insured does not make a profit or gain in any way as a consequence of an accident. He is placed in the same financial position, which he had occupied immediately before the loss occurred. As an off shoot of the above it is also fair that the insurer having indemnified the insured for damage caused by another (A Third Party) should have the right to recover from that party the amount of damages or part of the amount he has paid as indemnity. This right to recover damages usually lies with the bereaved or injured party but the law recognises that if another has already paid the bereaved or injured party then the person who has paid the compensation has the right to recover damages. In case the insured after having received indemnity also recovers losses from another then he shall be in a position of gain which is not correct and this amount recovered from another shall be held in trust for the insurer who have already given indemnity. Subrogation may be defined as the transfer of legal rights of the insured to recover, to the Insurer.

Why Subrogation is called a corollary of Indemnity and not treated as a separate basic Principle of Insurance can be traced to the judgement given in the case of ***Casletlan V Preston (1883***) in U.K. "That doctrine (Subrogation) does not arise upon any terms of the contract of Insurance, it is only the other proposition, which has been adopted for the purpose of carrying out the fundamental rule i.e. indemnity. Which I (Judge) have mentioned "it is a doctrine in favour of the underwriters or insurers, in order to prevent the insured from recovering more than a full indemnity; it has been adopted solely for that reason." Subrogation does not apply to life and personal accidents as these are not contracts of Indemnity. In case death of a person is caused by the negligence of another than the legal heirs of the deceased can initiate proceedings to recover from the guilty party in addition to the policy proceeds. If the insured is not allowed to make profit the insurer is also not allowed to make a profit and he can only recover to the extent he has indemnified the Insured.

For example: - Mr. John insures his house for $ 1 million. The house is totally destroyed by the negligence of his neighbour Mr. Tom. The insurance company shall settle the claim of Mr. John for $ 1 million. At the same time, it can file a law suit against Mr. Tom for $ 1.2 million, the market value of the house. If insurance company wins the case and collects $ 1.2 million from Mr. Tom, then the insurance company will retain $ 1 million (which it has already paid to Mr. John) plus other expenses such as court fees. The balance amount, if any will be given to Mr. John, the insured.

Subrogation can arise in 4 ways

(i) Tort (ii) Contract (iii) Statute (iv) Subject matter of Insurance

(i) Tort: When an insured has suffered a loss due to a negligent act of another then the Insurer having indemnified the loss is entitled to recover the amount of indemnity paid from the wrongdoer. The Insured has a right in Tort to recover the damages from the individuals involved. The Insurers assume these rights and take action in the name of the insured and take his permission before starting legal proceedings. Another reason for seeking permission of the insured is that the Insured may be having another claim which was not insured arising from the

same incident which he may wish to include because the law allows one to sue a person only once for any single event.

(ii) Contract: This can arise when a person has a contractual right to compensation regardless of a fault then the Insurer will assume the benefits of this right.

(iii) Statute: Where the Act or Law permits, the insurer can recover the damages from Government agencies like the Risk (Damage) Act 1886 (UK) gives the right to insurers to recover damages from the District Police Authorities in respect of the property damaged in Riots which has been indemnified by them.

(iv) Subject Matter of Insurance: When the Insured has been indemnified and the property treated as lost he cannot claim salvage as this would give him more than indemnity. Therefore, when Insurers sell the salvage as in the case of damaged cars it can be said that they are exercising their right of subrogation.

Suppose two ships were insured and belong to Mr. X and Mr. Y, they have collided and Mr. X received insurance claim from insurance company. Now in this case insurance company may sue Mr. Y for negligence and claim for damages.

The right of subrogation arises once the Insurers have admitted the claim and paid it. This can create problems for the Insurers as delay in taking action could at times hamper their chance of recovering the damages from the wrongdoer or it could be adversely effected due to any action taken by the Insured. To safeguard their rights and to ensure that they are in control of the situation from the beginning Insurers place a condition in the policy giving themselves subrogation rights before the claim is paid. The limitation is that they cannot recover from the third party unless they have indemnified the insured but this express condition allows the insurer to hold the third party liable pending indemnity being granted. Many individuals having received indemnity from the Insurer lose interest in pursuing the recovery rights they may have. Subrogation ensures that the negligent do not get away scot free because there is Insurance. The rights which subrogation gives to the Insurers are the rights of the Insured and it places certain obligations on the Insured to assist the Insurers in enforcing their claims and not to do anything which would harm the Insurers chances to recover losses.

(b) Contribution

Contribution is the second corollary of Indemnity. An individual may have more than one policy on the same property and in case there was a loss and he were to claim from all the Insurers then he would be obviously making a profit out of the loss which is against the principle of Indemnity. To prevent such a situation the principle of contribution has been evolved under common law.

Contribution may be defined as the "right of Insurers who have paid a loss to recover a proportionate amount from other Insurers who are also liable for the same loss". The common law allows the insured to recover his full loss within the sum insured from any of the insurers. Condition of Contribution will only arise if all the **following conditions are met**:

1) Two or more policies of Indemnity should exist
2) The policies must cover a common interest
3) The policies must cover a common peril which is the cause of loss
4) The policies must cover a common subject matter

5) The policies must be in operation at the time of loss It is not necessary that the policies be identical to one another. What is important is that there should be an overlap between policies, i.e. the subject matter should be common and the peril causing loss should be common & covered by both.

Example: - If a house is insured with company X for Rs.5,000 and with company Y for Rs.10000 and the damage amounts to Rs.1200, company X will apparently be liable to contribute Rs.400 and company Y Rs.800.

The law gives the right to the insured to recover the loss from any one insurer who will then have to effect proportionate recoveries from other insurers, who were also liable to pay the loss. To avoid this the Insurers modify the common law condition of contribution by inserting a clause in the policy that in the event of a loss they shall be liable to pay only their "Rate-able proportion" of the loss. It means that they will pay only their share and if the Insured wants full indemnity he should lodge a claim with the other Insurers also.

Rateable Proportion The accepted way to interpret the term Rate-able Proportion is exhibited. First being that the Insurers should pay in the proportion to the sum insured for example,

Sum Insured Policy A = 10,000/- Sum Insured Policy B = 20,000/- Sum Insured Policy C = 30,000/- Total = 60,000/-

In case of a claim of Rs.6000/- the three insurers would be liable to pay in the proportion 1:2:3 i.e. 'A' pays Rs.1000/- 'B' pays Rs.2000/- and 'C' pays Rs.3000/-. However, the drawback of this simplistic method is that the terms and conditions of the policies may be different and it would not be prudent to ignore these terms and conditions. For example, the condition of average may apply to one or more policies or there may be an excess clause in one policy which may affect their share of contribution to the loss. It would therefore be correct to assess the loss as per the terms and conditions of the individual policy and pay the claims accordingly. If by following this method the total sum of the liability of the Insurers is more than the claim amount then the Insurers shall pay in proportion to the amount of liability of each.

Difference between the doctrines of Contribution and Subrogation are –

- In contribution the purpose is to distribute the loss while in subrogation the loss is shifted from one person to another.
- Contribution is between insurers but subrogation is against third party.
- In contribution there must be more than one insurer but in subrogation there may be one insurer and one policy.
- In contribution the right of the insurer is claimed but in subrogation the right of the insured is claimed.

Proximate Cause

There are three types of perils related to a claim under an Insurance policy

(1) Insured Perils: These are the perils mentioned in the policy as being insured e.g. Fire, lightening, storm etc. in the case of a fire policy

(2) Excepted Perils: These are the perils mentioned in the policy as being excepted perils or excluded perils e.g. Riot strike, flood etc. which may have been excluded and discount in premium availed.

(3) Uninsured Perils: Those not mentioned in the policy at all either in Insured or excepted perils e.g. snow, smoke or water as perils may not be mentioned in the policy. Insurers are liable to pay claims arising out of losses caused by Insured Perils and not those losses caused by excepted or Uninsured perils.

Example: If stocks are burnt then the cause of loss is fire which is an Insured Peril under a fire policy and claim is payable. If the stocks are stolen the loss would not be payable as Burglary is not an Insured peril covered in fire policy Burglary policy is needed to take care of 'theft'. It is therefore important to identify the cause of loss and to see if it is an Insured peril or not before admitting a claim.

Need to Identify Proximate Cause

If the loss is brought about by only one event then there is no problem in settlement of liability but more often than not the loss is a result of two or more causes acting together or in tandem i.e. one after another. In such cases it is necessary to choose the most important, most effective and the most powerful cause which has brought about the loss. This cause is termed the Proximate Cause and all other causes being considered as "remote". The proximate cause has to be an insured peril for the claim to be payable. The following illustration may help in distinguishing between the proximate cause and the remote cause.

I. "A person was injured in an accident and was unable to walk and while lying on the ground he contracted a cold which developed into pneumonia and died as result of this. The court ruled that the proximate cause of death was the accident and Pneumonia (which was not covered) was a remote cause and hence claim was payable under the Personal Accident Policy."

II. "A person injured in an accident was taken to a hospital where he contracted an infection and died as a result of this infection. Here the court ruled that infection was the proximate cause of death and the accident was a remote cause and hence no claim was payable under the Personal Accident Policy.

III. A cargo ship's base was punctured due to rats and so sea water entered and cargo was damaged. Here there are two causes for the damage of the cargo ship - (i) The cargo ship getting punctured because of rats, and (ii) The sea water entering ship through puncture. The risk of sea water is insured but the first cause is not. The nearest cause of damage is sea water which is insured and therefore the insurer must pay the compensation.

The Meaning of Proximate Cause

The doctrine of proximate cause is based on the principle of cause and effect, which states that having proved the effect and traced the cause it is not necessary to go any further i.e. cause of cause. The law provided the rule "Cause Proxmia non Remote spectator". The immediate cause and not the remote one should be taken into consideration. Therefore the proximate cause should be the immediate cause. Immediate does not mean the nearest to the loss in point of time but the one most effective or efficient. Thus if there are a number of causes and the proximate cause has to be chosen the choice should be of the most predominant and efficient cause i.e. the cause which effectively caused the result. Proximate cause has been defined as "The active efficient cause that sets in motion a train of events which bring about a result without the intervention of any force started and working actively from a new and independent source". It is important to note that in Insurance Proximate has got nothing to do with time even though the Dictionary defines Proximity as 'The state of being near in time or space'

(period or physical) and the Thesaurus given the alternate words as "adjacency of" "closeness", "nearness" "vicinity" etc. But in Insurance Proximate cause is that which is Proximate in efficiency. It is not the latest but the direct, dominant, operative and efficient cause.

Losses can occur in the following manners:

I. Loss due to a single cause. i). A series or chain of events one following and resulting from the other causing the loss ii). A series or chain of events which is broken by a new event independently from a different source causing the loss – Broken sequence and iii). A contribution of two or more events occurring simultaneously and resulting in loss. In the case of a single cause being the cause of loss then if that peril is covered the claim is payable and if not covered claim is not payable.

i) Loss due to a series or chain of events. This can be illustrated by the following example event. a) A driver of a car meets with an accident b) As a result of the accident he suffers from concussion (shock) c) Because of the concussion he strayed around not aware where he was going d) While straying he fell into a stream e) He died of drowning in the stream It is clear that the above is a chain of events one leading to the other. The proximate cause would be accident (covered under PA Policy) which resulted in concussion (Disease – not covered) and hence the claim would be payable. Irrespective of the fact that subsequent causes are covered or not if it is established that the event starting the chain is a covered peril then claim is payable. However, if reverse were the case and the chain was started by an excepted or excluded peril then the claim would not be payable. For e.g. A person suffers a stroke and falls down the steps resulting in his death. He will not be entitled to any claim under his personal accident policy as the chain was started by a stroke which is an excepted peril.

ii). In case of the broken sequence or Interrupted chain of events if the chain of events is started by an Insured peril but interrupted by an excepted or excluded peril then the claim is paid after deducting the damage caused by the excluded peril. For example, the burglars enter the house and leave the gas stove on leading to a fire and the house is damaged in the fire. The "burglary Insurance" will only pay for the loss due to theft but exclude loss due to fire, which is accepted peril under the burglary policy. In case the sequence of events started by an excluded peril is broken by an Insured peril, as a new and independent cause then there is a valid claim for even the damage caused by exempted peril. The burglars enter the house and after carrying out thefts put the house on fire. The fire policy will pay for the damages due to theft as well (which is an excluded peril). 4. In the case of loss due to concurrent causes or two or more causes occurring simultaneously then all the causes will have to be Insured perils only then the claim would be payable but even if one of the causes is an excluded peril the claim will not be payable.

Example: i) A house collapses due to an earthquake, which results in fire. Under the fire policy earthquake is not a covered risk, hence the claim will not be payable. To really understand the complexities of proximate cause and its proper identification one must go through the case studies and a few are being given hereunder.

ii) An army officer insured under a personal accident policy, which excluded accident directly or indirectly due to war during war time went to the railway line to inspect the sentries. While on the visit he was hit by a train and he died as a result of the accident. It was ruled that the policy did not cover as he was there on the line because of the war and the policy did not cover accident due to war.

iii) A surveyor on surveying a factory damaged in a fire came to the conclusion after detailed investigation that the fire was caused by negligence as well as defective design and both these causes worked together to cause the damage. While the Insurance policy covered negligence it did not cover Defective Design and hence claim was denied.

iv) In an incident where stocks of potatoes kept in a cold storage got damaged due to leakage of ammonia gas. The stock was insured against contamination / Deterioration / putrefaction due to rise in temperature in the refrigeration chamber caused by any loss or damage due to an accident. The Insurance Company did not pay the claim saying that the leakage of gas was not accidental and hence the risk was not covered. The aggrieved approached the consumer forum which held that the leakage of gas was not foreseen or premeditated or anticipated and loosening of the nuts and bolts of the flanges. The consequential escape of gas was within the meaning of the word accident and hence ordered the Insurance Co. to pay the claim.

v) A trawler vessel was insured against losses resulting from collision. Co-incidentally a trawler vessel gets to collide, which result in further delay for few days. Because of this delay, the banana on the trawler vessel got putrid and was unsuitable for consumption. Hence there are two reasons for the losses one is of collision and other is delay, the closest cause of putrid banana was delay. As the trawler vessel was insured only for collision and not for the delay, so for putrid bananas the insured will not get any compensation from the insurance company. But trawler vessel will get compensation for collision.

Principle of Loss Minimization

According to the Principle of Loss Minimization, insured must always try his level best to minimize the loss of his insured property, in case of uncertain events like a fire outbreak or blast, etc. The insured must take all possible measures and necessary steps to control and reduce the losses in such a scenario. The insured must not neglect and behave irresponsibly during such events just because the property is insured. Hence it is a responsibility of the insured to protect his insured property and avoid further losses.

The plaintiff must take all reasonable steps to mitigate the loss which he has sustained consequent upon the defendant's wrong, and, if he fails to do so, he cannot claim damages for any such loss which he ought reasonably to have avoided. The plaintiff is only required to act reasonably, and whether he has done so is a question of fact in the circumstances of each particular case, and not a question of law. He must act not only in his own interests but also in the interests of the defendant and keep down the damages, so far as it is reasonable and proper, by acting reasonably in the matter. In cases of breach of contract the plaintiff is under no obligation to do anything other than in the ordinary course of business, and where he has been placed in a position of embarrassment the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the defendant whose breach of contract has occasioned the difficulty. The plaintiff is under no obligation to destroy his own property, or to injure himself or his commercial reputation, to reduce the damages payable by the defendant. Furthermore, the plaintiff need not take steps which would injure innocent persons

The general principles deducible from the above stated Principle are:

1) As far as possible a party who has proved a breach of the contract, is to be placed, as far as money can do it, in as good a situation as if the contract had been performed.

2) A statutory duty is cast on the plaintiff who has proved the breach of the contract of taking all reasonable steps to mitigate the loss consequent on the breach of the contract.
3) If the plaintiff, who proves the breach of the contract but fails to prove that he took all reasonable steps to mitigate the loss consequent to the breach of the contract, he will be debarred from claiming damages to the extent he could have mitigated the same by taking such steps.

For example: - Assume, Mr. John's house is set on fire due to an electric short-circuit. In this tragic scenario, Mr. John must try his level best to stop fire by all possible means, like first calling nearest fire department office, asking neighbours for emergency fire extinguishers, etc. He must not remain inactive and watch his house burning hoping, "Why should I worry? I've insured my house.

In ***Murlidhar Chiranjilal vs. M/s. Harishchandra Dwarkadas & Anr***, the Supreme Court observed that, "The two principles on which damages in such cases are calculated are well settled. The first is that, as far as possible, he who has proved a breach of a bargain to supply what he contracted to get is to be placed, as far as money can do it, in as good a situation as if the contract had been performed; but this principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach and debars him from claiming any part of the damage which is due to his neglect to take such steps".

In the case of ***United India Insurance Co Ltd and Others vs Orient Treasures Pvt Ltd and Others***, the Supreme Court held that where insured pays additional premium to the insurer to secure more safety and coverage of their insured goods, it is permissible to do but if the party only agrees and pay nothing additional in form of money then the insurance company is not liable for any extended safety and coverage.

MODULE 2

Insurance Policy - Classification of Policies - Transfer and Assignment of Policy - Construction of Policy. Life Insurance - Insurable Interest - Factors Affecting Risk – Amount Recoverable - Settlement of Claim

DEFINITION OF INSURANCE

The term Insurance has been defined vividly as given below:

The dictionary (Oxford) meaning of insurance is " (undertaking, by a company, society or the state, to provide) safeguard against loss, provision against sickness, death, etc, in return for regular payments".

Encyclopaedia Britannica provides that "Insurance may be described as a social device whereby a large group of individuals, through a system of equitable contributions, may reduce or eliminate certain measurable risks of economic loss common to all members of the group."

According to D.S. Hansell, " Insurance is a social device providing financial compensation for the effects of misfortune, the payments being made from the accumulated contribution of all parties participating in the scheme."

OTHER DEFINITIONS

(1) Insurance is a contract by which one party in consideration of a premium, engages to pay agreed sum on a certain event or indemnify another against a continent loss.

(2) Insurance is the business of providing protection against financial aspects of risk, such as those to property, life, health and legal liability.

ESSENTIAL OR INGREDIENTS OF A VALID INSURANCE CONTRACT

Insurance may be defined as a contract between two parties whereby one party called insurer undertakes, in exchange for a fixed sum called premiums, to pay the other party called insured a fixed amount of money on the happening of a certain event.

Elements of Insurance Contract can be classified into two sections;

1. The elements of general contract and

2. The elements of special contract relating to insurance: the special contract of insurance involves principles: insurable interest, utmost good faith, indemnity, subrogation, warranties. Proximate cause, assignment, and nomination, the return of premium.

Elements of Insurance Contract

This Act says that all agreements are the contract if they are made by free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and which are not at this moment declared to be void".

The insurance contract involves—(A) the elements of the general contract, and (B) the element of special contract relating to insurance.

The special contract of insurance involves principles:

(i) Insurable Interest.
(ii) Utmost Good Faith.
(iii) Indemnity.
(iv) Subrogation.
(v) Warranties.
(vi) Proximate Cause.
(vii) Assignment and Nomination.
(viii) Return of Premium.

So, in total, there are eight elements of the insurance contract which are discussed below:

General Contract

The valid contract, according to Section 10 of Indian Contract Act 1872, must have the following essentialities;

(i) Agreement (offer and acceptance),
(ii) Legal consideration,
(iii) Competent to make a contract,
(iv) Free consent,
(v) Legal object.

Offer and Acceptance

The offer for entering into the contract may come from the insured.

The insurer may also propose to make the contract. Whether the offer is from the side of an insurer or from the side of insured, the main fact is acceptance. Any act that precedes it is the offer or a counter-offer. All that preceded the offerer counter-offer is an invitation to offer.

In insurance, the publication of the prospectus, the canvassing of the agents are invitations to offer.

When the prospect (the potential policy-holder) proposes to enter the contract, it is an offer and if there is any alteration in the offer that would be a counter-offer.

If this alteration or change (counter-offer) ill-accepted by the proposer, it would be acceptable.

In the absence of counter-offer, the acceptance of the offer will be an acceptance by the insurer. At the moment, the notice of acceptance is given to another party; it would be a valid acceptance

Legal Consideration

The promisor to pay a fixed sum at a given contingency is the insurer who must have some return or his promise. It need not be money only, but it must be valuable.

It may be summed, right, interest, profit or benefit Premium being the valuable consideration must be given for starting the insurance contract.

The amount of premium is not important to begin the contract. The fact is that without payment of premium, the insurance contract cannot start.

Competent to make the contract

Every person is competent to contract;

- Who is off' is an age of majority according to the law,
- Who is of sound mind, and
- Who is not disqualified from contracting by any law to which he is subject?

A minor is not competent to contract. A contract by a minor is void excepting contracts for necessaries. A minor cannot sign a contract.

A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but, occasionally of sound mind may .make a contract when he is of sound mind. Alien energy, an un-discharged insolvent and criminals cannot agree. A contract made by incompetent party/parties will be void.

Free Consent

Parties entering into the contract should enter into it by their free consent.

The consent will be free when it is not caused by—

(1) coercion,
(2) undue influence,
(3) fraud, or
(4) misrepresentation, or
(5) mistake.

When there is no free consent except fraud, the contract becomes voidable at the option of the party whose consent was so caused. In case of fraud, the contract would be void.

The proposal for free consent must sign a declaration to this effect, the person explaining the subject matter of the proposal to the proposer must also accordingly make a written declaration or the proposal.

Legal Object

To make a valid contract, the object of the agreement should be lawful. An object that is,

(i) not forbidden by law or
(ii) is not immoral, or
(iii) opposed to public policy, or
(iv) which does not defeat the provisions of any law, is lawful.

In the proposal from the object of insurance is asked which should be legal and the object should not be concealed. If the object of insurance, like the consideration, is found to be unlawful, the policy is void.

CHARACTERISTICS OF INSURANCE

(1) It is a contract for compensating losses.

(2) premium is charged for insurance contract.

(3) The payment of agreement in the event of loss.

(4) It is a contract for mutual benefit.

(5) It is a future contract for compensating losses.

(6) It is an instrument of distributing the loss of few among many.

(7) The occurrence of loss must be accidental.

(8) Insurance must be inconsistent with public policy

FUNCTIONS OF INSURANCE

1) Primary Functions:

(i) Protection: The Primary function of Insurance is as we think about any insurance. One feel insured and contended about future risks only because one is sure to be compensated for any loss of future. It is therefore Primary function of Insurance to provide protection against future risks, accidents and uncertainty.

No insurance can arrest the risk from taking place, no insurance can prevent future miss happenings, but can certainly provide some cover for the losses of risk. In real terms Insurance is a protective cover against economic loss by sharing the risk with others, (the pooling members).

(**ii) Collective Risk:** The Insurance policies whether life insurance or general insurance are purchased by lacs of people. But all of them are not subjected to losses every year. It is only a few or negligible who become victim of some miss happenings. In other word lacs of people contribute towards insurance and only a few people need its cover.

It is therefore clear that insurance is a method by means of which a few losses are shared by a large number of people. All the people insured contribute by paying annual premium towards a fund out of which the persons exposed to risks are paid as per the terms and conditions of the insurance policy purchased by them.

(iii) Assessment of Risk: What is volume of risk is determined by the Insurance companies by assessing diverse factors that give rise to risk. The rate of premium is also decided on the basis of risk involved.

(iv) Certainty: Unless we are insured we remain uncertain about our capability to meet the future risks. But once we are insured it converts our uncertainty into certainty of bearing future risks.

2) Secondary Functions:

(i) Prevention of losses: In simple words we can say precautions are better than the treatment. It is better instead of seeking the help of insurance if one adopts such measure which prevent

the losses. Every Insurance prescribes to take preventive measures against losses. Such as installation of safety devices like automatic sparkler or alarm system, CCTV system etc.

If such type of preventive measure exist there shall be lower rate of premium for getting insurance cover against risks. Prevention of losses is to adopt preventive measures against unexpected losses. For example while driving a two wheeler we use helmets only because we take preventive measures to avoid any accidental loss. It is not certain that an accident is going to happen even than a preventive measure is adopted.

If an insured take such steps he saves a lot in form of the amount of premium required to be paid. If prevention techniques have been adopted and applied the Insurance company may rate the risk at lower level and shall prescribe a lower rate of premium otherwise a higher rate of premium shall be charged.

(ii) Covering Larger Risks with small capital: Every businessman is always worried about the security of his business. After making large investments in the business it is natural to take care of the business investments. There are two alternatives first one is that the concerned businessman should invest out of his own pocket to create a proper security. The second method is to get his business activities insured.

In such a case the insurance relives a businessman from security investments by paying small amount in the shape of premium against larger risks and uncertainties. This assuages the businessman from security investments for a small amount of premium against larger losses.

(iii) Helps in development of larger Industries: Larger Industries are prone to more risks in their setting up. The large industries have diversified fields of functioning where one field sometimes has no relation with the other field of the same industry. The activities of large industries are diversified that it goes above any planning to cover every type of risk.

It is only insurance that comes not only to help these large industries against possible risk but also help them to grow. It becomes possible only because insurance provides an opportunity to develop to those larger industries which have more risks in their setting ups.

3) Other Functions:

(i) Insurance is a tool used for saving and investments: By purchasing any Insurance Policy it becomes completion by the purchaser to make payment of the insurance policy. This completion is blessing in disguise. Most of the policy buyers particularly individuals do not know the purpose of payment of premium. They know only one thing that paying premium is compulsory for them. The fact is otherwise true.

Once an insurance policy is purchased it assume the compulsory way of savings. Not only savings but such funds collected by insurance companies are further invested to the benefit of insured.

Because it is compulsory it restricts the unnecessary expenses by the insured's on one hand and on the other hand insurance provides them the opportunity to avail Income tax exemption for the amount paid as insurance premium. Some prudent people take up insurance as good investment option also.

Such savings help growth in national economy.

(ii) It is one of sources to earn Foreign Exchange: The business of insurance has crossed the national borders of any country. While traveling by Air one needs aviation insurance. While on board at sea whether humans or cargo it needs marine insurance which is also spread over across the boarders of any country. In simple words the insurance has become an international business and is necessary also.

It being an international business any country is free to earn foreign exchange as much as per the polices of insurance devised in a way to attract more and more foreign business. It is a good source of earning foreign exchange for any country.

(iii) Risk Free Trade: Insurance promotes export insurance, which makes the foreign trade risk free with the help of different types of polices under marine insurance cover.

(iv) Subrogation: In its most common usage refers to circumstances in which an insurance company tries to recoup expenses for a claim it paid out when another party should have been responsible for paying at least a portion of that claim.

Ongoing through the functions of insurance there appear that the business of insurance has inherited certain character sticks as well.

NATURE OF INSURANCE

1. By nature, insurance is a devise of sharing risk by large number of people among the few who are exposed to risk by one or the other reason.
2. If a large number of subscribers to insurance serve the purpose of compensation to few among them exposed to uncertain risks appears as a co-operative look.
3. Valuation of risk is determined as per predefined terms and conditions of the insurance policies.
4. Insurance provides facility of financial help in case of contingency.
5. However, it depends on the value of insurance for which payment is made in case of contingency. This provides basis of the amount to be paid.
6. Insurance is a policy regulated under laws and therefore the amount of insurance can neither be paid as gambling nor as charity.

IMPORTANCE OF INSURANCE

1.) Provides Safety and Security to Individuals and Businesses: Insurance provides financial support and reduces uncertainties that individuals and businesses face at every step of their lifecycles. It provides an ideal risk mitigation mechanism against events that can potentially cause financial distress to individuals and businesses. For instance, with medical inflation growing at approximately15% per annum, even simple medical procedures cost enough to disturb a family's well-calculated budget, but a Health Insurance would ensure financial security for the family. In case of business insurance, financial compensation is provided against financial loss due to fire, theft, mishaps related to marine activities, other accidents etc.

2.) Generates Long-term Financial Resources: The Insurance sector generates funds by way of premiums from millions of policyholders. Due to the long-term nature of these funds, these are invested in building long-term infrastructure assets (such as roads, ports, power plants, dams, etc.) that are significant to nation-building. Employment opportunities are increased by big investments leading to capital formation in the economy.

3.) Promotes Economic Growth: The Insurance sector makes a significant impact on the overall economy by mobilizing domestic savings. Insurance turn accumulated capital into productive investments. Insurance also enables mitigation of losses, financial stability and promotes trade and commerce activities those results into sustainable economic growth and development. Thus, insurance plays a crucial role in the sustainable growth of an economy.

4.) Provides Support to Families during Medical Emergencies: Well-being of family is important for all and health of family members is the biggest concern for most. From elderly parents to new-born children, medication and hospitalization play important role while ensuring well-being of families. Rising medical treatment costs and soaring medicine prices are enough to drain your savings if not well prepared. Anyone can fall victim to critical illnesses (such as heart attack, stroke, cancer etc.) unexpectedly. And rising medical expense is of great concern. Medical Insurance is a policy that protects individuals financially against different type of health risks. With a Health Insurance policy, an insured gets financial support in case of medical emergency.

5.) Spreads Risk: Insurance facilitates moving of risk of loss from the insured to the insurer. The basic principle of insurance is to spread risk among a large number of people. A large population gets insurance policies and pay premium to the insurer. Whenever a loss occurs, it is compensated out of corpus of funds collected from the millions of policyholders.

DIFFERENT KINDS OR TYPES OF INSURANCE

(1) ADVANCE INSURANCE: A contract with an insurance company by which the insured in consideration of a gross sum paid him by the company agrees to pay the company certain special periodical payments for a term of years or for life only, if life should terminate within that period, the making of such payment being secured by a bond and deed of trust or mortgages on real property and there being no provision for repayment of the principal sum in any event, is not a loan but a contract if insurance, and such it is governed by the same rules of construction as are applied in the case of ordinary contracts of Insurance.

(2) ASSESSMENT INSURANCE: Assessment insurance is an insurance contract, the benefit of which is dependent on the collection of an assessment from persons holding similar contracts.

(3) CASUALTY INSURANCE: Casualty insurance is one against loss arising from accidental injury to property.

(4) CREDIT INSURANCE: Credit insurance is one against loss due to failure of purchasers of good to meet their obligations.

(5) DOUBLE INSURANCE: Double Insurance is where the same man is to receive two sums instead of one, or the same sum twice over, for the same loss, by reason of his having made two insurance upon the same property.

(6) EMPLOYERS LIABILITY INSURANCE: Employers liability insurance is one against loss arising from injury to employees while in the employment of the insurer.

(7) ENDOWMENT INSURANCE: Endowment Insurance, which is a form of life insurance, is a contract to pay a certain sum to the insured if he lives a certain length of time or if he dies

before that time, to some other person indicated. To constitute a contract one of endowment insurance the payment must be contingent upon the duration of human life.

(8) FIDELITY INSURANCE: Fidelity insurance is one against loss arising from the default or dishonesty of employees.

(9) FIRE INSURANCE: Fire insurance is insuring for a given period against loss to injury to specified property by fire.

(10) LIFE INSURANCE: The contract if life insurance is a mutual agreement by which one party undertakes to pay a given sum upon the happening of a particular event contingent upon the duration of human life in consideration of the payment of a smaller sum immediately, or in periodical repayments. To render a contract one of life insurance the payment must be contingent upon the duration of human life.

(11) MARINE INSURANCE: Marine insurance is one against loss by injury to ship, cargo, fright, by perils of the sea.

(12) TITLE INSURANCE: Title insurance is one against loss by reason of defective title or interest in land or real property.

(13) PROPERTY INSURANCE: Property insurance provides protection against risks to property, such as fire, theft or weather damage. This includes specialised forms of insurance such as fire insurance, flood insurance, earthquake insurance, home insurance, or boiler insurance.

(14) AUTOMOBILE INSURANCE: Auto insurance of car insurance or motor insurance is probably the most common form of insurance and may cover both legal liabilities claims against the driver and loss of or damage to the vehicle itself.

(15) HEALTH INSURANCE: Health insurance covers medical bills incurred because of sickness or accidents.

(16) FINANCIAL LOSS INSURANCE: Financial loss Insurance projects individuals and companies against various financial risks. For example, a business might purchase cover to protect it from loss of sales if a fire in a factory prevented it from carrying out its business for a time. Insurance might also cover failure of credit to pay money it owes to the insured. Surety bonds are included in this category.

(17) POLITICAL RISK INSURANCE: Political risk insurance can be taken out by business with operations in countries in which there is a risk that revolution or other political conditions will result in a loss.

(18) TERRORISM INSURANCE: Where there is danger due to terrorist activities, danger may be there for both property and life.

(19) ANNUITIES: Annuities provide a steam of payments and are generally classified as Insurance because they are issued by insurance companies and regulated as Insurance.

CLASSIFICATION OF INSURANCE

Insurance is classified (1) on the basis of business point of view;

(2) risk point of view; and

(3) as per nature of event

1.) CLASSIFICATION OF INSURANCE FROM THE BUSINESS POINT OF VIEW

The insurance can be classified into three categories from business point of view.

(1) Life insurance

(2) General insurance, and

(3) Social insurance

(1) Life insurance: The subject matter of life insurance is life of human being. The insurer will pay the fixed amount of insurance at the time of death or at the expiry of certain period. Each and every person requires the insurance to provide protection to the family at the premature death or gives adequate amount at the old age when earning capacities are reduced. Under personal insurance a payment is made at the accident.

(2) General insurance: The general insurance includes property insurance, liability insurance and other forms of insurance. Fire and marine insurances are strictly called property insurance. Motor , theft , fidelity and Machine insurances included the extent of liability insurance to a certain extent. The strictest form of liability insurance is fidelity insurance, whereby the insurer compensates the loss to the insured when he is under the liability of payment to the third party.

(3) Social insurance: The social insurance is to provide protection to the weaker section of the society who are unable to pay the premium for adequate insurance. Pension plans , disability benefits, unemployment benefits, sickness insurance and industrial insurance are the various forms of social security provided by the Government.

2.) CLASSIFICATION OF INSURANCE FROM RISK POINT OF VIEW

Insurance contracts may be broadly classified or categorised as per risk of view under the following heads:

As per nature of interest affected:

(1) Personal insurance: When a person takes a life insurance, either on his own life or on the another's life about his health or personal accident, the nature of the interest affected is the life, health and body and so these are said to be personal insurance contracts.

(2) Property insurance: When the interest affected by the happening of the event insured against is the proprietary interest of the insured the contracts are called property insurance contracts, for example marine insurance, fire insurance etc.

(3) Liability insurance: When the event insured against happens, the insured would be exposed to some Liability to third parties and this is called ' Liability insurance contract ' . The liability insurance covers the risks of third party, compensation to employees, Liability of the automobile owners and reinsurances.

(4) Fidelity insurance (Guarantee insurance): The fidelity insurance (guarantee insurance) covers the loss arising due to dishonesty, disappearance, and disloyalty of the employers or second. The party must be a party of the contract. His failure causes loss to the first party. For example, in export insurance, the insurer will compensate the loss at the failure of the importers to pay the amount of debt.

3.) CLASSIFICATION OF INSURANCE AS PER NATURE OF EVENT AFFECTED

(1) Life insurance

(2) Fire insurance

(3) Marine insurance

(4) Miscellaneous insurance (social insurance or liability insurance etc)

TRANSFER AND ASSIGNMENT OF INSURANCE POLICY

What is Assignment in an Insurance Policy?

Assignment means a complete transfer of the ownership of the policy to some other person. Usually assignment is done for the purpose of raising a loan from a bank or a financial institution

Assignment is governed by Section 38 of the Insurance Act 1938 in India. Assignment can also be done in favour of a close relative when the policyholder wishes to give a gift to that relative. Such an assignment is done for "natural love and affection". An example, a policyholder may assign his policy to his sister who is handicapped.

Who can make an assignment?

A policyholder who has policy on his own life can assign the policy to another person. However, a person to whom a policy has been assigned can reassign the policy to the policyholder or assign it to any other person. A nominee cannot make an assignment of the policy. Similarly, an assignee cannot make a nomination on the policy which is assigned to him.

What happens to the ownership of the policy upon Assignment?

When a policyholder assigns a policy, he loses all control on the policy. It is no longer his property. It is now the assignee's property whether the policyholder is alive or dead, the assignee alone will get the policy money from the insurance company.

If the assignee dies, then his (assignee's) legal heirs will be entitled to the policy money.

Can assignment be changed or cancelled?

An assignment cannot be changed or cancelled. The assignee can of course, reassign the policy to the policyholder who assigned it to him. He can also assign the policy to any other person because it is now his property. We can think of a bank reassigning the policy to the policyholder when their loan is repaid.

What happens if the assignment dies?

If the assignee dies, the assignment does not get cancelled. The legal heirs of the assignee become entitled to the policy money. Assignment is a legal transfer of all the interests the policyholder has in the policy to the assignee.

What is the procedure to make an assignment?

Assignment can be made only after issue of the policy bond. The policyholder can either write out the wording on the policy bond (endorsement) or write it on a separate paper and get it

stamped. (Stamp value is the same, as the stamp required for the policy — Twenty paise per one thousand sums assured). When assignment is made by an endorsement on the policy bond, there is no need for stamp because the policy is already stamped.

Is it necessary to Inform the insurer about assignment?

Yes, it is necessary to give information about assignment to the insurance company. The insurer will register the assignment in its records and from then on recognize the assignee as the owner of the policy. If someone has made more than one assignment, then the date of the notice will decide which assignment has priority. In the case of reassignment also, notice is necessary.

Can a policy be assigned to a minor person?

Assignment can be made in favour of a minor person. But it would be advisable to appoint a guardian to receive the policy money if it becomes due during the minority of the assignee.

Who pays premium when a policy is assigned?

When a policy is assigned normally, the assignee should pay the premium, because the policy is now his property. In practice, however, premium is paid by the assignor (policyholder) himself. When a bank gives a loan and takes the assignment of a policy a security, it will ask the assignor himself to pay the premium and keep it in force. In the case of an assignment as a gift, the assignor would like to pay the premium because he has gifted the policy.

TYPES OF ASSIGNMENT

Assignment may take two forms:

1. Conditional Assignment.
2. Absolute Assignment.

1. Conditional Assignment

It would be useful where the policyholder desires the benefit of the policy to go to a near relative in the event of his earlier death. It is usually effected for consideration of natural love and affection. It generally provides for the right to revert the policyholder in the event of the assignee predeceasing the policyholder or the policyholder surviving to the date of maturity.

Example: Mr. Mallya owns a term insurance policy of Rs 50 Lakh. He wants to apply for a home loan of Rs 50 Lakh. His banker has asked him to assign the term policy in their name to get the loan. Mallya can conditionally assign the policy to the home loan provider to acquire a home loan. If Mallya meets an untimely death (during the loan tenure), the banker can receive the death benefit under this policy and get their money back from the insurance company.

If Mallya repays the entire home loan amount, he can get back his term insurance policy. The policy would be reassigned to Mallya on the repayment of the loan.

In case if the death benefit received by the banker is more than the outstanding loan amount, the insurer will pay the bank the outstanding dues and pay the balance to the nominee directly. The balance amount (if any) will be paid to Mallya's beneficiaries (legal heirs / nominee).

2. Absolute Assignment

This assignment is generally made for valuable consideration. It has the effect of passing the title in the policy absolutely to the assignee and the policyholder in no way retains any interest in the policy. The absolute assignee can deal with the policy in any manner he likes and may assign or transfer his interest to another person.

Example: Mr. PK Khan owns a life insurance policy of Rs 1 Crore. He would like to gift this policy to his wife. He wants to make 'absolute assignment' of this policy in his wife's name, so that the death benefit (or) maturity proceeds can be directly paid to her. Once the absolute assignment is made, Mrs. Khan will be the owner of the policy and she may again transfer this policy to someone else.

How to assign a life insurance policy?

The Assignment must be in writing and a notice to that effect must be given to the insurer. Assignment of a life insurance policy may be made by making an endorsement to that effect in the policy document (or) by executing a separate 'Assignment Deed'. In case of assignment deed, stamp duty has to be paid. An Assignment should be signed by the assignor and attested by at least one witness.

Nomination Vs Assignment

Nomination is a right given to the policyholder to appoint a person(s) to receive the death benefit (death claim). The person in whose favour the nomination is effected is termed as 'nominee'. The nominee comes into picture only after the death of the life assured (policy holder). The nominee will not have the absolute right over the money (claim proceeds). The other legal heirs of the policy holder can also recover money from the nominee.

(However, as per Insurance Laws (Amendment) Act, 2015 – If an immediate family member such as spouse / parent / child is made as the nominee, then the death benefit will be paid to that person and other legal heirs will not have a claim on the money)

Under nomination, the rights of the policyholder are not transferred. But, assignment is transfer of rights, interest and title of the policy to some other person (or) entity. To make assignment, consent of the insurer is also required.

Assignment and transfer of insurance policy under the Insurance Act ,1938

38. Assignment and transfer of insurance policies. —

(1) A transfer or assignment of a policy of life insurance, whether with or without consideration may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor, his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, and right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place in India mentioned in the policy for the purpose or at his principal place of business in India.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgement relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of receipt of the notice referred to in sub-section (2), recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section.

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

CONSTRUCTION OF POLICY

1. An insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled.
2. Language in an insurance policy is construed according to its plain and ordinary meaning.
3. If the terms of the policy are not clear, but instead ambiguous, the ambiguous terms are construed against the insurance company and in favour of the insured so as to give effect to the insured's reasonable expectations. However, the courts cannot write for the insured a better policy than the insured purchased.
4. Exclusions are presumptively valid and are enforced if the exclusion is specific, clear, prominent, and not contrary to public policy.

5. If the words of an exclusionary clause are clear and unambiguous a court should not engage in a strained construction to support the imposition of liability.
6. Exclusions are to be narrowly construed and it is the insurance company's burden to prove that the exclusion applies. If there is more than one possible interpretation of the language, courts apply the meaning that supports coverage rather than a meaning that limits coverage.
7. If the language of an exclusion requires a causal link, courts must consider its nature and extent of the causal link to determine the meaning and application of the exclusion.
8. If the exclusion's terms make plain that coverage is unrelated to any causal link, it will be applied as written.
9. The duty to defend and indemnify are not coextensive and must be analyzed separately.
10. Coverage questions are not always clear, and an insurance company can have a duty to defend although after trial, it may not have a duty to indemnify.
11. A duty to defend depends on a comparison between the allegations set forth in the complaint and the language of the insurance policy. In evaluating the complaint, doubts are to be resolved in favour of the insured. Therefore, a potentially covered claim obligates the insurer to provide a defence.

First Party Coverage – Multiple Events

- If there is a covered loss and an uncovered loss in the chain of events, the loss is covered if a covered cause starts or ends the sequence of events leading to the loss.
- If the claimed causes, one covered and one not, combine to produce an indivisible loss, the loss will not be covered unless the insured can prove the allocation between the covered and uncovered cause.

Concurrent Causes

- If the policy is silent on concurrent causation, the insurance company has a duty to defend but not necessarily to indemnify.
- If the claim could be based on the covered cause which is independent of an excluded cause, the insurance company has a duty to defend.

LIFE INSURANCE

Section 2 (11) of the Insurance Act, 1938 provides that life insurance contract comprises any contract in which one party agrees to pay a given sum upon happening of a particular event contingent upon the duration of human life.

'Life insurance' is a contract of insurance whereby the insured agrees to pay certain sums, called premiums, at specified times, and in consideration, thereof the insurer agrees to pay certain sums of money on certain conditions and specified way, upon happening of a particular event contingent upon the duration of human life.

Life insurance imports a mutual agreement whereby the insurer, in consideration of the payment by the assured of a named sum annually or at certain times, stipulates to pay a large sum at the death of the assured. The insurer takes into consideration, among other things the age and health of the parents and relatives of the applicant for insurance together with the applicant's own age, course of life, habits, and present physical condition: and the premium exacted from the insured is determined by the probable duration of his life, calculated upon the basis of past experience in the business of insurance.

Life insurance (or life assurance, especially in the Commonwealth of Nations) is a contract between an insurance policy holder and an insurer or assurer, where the insurer promises to pay a designated beneficiary a sum of money (the benefit) in exchange for a premium, upon the death of an insured person (often the policy holder). Depending on the contract, other events such as terminal illness or critical illness can also trigger payment. The policy holder typically pays a premium, either regularly or as one lump sum. Other expenses, such as funeral expenses, can also be included in the benefits.

Life insurance is a legally binding agreement:

- between the life insurance company and the policy owner,
- assuring that the beneficiary will get a pre-determined fixed sum of money on the occurrence of certain event (such as death of the insured or permanent disability of the insured),
- in accordance to the terms mentioned therein.

There are many types of insurance policies that one can purchase depending on the amount of premium the insured can be able to pay. Life insurance policy can be:

- term life insurance: such policies are comparatively cheap, and the beneficiary is insured to get a fixed amount if the insured dies during the policy term.)
- mortgage life insurance: the insurance company would pay the outstanding amount of the mortgage loan in case the insured dies before repaying the entire mortgage amount.
- whole life insurance: such policies remain in force during the insured's entire lifetime, and on the death of the insured, the beneficiary would get the assured value.
- group life insurance: covers a group of people such as employees working in an organization, or members of an association.

The sum insured can be paid in full or part depending on the type of policy and the insurer.

There are many advantages and disadvantages of life insurance as discussed below.

Advantages of Life Insurance

1. **Economic protection against the loss of life**. The emotional loss caused to the family of the insured cannot be measured in terms of money. However, the financial responsibility of the insured towards his family members are to an extent shared by the Life insurers. On the death of the insured, the family will have some money to continue having a comfortable life. The life insurance policy provides an option to choose the nominee.

2. **A form of investment or saving.** Many people buy life insurance as part of their investments. Most insurance policies guarantees a fixed sum of money payable either on the death of the insured or at the expire of the pre-determined tenure. Hence, many people keep aside a part of their savings for the payment of Life insurance premium in the form of investment.

3. **Life insurance is simple to understand in terms of premium and the maturity of the compensation**. The investment amount, policy term, and the maturity amount are clearly mentioned on the policy document.

4. **Some Life insurance policies are flexible.** The give the insured an option to change the policy amount with the change in his needs. When the insurance needs of the insured changes, they can talk to the insurer so that they can adjust their insurance plan. However, it should be kept in mind that not all insurance policies are flexible enough to satisfy the ever-changing need of the policy holder. Hence, the policy buyer should read all the term and conditions of the policy at the time of first purchase.

5. **Loan against Life Insurance Policies (LAIP) is a newest form of financial revolution.** Many financial institutions offer loan against the surrender value of the insurance policy. This a safe and quick way to generate cash.

6. **The insured pays the premium depending on the sum insured.** Depending on the age of the insured, they can select the amount they want to pay per month that won't be a burden to them.

7. **Enable the insured to be able to select their beneficiary**. When buying a policy, one has to choose who the beneficiary of the insurance policy will be. In this way, they make sure that the material needs of their loves ones would always be met.

8. **Reduces the financial implication of death**. Life insurance reduces the financial burden that comes with the death of the breadwinner.
9. **There is a range of policies to choose from**. Life insurance has a range of policies to choose from. In some policies, one is compensated when a certain period of time elapses.

10. **Tax saving weapon. In most countries, the final amount that you get from the insurer is not taxable**. In India, the amount of Life insurance policy premiums are allowed as deduction under section 80C of the Income Tax Act, 1961. The maturity proceeds are also exempted from Income Tax. Hence, investment in a life insurance policy is an amazing tax saving weapon.

Disadvantages of Life Insurance

1. **Insurance policies are expensive**. Life insurance means that you have to contribute your premium until you die or a fixed tenure that is very long. This will be expensive for the insured. The part of the life insurance premium paid towards risk coverage is an expense. However, the quantum of financial risk mitigated by these policies are much more than these expenses. Hence, people treat life insurance premiums as mandatory expense.

2. **Some insurance companies may refuse to pay the sum insured. Some insurers will use dirty tricks to evade the pay the sum insured even after maturity of the policy**. For this reason, it is important that you read all the clauses of the life policy at the time of entering into the contract. Further, you can consult your financial advisor before buying a policy.

3. **People buying the insurance they don't need. Some people may buy the insurance policy when they don't need one**. Paying for a policy that do not meet the need of the paying person is a waste of money.

4. **Some people give falsified information**. Some people give false information to the insurance company e.g., age leading to the insurer making losses.

5. **The beneficiary may decide to waste the amount they receive.** The beneficiary may not use the funds as it was intended leading to wastage of the sum insured.

6. **Many life insurance policies keep on changing.** In such policies, the premium amount is low during the initial years. However, the premium amount do not remain constant. They keep changing with time. You may be required to pay more premium as you grow older than when you were young.

7. **Having it doesn't necessarily mean better quality of life**. Life insurance may mean poor quality of life to be able to pay the premium. The deduction may be too many.

8. **There are so many complex insurance policies.** The insurance policies are complex that one may not be able to understand. There are 'good' and there are 'not so good' insurance companies. Similarly, there are some 'not so simple' insurance policies that is beyond the understanding capability of a common man. Hence, it can be a very daunting task to choose the right life policy.

9. **The investment is not highly paying**. Life insurance is primarily an instrument to cover risk. The investment function is of secondary nature. Unlike other types of investment that have high returns, life insurance does not give high returns. Hence, people seeking high return on their investment may not find it attractive for investment.

INSURABLE INTEREST

An insurable interest is a stake in the value of an entity or event for which a person or entity purchases an insurance policy to mitigate the risk of loss. Insurable interest is a basic requirement for issuing an insurance policy that makes the entity or event legal, valid and protected against intentionally harmful acts. Entities or events not subject to financial loss do not have an insurable interest and cannot be purchase an insurance policy to cover them in the event of loss.

Concept of Insurable Interest:

The existence of insurable interest is an essential ingredient of any insurance contract. It is a legal right to insure arising out of a financial relationship recognized under law, between the insured and the subject matter of insurance.

The interest should not be a mere sentimental right or interest, for example love and affection alone cannot constitute insurable interest. It should be a right in property or a right arising out of a contract in relation to the property. The interest must be pecuniary i.e. capable of estimation in terms of money. In other words, the peril must be such that its happening may bring upon the insured an actual or deemed pecuniary loss. Mere disadvantage or inconvenience or mental distress cannot be regarded as an insurable interest but this rule not strictly followed in life insurance cases. The interest must be lawful, that is, it should not be illegal, unlawful, and immoral or opposed to public policy and does not harm any others legal justified claim.

Insurable interest means an interest which can be or is protected by a contract of insurance. In the case of ***Brahma Dutt v. LIC***, Mukhtar Singh a petty school teacher on salary of Rs 20 took a policy for Rs 35,000 on his life making false statements in the proposal and nominated a stranger Brahma Dutt for the policy. The nominee paid the first two quarterly premiums by which time the life insured died. The nominee intimated the insured's death and claimed the sum assured. It was found on evidence that Brahma Dutt had taken the policy without any insurable interest in the life of the deceased for his own benefit and that therefore it was void being a wagering agreement.

Insurable Interest in Life Insurance:

The general rule is that every person has an insurable interest in his own life. Accordingly, a person may purchase a life insurance policy on his own life, making the proceeds payable to anyone he wishes. Life insurance contract is not a contract of indemnity and a person affecting a policy must have an insurable interest in the life to be assured. But when a person seeks insurance on his own life, the question of insurable interest is immaterial. Every person is presumed to have insurable interest in his own life without any limitation. Every person is entitled to recover the sum insured whether it is for full life or for any time short of it. If he dies, his nominee or dependents are entitled to receive the amounts.

In case of **Liberty National Life Insurance v. Weldon**, the aunt of the of a two-year-old child who was a nurse by profession, managed 3 life insurance policies by different 3 companies on the life of the child. One day she mixed some poisonous thing into the milk and by that milk child was died. And the lady claimed a huge amount from three companies. The father filed a case against all the insurance companies that without knowing the fact that whether she had any insurable interest in the life of child they issued the life insurance policies. In this case Court held that the aunt has no insurable interest in the life of child therefore the companies were not liable but the companies are liable to pay compensation to father of the child.

In the life insurance policy persons having relationship by marriage, blood or adoption have been recognized as having insurable interest.

Few examples of relationship which has insurable interest in the life of other: –

1. **Husband and Wife:** Husband and wife have an insurable interest of life of each other. In case of **Griffith v. Flemming**, Griffith and his wife each signed a proposal from for a joint life policy on their life and both contributed towards the premium. After the policy was taken, the wife committed suicide and the husband claimed the sum assured. The insurer alleged that at the time of taking the policy the husband had no insurable interest in his wife's life as required by the Life Assurance Act, 1774. In this case Vaughan Williams L.J. held that 'the husband has an interest in his wife's life which ought to be presumed'.

2. **Child and Parents:** In England only, children have an insurable interest on the life of parents, but parents do not have any insurable interest in life of the child. But in India Child and parents both have the insurable interest in life of each other. In case of **Halford v. Kymer**, it was held that a father has no insurable interest in the life of his son unless he is getting some pecuniary benefit from him.

3. **Debtor and Creditor:** Creditor has the insurable interest on life of the debtor to that extent on which amount he has the position to recover from debtor. It was held in case of **Godsall**

v. Boldero, that if a creditor affects a policy of insurance upon the life of his debtor for greater amount than due, then he will not be able to recover any greater sum than the amount or value of his interest. In **Beauford v. Saunders**, it was held that if the debt has been guaranteed by a surety, the creditor will have interest in the life of the surety as well.

4. **Bailor and Bailee:** A bailor has an insurable interest in the property bailed to the extent of possible loss. The bailor has a potential loss from two sources. Compensation as provided for in the contract of bailment might be lost. Second, the bailee may be held legally liable to the owner if the bailee's negligence cause the loss.

5. **Mortgagee and Mortgagor:** The mortgagee has an insurable interest in the life of mortgagor to the extent of the property mortgaged.

6. **Employer and Employee:** An employee has an insurable interest in his employer's life to the extent of his salary as held in case of **Hebdon v. West**

Insurable Interest in Non-Life Insurance:

For all the insurance policy other than life insurance, the person taking the insurance policy must have an insurable interest in the property insured. Insurable interest is not confined to legal ownership only but there are certain other conditions when a person other than a legal owner has the insurable interest in the property. Which are described as under different policies of insurances: –

Marine Insurance: Insurable interest is a special requirement of the marine insurance contract and any valid contract of marine insurance can be entered into by person only if he has insurable interest in the marine adventure. And what is important for insurable interest is that (1) there should be a physical object which is exposed to the marine perils and (2) the assured must have some legally recognized relationship with that object in consequences of which he benefits by its preservation and is prejudiced by its loss or damage.

In ***Wilson v. Jones***, it was held that a contingent buyer of goods, who has not obtained property, risk or possession, has no insurable interest in the goods themselves even though he expects at a future date to acquire it.

Fire Insurance: A contract of fire insurance, like all other contracts of insurance, requires an insurable interest in the subject-matter of the insurance to support it; in the absence of an insurable interest, the assured can suffer no loss, and the contract becomes a mere wager. In fire insurance, a person is said to have interest in a property if he is liable to suffer a direct loss upon its destruction. But a person who is so connected with a property that he might suffer loss upon its destruction may not be said to be interested in it.

As the House of Lords in case of **Macaura v. Northern Assurance Co**. ruled that neither a shareholder nor a simple creditor of a company has any insurable interest in any particular asset of the company although both the shareholder and creditor may suffer loss upon destruction of their company's property.

Few examples of peoples those can have insurable interest in any insured property by fire.

- Owner of the property, joint owner, sole owner, or a firm owning the property.
- Lessor and lessee both have insurable interest on any property.

- The vendor and the purchaser both has the insurable interest.
- The mortgagor and mortgagee.
- Trustees are legal owners and beneficiaries or the beneficial owner of the trust property and each can insure it.
- Bailees such as carriers, pawnbrokers or warehouse men are responsible for the safety of the property entrusted in them and so can insure it.

Other Property Insurance: In other types of insurance policies such as burglary insurance, flood insurance, vehicle insurance, agricultural insurance etc. the person making the insurance policies must have the insurable interest in the property being insured at the time of the taking policies.

FACTORS AFFECTING RISK IN LIFE INSURANCE

In life insurance, the factors which may affect the risk are usually those factors which are affecting the mortality; they are also called factors affecting longevity of a person. The mortality is not the only risk but the capacity and willingness of a person also influence the insurance decision. Before effecting the contract/issuing the policy, the insurer makes enquiries regarding the following facts:

1. Age: The age is an important material fact in Life Insurance as the rate of the premium depends on the age of insured. The age of an assured is generally proved at the time the time of issuing the policy. When once the age is admitted, no further proof is necessary. If there is any fraud or misinterpretation regarding age, the insurer may avoid the policy (but generally, the company may increase the rate of premium. Except for a few years of the childhood, the premium is determined at every year of the completion of age. The corporation asks for the age nearer to birthdays. The person below six months and the person above six months older of the age will be treated of the same age. For instance, a person of 22 years 7 months and another person of 23 years 5 month will be treated the age of 23 years.

The age proof is very essential for calculating premium rate. So, unless age is proved payment of claim is not made if the age was not admitted at the time of proposal. Now it has been the common practice that the age should be admitted at the time of proposal to avoid dispute.

On the basis of age, in future, if a misstatement is discovered after the policy has become a claim; the amount of the claim is adjusted in accordance with the rectification of age.

Age proof is essential at the proposal if the policy is term insurance, non-medical policies and immediate annuity or the insurance is taken at advance age or for a child because they are maximum and minimum limits of age.

Minimum and Maximum limit of age: The maximum age limit is fixed to avoid adverse selection. At advance age, the need for insurance is a doubtful proposition, i.e., the chances of moral hazard are higher. The third reason for fixing maximum limit is the medical examination will disapprove most of the proposal at that stage. Mortality is certainly increased at that age. The minimum age limit is meant to avoid risk of infant mortality.

2. Build: Build refers to physique of the proposed life and includes height, weight, the distribution of weight and chest expansion. There are standards of weight according to

maximum weight reveal the indication of certain hidden diseases. Therefore, this sign is not favourable. The relationship between height, weight, girth and expansion of chest are the basic determinants of mortality expectations.

Overweight is dangerous in advanced age and underweight is similarly not desirable at younger age, say, below 35 years. The corporation, for example, has fixed the minimum weight, and maximum weight at a specified height. If the assured life is not within the standard the proposal may not be accepted at the time of proposal and it may be postponed or may be accepted at extra-premium or may be rejected at all.

3. Physical Condition: The physical condition of the age life proposed has a direct bearing on the mortality of the life. Insurers are, therefore, very particular about the conditions of an applicants' sight, hearing, heart, arteries, lungs, tonsils, teeth, kidneys, nervous system, etc. The experts in the field can assess the longevity or mortality of a person due to impairment of certain organs.

The questions are also designed to elicit information on the physical status of the applicant in the proposal form. The information is confirmed and supplemented by a medical examination. The primary purpose of the medical examination is to detect any malfunctioning of the vital organs of the body.

4. Personal History: The personal history of the life proposed would reveal the possibility of death to him. The history may be connected with the (i) health record, (ii) past habit, (iii) previous occupation, (iv) insurance history. The habits of life, past and present , which tends to shorten the life must be disclosed. Eg.use of opium ,tobacco or alchohol.

(i) Health Record: The past health record is the most important factor under personal history because it affects the longevity or mortality of a person to a greater extent. It includes any operations of the life proposed. The medical examination may reveal these facts.

This information is also given by the applicant. Particular emphasis is placed on the recent injuries and illness. It is customary to consult attending physicians.

It has been the practice not to accept the proposal form of the applicants who are suffering from illness. If the applicant has suffered from certain serious disease or operation during the past 5 years, he may be under the possibility of getting it again.

(ii) Past Habits: The insurers want to know the past habit the life proposed, for drugs or alcohol because the cure may be only temporary. The past history is usually expected to be repeated. Therefore, past history is very cautiously examined.
(iii) History of Occupation:

If the proponent was employed in hazardous or unhealthy occupation, there is a possibility that he may still retain ill-effects there from or may revert to such occupation.

An intimate association within a person suffering from a contagious disease may influence the health of the life proposed. The past hazardous occupations generally affects, health slowly occupational diseases are contacted. Inorganic dust may create silicosis.

(iv) Insurance History: The previous amount of insurance may disclose the degree of risk of the applicant. If he was refused insurance, it might be a suspicious factor of his insurability. If it was found that the applicant was already insured for adequate amount this request for more insurance is regarded with suspicions.

5. Family History: Like the personal history, family history also requires information of habit, health, occupation and insurance of other family members, particularly of the parents and siblings. The children's history of health is also required.

In certain diseases, like tuberculosis and insanity, etc. longevity of the parents will be relevant factors for determining the degree of risk of the proponents. The favourable family history, however, is not considered for offsetting the adverse effect of the personal history.

The family history is considered significant to know the transmission of certain, characteristics by heredity. Hearts, lungs, build, etc., follow family. The assured must give correct answer regarding family history.

In ***Asia Assurance Co. v Kartiya Devi (1936) Cal. 437***- the total number of brothers and sisters was to be filled in the 1st column and the number alive was to be filled in the 2nd column. The assured filled the 1st column leaving the 2nd column blank. It was held that the answer amounts to suppression of truth and hence amounted to misinterpretation and the policy was void.

6. Occupation: Occupation is an important factor to affect the risk. The rate of insurance premium is subject to the occupation of the insured.

Firstly, the nature of work may be hazardous because he may suffer an accident at any time while at work.

Secondly, the morale of the workers may go down. They may be tempted to indulge in intoxicating or liquor or other forms of immoral living.

Thirdly, the chemical effect may be poisonous. For instance, the workers may contact poison while engaged in match or chemical factories.

Fourthly, the dusty or unventilated house, unhealthy or insanitary environments may deteriorate the health of the workers.

Fifthly, in certain occupation, the occupational diseases are common.

Sixthly, excessive mental and nervous strain may cause financial worries, and lastly, the lesser income may affect the health of the worker.

If it is a dangerous occupation like a soldier, sailor, airman or a workman, the insurer charges higher rates of premium.

7. Residence / geographical position: The residence also affects the risk. The place where the applicant lives is an important factor since the climate and the enviornment have an impact on one’s health. The risk will be lesser in a good climate area and more in a bad climate although the difference is narrowed down because of better medical and sanitary facilities. Information about the previous residence is equally important.

The geographical location, atmosphere, political stability, climate, construction of house, travel, etc., are important factor which may affect the risk. The particular place maybe subjected to earthquakes, flood, etc. Therefore, the applicant must furnish his correct residential address.

In ***Huguenin v Rayley*** **–** the assured gave his residential address but actually he was not there at that time. Held that the insurance company was not liable.

8. Present Habits: The general mode of living of the proposer affects the risk. Drunkards and non-temperate persons cause increase in mortality. Similarly, temperate habits tend to increase longevity of a person. Excessive and careless smoking tends to shorten the life due to development of nicotine poisoning. The past habits are also considered important. The intoxication affects the health of a person and consequently his mortality. The general mode of living is also considered in habits.

9. Morals: It has been observed that the departure from the commonly accepted standards of ethical and moral conduct involve extra mortality. Infidelity and departure from the code of sex behaviour are seriously regarded because these may affect the health. Unethical conduct is considered to be another form of moral hazard. Insurance is not generally given to bankrupt and reputed dishonest persons.

Consideration, of morals is essential to determine the moral hazard. There are two types of hazards Moral and Physical hazards we have discussed factors affecting physical hazards in the other sections. Moral hazard will be discussed only under this heading.

The moral hazard occurs due to intention of the insured whereas the physical hazard is beyond his approach. The former is present where the policy is taken not with a view to protect one-self against losses but to obtain gain through crooked means.

The moral hazard is judged by the reputation and fairness in dealings. The moral hazard is expected to present where insurance is taken at advanced age, where person is suffering from serious disease, proposal is on other's life and the proponent is engaged in hazardous occupation.

10. Race and Nationality: The mortality rate differs from race to race and nation to nation. In India, persons of high, race or caste are expected to live longer than the scheduled castes or tribes. Similarly, countries near to equator have more mortality. The climate and way of life of a country affect the health conditions of the people.

11. Sex: Mortality among female sex is, generally, higher than that of male sex because the physical hazard of maternity is present in the former case. Moreover, the ladies are physically more handicapped. The lesser education, conservatism and non-employment of the ladies also affect the mortality.

The absences of proper examination of the ladies also count more hazard. The chances of moral hazard are also present in the female insurance. So, unless woman has good financial reasons for insurance, her proposal is not generally conceded.

12. Economic Status: It is essential to examine that the family and business circumstances of the proponents are such as to justify the amount of insurance applied for. This investigation also reveals whether the income of the applicants bears a reasonable relationship to the amount of insurance which he proposes to carry.

The higher economic status generally provides a better field for insurance due to various reasons. Educational, financial and professional consciousness makes the proponent insurance minded. The chance of death is also lower in higher strata of the society.

13. Defence Services: Though there has been much improvement in defence technology, yet flying or gliding, etc., is still considered hazardous one. Sometimes, certain restrictive clauses are imposed for insuring persons engaged in such services.

In some other works, extra premiums are required. In commercial flying, no occupational extra is required. The war clause is added to avoid the occupation risk in defence, say, navy, air force and military.

14. Plan of Insurance: Certain plans involve more responsibility to the insurer at death and so these plans are restricted to only first-class lives, similarly, some plans have lesser risk and. therefore, can be issued without any extra investigations. For example, the multi-purpose policy is issued only to first class lives and the pure endowment policy can be issued to any one irrespective of health.

AMOUNTS RECOVERABLE UNDER LIFE INSURANCE POLICY

Following are the amounts recoverable under life insurance policies:

1. Amount Insured;
2. Bonus;
3. Profits and
4. Surrender Value.

i)Amount Insured: The sum assured is payable on the happening of the event or after completion of the period, whichever is earlier.

ii)Bonus: Bonus is declared with insurance amount. The insurer declares bonus every year and credits to the policies.

iii)Profits: In case of participation policy, the insured is entitled to recover a share in the profits declared.

iv)Surrender Value: The insurer has to pay the value of the amount paid, towards the premium paid, in the event, the policy is surrendered by the insured. The insured is entitled to get the guaranteed surrender value after 3 years of the policy.

LIFE INSURANCE SETTLEMENT OF CLAIMS

The very purpose of a life insurance policy is to secure the breadwinner's life and his family's future. Payment of claim is the ultimate objective of life insurance and the policyholder has waited for it for quite a long time; and in some cases, for the entire life time literally for the payment. It is the final obligation of the insurer in terms of the insurance contract, as the policyholder has already carried out his obligation of paying the premium regularly as per the conditions mentioned in the schedule of the policy document. The policy document also mentions in the schedule the event or events on the happening of which the insurer shall be paying a predetermined amount of money.

Life insurance gives cash benefits to the policyholder during his critical life milestones such as child's higher education and marriage, health care emergencies and retirement or after the event of his unfortunate death. The benefit(s) received from the purchase of a life insurance policy in return of the premiums paid is called a claim.

There are four important types of claims in life insurance policies:

1. Survival claim
2. Maturity claim
3. Death Claim
4. Accidents and Disability Claim

Settlement of claims under life insurance policies depend upon the nature of a claim, eligibility to policy moneys, proof of the happening of the event insured against, proof of title, and so on.

1.Survival Claim

Survival claim is not payable under all types of plans. It is payable in endowment or moneyback plans after a lapse of a fixed period say four to five years, provided firstly the policy is in force and secondly the policyholder is alive. As the insurer sends out premium notices to the policyholder for payment of due premium, so it sends out intimation also to the policyholder if and when a survival benefit falls due. The letter of intimation of survival benefit carries with it a discharge voucher mentioning the amount payable. The policy holder has merely to return the discharge voucher duly signed along with the policy document. The policy document is necessary for endorsement to the effect that the survival benefit that was due has been payed. The survival benefit can take different forms under different types of policies.

2.Maturity Claim

It is a final payment under the policy as per the terms of contract. Any insurer is under obligation to pay the amount on the due date. Therefore, the intimation of the maturity claim and discharge voucher is sent in advance with the instruction to return it immediately.

If the life assured dies after the maturity date, but before receiving the claim, there arises a typical problem as to who is entitled to receive the money. As the policyholder was surviving till the date of maturity, the nominee is not entitled to receive the claim.

The policy under such condition is treated as a death claim where the policy does not have a nomination. The insurer in such a case shall ask for a will or succession certificate, before it can get a valid discharge for payment of this maturity claim. In case the policy has been taken under Married Women's Property Act, the payment of maturity claim has to be made to the appointed trustees, as the policy holder has relinquished his right to all the benefits under the policy. It is for this relinquishment of right that the policy money enjoys a privileged status of being beyond the bounds of creditors. If the maturity claim is demanded within one year, before the maturity, it is called a discounted maturity claim. This amount is much less than the actual maturity claim amount.

3.Death Claim

If the life assured dies during the term of the policy, the death claim arises. If the death has taken place within the first two years of the commencement of the policy, it is called an early death claim and if the death has taken place after two years, it is called a non-early death claim.

Death claim settlement naturally assumes very great importance in the total operations of any life insurance company. Unlike in maturity and survival claims the policyholder is not alive. This itself poses many problems. Broadly the problems in the settlement of death claims can be discussed under two categories.

They are

a) Obtaining satisfactory proof of death, and
b) Obtaining satisfactory proof of title.

These two requirements are independent of each other. It is necessary for an insurance company to decide first whether any liability lies in a death claim. This not only depends on the proof of the happening of the event, i.e. death but also the status of the policy as on the date of death. It is necessary to verify whether the policy in question is force or in a reduced paid-up condition. In these cases, some money becomes payable. However, there may be cases where the policy has lapsed without acquiring any value. It is also necessary for the office to verify whether any claim concessions or administrative concessions are applicable or whether the claim can be considered on ex-gratia basis. Cause of death also assumes importance. If it was suicide, it is also to be considered whether it was within one year from the date of the policy. If it was accident, it is to be verified whether accident benefit becomes payable. Once liability is admitted, the office will have to verify position of title to the policy moneys and arrange payments to the persons legally entitled to receive the same.

The company is not expected to know about the death of a policyholder unless the same is intimated by the claimants. Any action can therefore be initiated only after receipt of such intimation. The letter of intimation should contain certain particulars. They are as follows

a) Policy number and the name of the life assured. These two should match, otherwise the policy number must be wrong.
b) Date of death, on which depends the status of the policy and amount payable.
c) Name and address of the claimant as requirements are too called from them.

Usually, the nominee or assignee or someone near and dear shall send the death intimation to the deceased life assured. If the intimation is received from a stranger, the office should be careful to verify as to why a stranger should be interested in the policy moneys.

Once a proper intimation is received, the insurance office will process the same to know whether anything is due at all under the policy. This usually depends on the status of the policy on the date of death. A calculation of the claim amount will be made and requirements are called for from the claimant. If there is a valid nomination or assignment under the policy, duly registered in the books of the insurance company, requirements will be called for from such nominee or assignee only and not from the claimant.

In considering a death claim, it becomes necessary to verify the duration of the policy, i.e. The time elapsed from the date of commencement of risk under the policy (or date of revival of a lapsed policy) to the date of death. Normally, if the duration is two years or less, such a claim is considered as “Early claim”. If the duration is more than two years, such a claim is considered as a “non-early claim”. This becomes necessary because of application of section 45 of the Insurance Act, 1938, which is otherwise called “Indisputability Clause”. This provision of law is of great significance and it was incorporated in the Insurance Act as a protection to policy holders and their claimants.

To ensure that the insurance companies do not go to unreasonable levels and repudiate liability under a policy invoking the principles of utmost good faith, the Insurance Act provides protection to the policy holders and the claimants under sec 45. To avoid liability under a policy of life insurance two years after the policy was effected (i.e. date of commencement of risk), the life insurance company will have to prove that:

a) There was suppression of facts by the life assured,
b) What was suppressed was a material fact, and
c) Such suppression was done intentionally with a view to defraud the insurance company

The onus proof of all the above lies on the insurance company only. The above also is an indication that when the death of a policyholder is within two years after the policy was effected, the company can avoid the liability after proving suppression of material facts by the life assured at the time of taking the policy. It is not necessary to prove whether such suppression was intentional or unintentional in such cases. The said provision in the Insurance Act refers to the period elapsed from the date on which the policy was effected. However, a typical and different situation arises when a policy lapses due to non-payment of premium and subsequently revived. The question arises whether the duration of the policy should be reckoned in such cases from the date on which the policy was affected or from the date on which it was revived. The legal provision that is sec45 indicates the former but is silent on the latter.

The Life Insurance Corporation of India treats revival of a lapsed policy as a novatio ie. A new contract and so applies the provisions of sec45 of the Life Insurance Act to a case where death of the policyholder takes place within two years from the date of revival of the policy.

In one case, the Supreme Court set aside the repudiation of liability made by the LIC of India on the grounds of suppression of material facts by the life assured at the time of revival of his lapsed policy as not coming under sec45. If the section does not apply to cases of revival of lapsed policies, then there is always a possibility of policy holders taking policy on their lives, immediately lapsing the same and get them revived just when they are on the death bed by supressing facts about their health. If the Life insurance companies have to assume liability and cannot dispute the same, it will be against public policy. The duty of disclosure of material facts by the applicant is not limited only to the statement made by him in the Proposal Form. It continues till the date of acceptance of the proposal by the insurance company.

This condition is also called 'Continued Insurability Condition'. It therefore becomes necessary for the insurance company, when they receive an information of death of a life assured, to verify the duration of the policy i.e. from the date of commencement of risk or date of revival of the policy to the date of death. If the cause of death is such that it can be only a long duration disease, it leads to the suspicion of suppression of material facts about the health of the life assured in cases where the duration as mentioned is two years or less. For this reason, the requirements to be called for in cases of Early Claims are to some extend different from those needed for considering Non-Early Claims. LIC of India calls for the following requirements in cases of death claims:

I. Original Death Certificate issued by the Municipality/ Corporation/ Revenue officials in the form prescribed by the government.

II. Claimant's statement: Here the claimant furnishes the following information

a) About the deceased life assured, his/her age, date of death, cause of death, place of death, if hospitalised during a period of three years earlier to death, details of the same;
b) Details of the claimant- Name, address, how relayed to the life assured, in what capacity claim is being made
c) Details of any other policy/policies of the life assured so that all claims can be considered together.

III. Statements from the hospital / nursing home where the life assured had treatment for terminal illness in which the hospital / nursing home authorities furnish information about the life assured, hi/her address, date of admission, date of discharge/ date of death, time of death, reasons for admission, primary cause of death, secondary causes, duration of illness ,whether treated in the same hospital / nursing home at any time earlier for any ailment , if so details , whether treated by any doctor earlier, if so details.

IV. Statement from the doctor who attended to the deceased life assured last; identification of the life assured, how long the doctor treated him, for what ailments

V. Statement by a gentleman who is not related to the deceased life assured and who is not interested in the policy money, who has attended the burial/ cremation of the deceased life assured

VI. If the deceased life assured was an employee of any organisation, a statement from the employer furnishing details of the life assured, date of joining service, designation, date last attended duty

VII. In case of death due to unnatural causes like accidents and suicide the following records are called for:

1. FIR of the police
2. Panchnama Report/ Police Inquest Report
3. Post Mortem Report

A few cases arise when it may not be possible for the claimants to obtain and submit the Original Death Certificate issued by the concerned authorities. In such cases alternative proofs are also considered. E.g. Death in an air crash – where there are no survivors, the list of passengers as per the records of the airline company can be accepted as an alternate proof of death.

Presumption of death: as per sec108 of the Indian evidence act, 1872, if a person has not been heard of for seven years by those who would naturally have heard of him had he been alive, there is presumption of law that he is dead. Here the death of the life assured is presumed but not the date of death. Hence the date of the order of the court declaring presumption of death is taken as date of death.

On receipt of the requirements, the insurance office decides whether there is any liability or not. In cases where the office could obtain documentary evidence of suppression of material facts by the deceased life assured at the time of taking the policy or at the time of revival of the lapsed policy, the liability is repudiated. Where the liability is admitted, the office proceeds to the next step viz. verifying the title to the policy moneys.

Evidence of title: there are different kinds of evidence of title to policy moneys. The simplest of these are the Nomination and Assignment effect as per sec 39 and 38 respectively of the Insurance Act 1938.

4.) Accident and Disability Claim

Accident Claim

Death should be due to accident, i.e. by external, violent and visible means. Death must be directly due to the accident and there should be no intervening cause. E.g. if a person meets with an accident admitted to the hospital, develops gangrene due to his diabetic condition and then dies, it is not taken as death due to accident because there is an intervening cause viz diabetes.

Death should take place within a specified period of time after the accident. As per the rules of LIC of India, this period is 120 days.

Proof satisfactory to the insurance company should be submitted. the requirements called for are as follows:

1. FIR
2. Panchnama/ Police Inquest Report
3. Post Mortem Report

If it were sent for chemical examination, then the report of the Forensic Lab is also called for, these reports indicates the cause and circumstances of death.

The policy must be in full force at the time of death. The policy holder should have availed of the Accidents Benefits Claim by paying the necessary additional premium. He must not have been aged 70 years and above at the time of death. There are several exclusions in considering granting Accident Benefit. The life assured should not be under the influence of any intoxicating liquor, drug or narcotic at the time of the accident. The accident should not be because of the life assured being engaged in an activity which is Breach of Law. The accident should not have happened when the life assured is involved in war or war like operations, or when the life assured was flying in an aircraft other than as a passenger , or in police or police like operations; he must not have been engaged in hazardous sports, like car or motorcycle racing , mountaineering etc or the life assured making an attempt to commit suicide (whether sane or not at that time).

Subject to all the above conditions being satisfied, the insurance company decides to allow the extra benefit.

The benefit is generally paid along with the normal liability under the policy.

Disability Benefit Claim

There are two types of disability benefits claim. They are:

- Waiver of Premiums
- Payment of an income to the life assured apart from waiver of premiums.

The exclusions mentioned in respect of accident benefit are equally applicable to disability benefit claims also. In addition, disability itself is defined as permanent loss of two limbs due to accident, by amputation or otherwise.

The life assured should not be in a position to peruse the same occupation he was engaged in earlier to the accident. The proof disability should be satisfactory in the insurance company.

The following requirements are called for

1. FIR of the police
2. A declaration from the life assured explaining the details of the accident and the treatment undergone and the type of disability suffered
3. Records of the hospital where treatment was given.
4. A statement from the hospital about the extent of the disability, whether permanent or temporary, details of any surgery performed, percentage of disability etc

Subject to the above being found satisfactory, the insurance company considers granting the disability benefits to which the policy is eligible. Payment depends upon the type of annuity and also the mode of payment of pension chosen by the annuitant.

MODULE 3

Special Feature of Fire and Marine Insurance - Implied Terms in Marine Policy - Partial Loss and Total Loss - Measure of Indemnity.

SPECIAL FEATURES OF FIRE AND MARINE INSURANCE

FIRE INSURANCE

Fire insurance is a contract between a policyholder and the insurance company in which the insurer agrees to compensate the insured in case of loss or damage happens to a particular property due to fire. The premium is also pre-decided and the insurer compensates for the loss up to the insured amount only.

Special Features

(a) **Insurable Interest –** It is necessary for the insured party to have the insurable interest in the property for which he/she wants to buy insurance. With insurable interest, we mean, the policyholder is benefited by the survival of the insured things and suffers a loss in case of its destruction. Remember, the insurable interest should exist both at the time of buying the policy and at the time of filing a claim.

(b) **Utmost Good Faith –** A fire insurance contract is governed by the principle of utmost good faith that says it is necessary for the policyholder to disclose all vital points with regard to the subject-matter of the insurance policy so that the insurer can have a proper calculation with regards to the risks involved. The policyholder should give information pertaining to the environment, construction of the house, the possibility of catching fire, etc. The insurance company has all rights to terminate the contract if it finds that important points are not disclosed. Similarly, it is necessary for the insurance company to give complete and honest detail about the insurance policy. There should be no hidden clauses or charges.

(c) **Contract of indemnity –** The insurer will settle the claim only up to the insured limit. In case there is no loss, no claim is applicable.

(d) **Personal insurance contract –** As a fire insurance is a personal contract, the policyholder is involved with the property. As a result, it is necessary that the insurance company should have complete knowledge about the behavior of the policyholder. Moreover, the policyholder can't transfer the insurance policy without the permission of the insurer. In case the possession of goods is transferred to a third-party, the insurer has all rights to terminate the insurance contract.

(e) **Personal right –** The person whose name is mentioned in the fire insurance contract as the policyholder is eligible to receive the insured amount in case of any loss or damage.

(f) **Direct loss –** As it is a fire insurance, the fire should be the direct and immediate cause of the loss or damage.

(g) Description of property – It is an important part of the insurance contract, which says that the location of the property should be mentioned in the policy document. Moreover, at the time of claim, the insurer will settle the claim only when the accident happened at the insured place. In the case of any change in the location, it is necessary to inform the insurance company.

MARINE INSURANCE

Ever since the ancient times, international trade has relied heavily on sea routes for transportation. Well before airplanes or trains were invented, ships have been the primary mode of trade related transport. However, sea routes in the old days were plagued by plenty of risks like bad weather, attacks by sea pirates, collision, etc. All these perils have given rise to the need for marine insurance which is believed to the very first form of developed insurance.

Marine insurance, like many other types of insurance, helps protect not only the ship but also the cargo contained and being transported by the ship. There are 3 types of marine insurance – cargo insurance, freight insurance and hull insurance – which have been designed for ships, boats, and for cargo being transported on either of these two carriers.

Marine insurance is a compulsory requirement for all ship / yacht owners, who are using their vessel for commercial or transportation purposes.

Marine insurance business is mostly international and subject to law and international regulations in every stage of operations. It is governed by the Marine Insurance Act, 1963, in India and guided by the various clauses formulated by the Institute of London Underwriters (ILU) and the International Commercial Terms, known as 'Incoterms' developed by ICC (International Chamber of Commerce).

Marine Insurance Act, 1963, is designed to regulate the transaction of marine insurance businesses of hull, cargo and freight. They have also, in addition, to fulfill the provisions of section 64VB of the Insurance Act 1938 on payment of premium in advance of risk commencement. The voyages undertaken are subjected to specific Institute of London Underwriters (ILU) clauses, defining inception and termination of insurance covers, and the perils insured against.

Some of the important types of marine insurance are as follows:

a) Marine hull insurance

This pertains to insurance of ocean-going steamers and other vessels. "Hull" refers to the body or frame of the ship. Hull insurance provides the cover for the hull and machinery as well as in respect of materials and outfit and stores and provisions for the officers and crew. In addition, cover for liabilities is included. It is affected generally by the owner of the ship.

Hull policy consists of basic policy attached to Institute Clauses, which are drafted by the Institute of London Underwriters. The Institute Time Clause (Hull) Cover embraces:

(i) the coverage of maritime perils namely fire, collision, stranding etc.;
(ii) the coverage of additional perils such as latent defect in machinery, accidents in loading / discharging cargo,

(iii) the Running Down Clause embodied in the hull insurance provide cover for damage caused to another ship in collision as a consequence of negligent navigation;
(iv) it may also cover vessels in course of construction, which are taken by the ship builders. Coverage starts from keel laying and until delivery of the ship to the owners.

b) Marine cargo insurance: Cargo insurance covers the cargo or goods contained in the ship and the personal belongings of the crew and passengers. It provides cover for various transit perils in respect of goods and or merchandise in transit from one place to another by sea, air, road or registered post. Transit or marine risks or perils are covered under marine insurance. Marine insurance plays a pivotal role in import, export and internal trade. Trade involves movement of goods from one place to another place. Goods while in transit are liable to be lost or damaged through one or other of various perils from the time it leaves the warehouse of the supplier till it is received at the final warehouse of the consignee. Goods while in transit are generally exposed to any one of the following perils leading to total loss or damage. The loss or damage suffered due to these perils is to be transferred to the insurer in lieu of the premium, as these are included in the Marine cover.

c) Freight insurance: Freight insurance provides protection against the loss of freight. In many cases, the owner of goods is bound to pay freight, under the terms of the contract, only when the goods are safely delivered at the port of destination. If the ship is lost on the way or the cargo is damaged or stolen, the shipping company loses the freight. Freight insurance is taken to guard against such risk.

d) Liability insurance: Liability insurance is one in which the insurer undertakes to indemnify against the loss which the insured may suffer on account of liability to a third party caused by collision of the ship and other similar hazards.

Benefits of Marine Insurance Plan:

Marine insurance is helpful for a variety of reasons.

(i) It provides all-round coverage against a wide variety of risks faced while at sea.
(ii) Most marine insurance providers offer claim survey assistance worldwide, along with claim settlement assistance.
(iii) Different marine insurance providers offer a variety of options and plans under marine insurance policies to suit different budgets and requirements.
(iv) Marine insurance covers can often be customized and adjusted to meet specific needs and budgets of the customers.
(v) Often, marine insurance policies do provide extensions to provide protection against damages caused due to riots, strikes and other such perils.

The primary objective of a marine insurance policy is to protect your finances and assets while they are being transported via sea. However, different insurance companies offer multiple types of marine insurance policies. Due to this reason, there is no standard list of risks against which marine insurance will provide protection. Though most marine insurance policies do provide cover against damages or losses to expensive cargo, some policies may while some may not provide extended cover against cross border civil disturbances or against pirates. Following is a list of some of the common instances or losses which marine insurance provides cover against:

- Import or export shipments.

- Goods which are being transported via sea, rail, air, road or post.
- Goods being transported by coastal vessels which ply between different ports inside the country.
- Goods which are transported via vessels plying along rivers.

Special Features

1.) **PROPOSAL AND ACCEPTANCE:** It is based on a general proposal and acceptance concept. Coverage of risk will start from the date of acceptance of the proposal by the insurance company. Any loss or damage to goods in transit occurring prior to the date of acceptance of proposal will not be covered under the marine insurance policy.

2.) **PAYMENT OF PREMIUM:** Coverage of risk will also start from the date of payment of premium. If the payments are made in cheque, the date of realization of money will be considered for providing the risk coverage.

3.) **CONTRACT OF INDEMNITY:** Marine insurance is a contract of indemnity. That means, the insurance company is liable to compensate only till the extent of actual loss suffered. There is no liability lies on the part of the insurance company if there is no actual loss suffered. For example, let's says an insured has a marine insurance policy for Rs.25 lakhs. In the event of loss, actual loss was estimated as Rs.15 lakhs. In this case, insured will not receive compensation more than Rs.15 lakh even if the coverage is Rs.25 lakh.

4.) **INSURABLE INTEREST:** Marine insurance gets applicable only if the insured has an insurable interest in the subject matter (insurable property) at the time of loss. Requirement of insurable interest to be present only at the time of loss makes the marine insurance policy as 'freely assignable'. Policy can be assigned freely prior to or after the occurrence of damage or loss unless the terms and condition of the policy restricts it.

5.) **UTMOST GOOD FAITH:** Marine insurance policies work on the principle of utmost good faith. Owner of the goods or property to be transported must disclose all the required information accurately to the insurance company at the time of availing the marine insurance. Non-disclosure, mis-description or misrepresenting of facts and information by insured makes the marine insurance policy voidable at the time of claim.

6.) **PRINCIPLE OF SUBROGATION:** Marine insurance policy works on the principle of subrogation. But the right of subrogation arises only after the payment has been made to the insured. After settling the marine insurance claim, insurer holds all the right to sue the third party who is responsible for the loss. In this case, insurer can recover the amount of compensation paid to insured from the third party. The aim of the principle of subrogation is to ensure that the insured receives the compensation only for actual loss suffered.

7.) **PRINCIPLE OF CONTRIBUTION:** Principle of contribution applies in case of multiple marine insurance policies. Losses will be paid proportionately if the insured holds multiple policies for his goods or property. For instance, goods worth Rs.40 lac is insured with two different insurers. And there is loss of goods in the marine event, total amount of loss will be compensated to the insured proportionately by both the insurance companies.

8.) COMES WITH WARRANTY: Marine insurance policies come with warranty which is a legal undertaking between insurance company and insured. It's basically a legal obligation by the insured. Marine insurance policy stands cancelled or terminated as soon as there is breach of warranty. Warranty can be express warranty which are expressly included in the policy or can be an implied warranty which is not included expressly in the policy but are assumed and understood by both the parties in the contract.

IMPLIED WARRANTIES OF MARINE POLICY (IMPLIED TERMS)

As per Tomlins Law Dictionary, 'Warranty' is a guarantee or security that goods are of the quality stated. A promise or covenant by deed by the bargainer, for himself and his heirs, to warrant or secure the bargainee and his heirs, against all men for the enjoying of the thing granted.

Regarding the nature of the warranty, **section 35 of the Marine Insurance Act, 1963** provides that:

(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.
(2) A warranty may be express or implied.
(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy the insurer is discharged from liability as from the date of the branch of warranty but without prejudice to any liability incurred by him before that date.

Implied Warranties

Warranties implied by law or from circumstances are called ***'implied warranties***. These are not mentioned in the policies at all but are tactfully understood by the parties to the contract and are as fully binding as express warranties. In marine insurance implied warranties are very important. They are of two types***: (1) warranties implied from an express warranty; and (2) implies warranties in every case.***

1. **Warranties implied from an express warranty:** Where there is an express warranty of ***i) neutrality; or ii) good safety,*** certain warranties are implied from those express warranties.

i) Warranty of Neutrality.

Section 38 in The Marine Insurance Act, 1963 provides that

(1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral", there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or

suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

ii) Warranty of Neutrality.

Section 40 in The Marine Insurance Act, 1963 provides that**:**

Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

Under section 18 of the Act, the assured is under "the duty of disclosure' as he knows the condition of the subject-matter of insurance, and if he fails to do it in spite of his knowledge, actual or constructive, the insurer can avoid the contract. If either party knows that the goods are safe or destroyed or suppressed the fact, the other can avoid the contract. When the assured genuinely believes that the subject matter of the policy is 'well' or ' in good safety' then only Section 40 of the Act comes into play.

2.) Implied warranties in every case of marine insurance.

The implied warranties of marine insurance are: i) seaworthiness of the ship; ii) legality of venture and iii) other implied warranties.

(i)Seaworthiness of the ship.

Section 41 in The Marine Insurance Act, 1963 provides that

(1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the sea of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

The standard to judge the seaworthiness is not fixed. It is a relative term and may vary with any particular vessel at different periods of the same voyage. A ship may be perfectly seaworthy for Trans-ocean voyage. A ship may be suitable for summer but may not be suitable for winter. There may be the different standard for a different ocean, for different cargo, for different destination and so on.

Seaworthiness does not depend merely on the condition of the ship, but it includes the suitability and adequacy of her equipment, adequacy, and experience of the officers and crew.

At the commencement of journey, the ship must be capable of withstanding the ordinary strain arid stress of the sea.

Seaworthiness also includes "Cargo-Worthiness." It means the ship must be reasonably fit and suitable to any the kind of cargo insured. It should be noted that the warranty of seaworthiness does not apply to cargo. It applies to the vessel only. There is no warranty that the cargo should be seaworthy, ft cannot be expected from the cargo-owner to be well-versed in the matter of shipping and overseas trade. So, it is admitted in seaworthiness clause that the cargo would be seaworthy of the vessel and would not be raised as the defence to any claim for loss .by insured perils.

It should be noted that the ship should be seaworthy at the port of commencement of voyage or at the different stages if the voyage is to be completed in stages.

The burden of proving that the ship is unseaworthy at the relevant time lies on the insurer to protect him normally except in cases where the maxim res ipsa loquitor applies.

The aim of the warranty of seaworthiness is to ensure that those with an insurable interest do not grow careless of the condition of the vessel and the safety of the crew because they have insurance cover ***(Douglas V. Scougall).***

In the case ***Quebec Marine Insurance Co Vs Commercial Bank of Canada*** *(1870)*: Ship insured from Montreal to Halifax, N S. When she sailed there was a defect in the boiler. This defect became patent in the sea adventure in its passage on river St. Lawrence. She came back to Montreal, and after repairs, she commenced the voyage again, and was lost in bad weather. Held, vessel was un-seaworthiness when the voyage commenced. The underwriters were thus not liable.

To be seaworthy, the vessel must not only be not overloaded, cargo properly stowed, the vessel must not be undermanned, and officers & crew must be efficient. Furthermore, if the vessel is warranted neutral, she must be properly documented.

In the case ***Bouillon Vs Lupton (1863):*** 3 steamers trading on the river Rhone had been sold for service on the Danube. They were insured for the voyage from Lloyns to Galatz. In order to pass numerous low bridges, which span the Rhone, the vessel left Lloyns without masts, & proceeded in this manner up-to Marseilles. On arrival, it was Masts & generally prepared for voyage tom Galatz. On entering Black Sea, a storm arose, & they all foundered. Underwriters declined on the ground that when they left Lloyns, they were not in a seaworthy state for the whole voyage. Held- different degrees of seaworthiness were needed for different stages of the voyage and that underwriters were liable to pay. (Justice Wills). A parallel is that seaworthiness with respect to fuelling at intermediate stations would not make the vessel unseaworthy.

(ii) Warranty of Legality.

Section 43 of the Marine Insurance Act, 1963 provides that

There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

This warranty implies that the adventure insured shall be lawful and that so far as the assured can control the matter, it shall he earned out in the lawful manner of the country. Violation of foreign laws does not necessarily involve the breach of the warranty.

There is no implied warranty as to the nationality of a ship. The implied warranty of legality applies total policies, voyage or time. Marine policies cannot be applied to protect illegal voyages or adventure. The assured could have no right to claim a loss if the venture was illegal.

The example of the illegal venture may be trading with an enemy, violating national laws, smuggling, breach of blockade and similar ventures prohibited by law.

Illegality must not be confused with the illegal conduct of the third party, e.g., barratry, theft, pirates, rovers. The waiver of this warranty is not permitted as it is against public policy.

In ***Geismer v. Sum Allian of London Insurance***, it has been observed that it is against the public policy to indemnify the insured against their loss as it helps him to derive profit from his deliberate breach of law.

Other Implied Warranties: There are other warranties which must be complied with marine insurance;

(a) No Change in Voyage: When the destination of the voyage is changed intentionally after the beginning of the risk, this is called a change in the voyage.

In the absence of any warranty contrary to this one* the insurer quits his responsibility at the time of change in the voyage. The time of change of voyage is determined when there is determination or intention to change the voyage.

(b) No Delay in Voyage: This warranty applies only to voyage policies. There should not be a delay in the starting of voyage and laziness or delay during the journey. This is implied condition that venture must begin within the reasonable time.

Moreover, the insured venture must be dispatched within the reasonable time. If this warranty does not comply, the insurer may avoid the contract in the absence of any legal reason.

(c) No deviation: The liability of the insurer ends in deviation of a journey. Deviation means removal from the common route or given path. When the ship deviates from the fixed passage without any legal reason, the insurer quits his responsibility.

This would be immaterial that the ship returned to her original route before a loss. The insurer can quit his responsibility only when there is the actual deviation and not mere intention of the deviation.

Exceptions to warranties in marine insurance

(a) There are following exceptions to delay and deviation warranties:
(b) Deviation or delay is authorized according to a particular warranty of the policy.
(c) When the delay or deviation was beyond the reasonable approach of the master or crew.
(d) The deviation or delay is exempted for the safety of the ship or insured matter or human lives.
(e) Deviation or delay was due to barratry.

TOTAL LOSS AND PARTIAL LOSS

Marine losses can be divided into two main parts containing several subparts;

A. Total loss;

1. Actual total loss
2. Contractive total loss

B. Partial loss;

1. Particular average losses
2. General average losses
3. Particular charges
4. Salvage charges

A. Total loss

- There is an actual total loss where the subject matter insured is destroyed or so damaged as to cease to be a thing of the kind insured or where the assured is irretrievably deprived thereof.
- Losses are deemed to be total or complete when the subject- matter is fully destroyed or lost or ceases to be a thing of its kind.
- It should be distinguished from a partial loss where only part of the property insured is lost or destroyed.
- In case of total loss, the insured stands to lose to the extent of the value of the property provided the policy amount was to that limit.

Actual Total Loss

The actual total loss is a material and physical loss of the subject-matter insured.

Where the subject- matter insured is destroyed or so damaged as to cease to be a thing of the kind insured, or where the insured is irretrievably deprived thereof, there is an actual total loss. When a vessel is foundered or when merchandise is so damaged as to be valueless or when the ship is missing it will be an actual total loss.

The actual total loss occurs in the following cases:

(a) The subject-matter is destroyed, e.g., a ship is entirely destroyed by fire.
(b) The subject-matter is so damaged as to cease to be a thing of the kind insured. Here, the subject- matter is not totally destroyed but damaged to such an extent as the result of the mishap; it is no longer of the same species as originally insured. The examples of such losses are—foodstuff badly damaged by sea water became unfit for human consumption, hides became valueless as hides due to the admission of water. These damaged foodstuffs or hides may be used as manure. Since the characters of the subject-matters are changed and have lost their shapes, they are all actual total loss.
(c) The insured is irretrievably deprived of the ownership of goods even they are in physical existence as in the case of capture by the enemy, stealth by a thief or fraudulent disposal by the captain or crew.
(d) The subject-matter is lost. For example, where a ship is missing for a very long time and no news of her is received after the lapse of a reasonable time. An actual total loss is presumed unless there is some other proof to show against it.

In case of actual total loss, notice of abandonment of property need not be given. In such total losses, the insurer is entitled to all rights and remedies in respect of damaged properties. In no

case, amount over the insured value or insurable value is recoverable in a total loss from the insurers.

If the property is under-insured, the insured can recover only up to the amount of insurance. If it is over insured he is not over-benefited but only the actual loss will be indemnified. Where the subject-matter had ceased to be of the kind insured, the assured will be given the full amount of total loss provided there was insurance up to that amount, and the insurer will subrogate all rights and remedies in respect of the property.

Any amount realized by the sale of the material will go to the insurer.

Constructive Total Loss

Where the subject-matter is not actually lost in the above manner but is reasonably abandoned when its actual total joss is unavoidable or when it cannot be preserved from total loss without involving expenditure which would exceed the value of the subject-matter.

For example: The cost of repair and replacement was estimated to be $50,000, whereas the ship was estimated to be $40,000, the ship may be abandoned and will be taken as a constructive total loss.

But if the value of the ship was more than $50,000 it would not be a constructive total loss. Here it is assumed that retention of the subject-matter would involve financial loss to the insured.

The constructive total loss will be where;

(a) The subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable;
(b) The subject-matter could not be preserved from actual total loss without an expenditure which would exceed its repaired and recovered value.

The insured is not compelled to abandon his interest, where the goods are abandoned; the insurer will have to pay the full insured value.

Where awe is a constructive total loss, the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it was an actual total loss.

Difference between actual and constructive total loss

The actual total loss is related with the physical impossibility and the constructive total loss is related with the commercial impossibility.

For example: If the hides are so damaged that it is impossible to prevent the hides from the destruction and it may become a mass of putrefied matter, die case is of an actual total loss.

But if it was possible to restore the hides to their original condition, though die cost of so doing would exceed their value at the destination, the damaged hides can be claimed as constructive total loss because the completion of the adventure has become commercially impossible.

Salvage loss

Where actual total loss occurred, and die subject-matter is so damaged as to cease to be a thing of the kind insured or when they have been sold before reaching the destination, there is a constructive total loss. The usual form of settlement is that the net sale proceeds will be paid to the assured.

The net sale proceeds are calculated by deducting expenses of the sale from the amount realized by die sale.

The insured will recover from the insurer the total loss less the net amount of sale. This amount received from the insurer is called a 'salvage loss'.

B. Partial Loss

Any loss other than a total loss is a partial loss. The partial loss is there where only part of the property insured is lost or destroyed or damaged partial losses, in contradiction from total losses, include;

(a) Particular average losses, i.e., damage, or total loss of a part,
(b) General average losses (general average) le., the sacrifice expenditure, etc., done for the common safety of subject-matter insured,
(c) Particular or special charges, i.e., expenses incurred in special circumstances, and
(d) Salvage charges.

(a) Particular average loss: The particular average loss is 'a partial loss' of the subject-matter insured caused by a peril insured and is not a general average loss.

The general average loss or expense is voluntarily done for the common safety of all the parties insured.

But, the particular average loss is fortuitous or accidental. It cannot be partially shifted to others but will be borne by die persons directly affected. The particular average loss must fulfil the following conditions:

(i) The particular average loss is a partial loss or damage to any particular interest caused to (hat interest only by a peril insured against.
(ii) The loss should be accidental and not intentional.
(iii) The loss should be of the particular subject-matter only.
(iv) It should be the loss of a part of die subject-matter or damage thereto or both. The distinguishing feature in this matter is that where the properties insured are all of the same description, kind and quality and they are valued as a whole in the policy, the total loss of a part of this whole is a particular loss, but where the properties insured are not all of the same description, kind and quality and they are separately valued in the policy, the loss of an apportionable part of the interest is a total loss.

In case of total loss of a part of recoverable either as a total loss or as a particular average loss, the basis of the settlement will be on the total loss of the whole lot or the insurer will be liable to pay in proportion according to the insured or insurable value of the whole interest.

The particular average on cargo: The particular average loss may be either the damage or depreciation of a particular interest or a total loss of its part.

If the property is insured under one value for the whole and is all the same kind, quality or description, a total loss of part will be recovered as a particular average loss.

In the case where goods are delivered in a damaged condition or where the value is depreciated, the resulting particular average loss will be adjusted upon the basis of comparison between the gross sound value and damaged value.

The process of valuation is as follows:

(i) The gross sound value of the goods damaged is found out. This is the value for which the goods would have been sold if the goods had reached the port of destination in sound condition.
(ii) After calculating the above value, the gross damaged value of the goods damaged or depreciated is found out on the basis of market price at that time.
(iii) Deduct the gross damaged value from the gross sound value. The difference is the measure of the actual damage or depreciation.
(iv) The ratio of the damage or depreciation is calculated by dividing the amount of damage or depreciation by the gross sound value.
(v) Apply the above ratio to the value (insured or insurable value as the case may be) of the damaged or depreciated goods which will give the amount of particular average loss.
(vi) Of the amount thus arrived at, the insurer is liable for that proportion which his sum insured bears to the value (insured or insurable).

(b) General average Loss: General average is a loss caused by or directly consequential on a general average act which includes a general average expenditure as well as general average sacrifices.

The general average loss will be there where the loss is caused by an extraordinary sacrifice or expenditure voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in common adventure.

The following elements are involved in general average.

- The loss must be extraordinary in nature. The sacrifice or expenditure must not be related to the performance of routine work.
- A state of affairs may compel the master to do something beyond his ordinary duty for the preservation of the subject-matter.
- The whole adventure must be imperilled. The peril should be something more than the ordinary perils of the sea. It should be imminent and real.
- The general; average act must be voluntary and intentional accidental loss or damage is excluded.
- The toss, expenses or sacrifice must be incurred or made reasonably and prudently. The master of the ship is the proper person to decide the reasonableness of a particular circumstance.
- The sacrifice, loss or expenditure should be made for the preservation of the whole adventure. It should be made for the common safety.

- If the sacrifice proved abortive, it will be allowed as the total loss. Therefore, to call it the general average, it must be successful at least in part.
- In absence of contrary provision, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of a peril insured against.
- The loss must be a direct result of a general average act. Indirect losses such as demurrage and market losses are not allowed as general average.
- The general average must not be due to some default on the part of the person whose interest has been sacrificed.

The adjustment of general average losses is entrusted to an average adjuster.

Particular charges: Where the policy contains a "sue and labor" clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance and the assured may recover from the insurer any expenses properly incurred pursuant to the clause.

The clause requires the insurers to pay any expenses properly incurred by the assured or his agents in preventing or minimizing loss or damage to the subject-matter by an insured peril. The essential features of the clause are as below:

The expenses must be incurred for the benefit of the subject matter insured. The expenses incurred for the common benefit will be a part of the general average.

The expenses must be reasonable and be incurred by "the assured, his factors, his servants or assigns" and this provision effectively excludes salvage charges.

They are recoverable only when incurred to avert or minimize a loss from a peril covered by the policy.

MEASURE OF INDEMNITY

As per provisions of the Marine Insurance Act, 1963,

Extent of liability of insurer for loss. (section 67)

(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

Extend of liability for Total loss. (section 68)

Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured, —

(1) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy:

(2) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

Partial loss of ship (section 69)

Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows: —

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above:

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

Partial loss of freight (section 70)

Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

Partial loss of goods, merchandise, etc. (section 71)

Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows: —

(1) Where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy:

(2) Where part of the goods, merchandise, or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss:

(3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value:

(4) "Gross value" means the wholesale price, or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers.

General provisions as to measure of indemnity (section 75)

(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

MODULE 4

Property Insurance and Liability Insurance - Risk Insured – Insurance Under Motor Vehicles Act, Avoidance of Liability. MACT – Powers and Functions - Public Liability Insurance - Schemes and Authorities.

PROPERTY INSURANCE AND LIABILITY INSURANCE

Property insurance provides protection against most risks to property, such as fire, theft and some weather damage. This includes specialized forms of insurance such as fire insurance, flood insurance, earthquake insurance, home insurance, or boiler insurance. Property is insured in two main ways—open perils and named perils.

Open perils cover all the causes of loss not specifically excluded in the policy. Common exclusions on open peril policies include damage resulting from earthquakes, floods, nuclear incidents, acts of terrorism, and war. Named perils require the actual cause of loss to be listed in the policy for insurance to be provided. The more common named perils include such damage-causing events as fire, lightning, explosion, and theft.

Property insurance as the name suggests provides cover against damage and theft of property to the owner or tenant of the property. It can be used to cover the structure of a building, or the contents kept inside the building by its owner(s) or tenants.

This insurance policy will help the insured reduce the financial burden of recovering from loss due to:

- Accidental damage to the structure of the property
- Theft or burglary of the contents inside the property
- Physical harm caused to a third party on the premises of the property

Property insurance is a combination of multiple covers as mentioned above, and policy can be bought as a comprehensive all-inclusive policy or as a package policy excluding some of the unwanted covers.

A comprehensive cover may include any or all the following covers:

- Fire Insurance
- Burglary Insurance
- Flood & Earthquake Cover
- Office Insurance and
- All Risk Insurance

Package or Umbrella policies There are package or umbrella covers available which give, under a single document, a combination of covers. For instance, there are covers such as Householders Policy, Shopkeepers Policy, Office Package policy etc that, under one policy, seek to cover various physical assets including buildings, contents etc. Such policies, apart from seeking to cover property may also include certain personal lines or liability covers.

The most popular property insurance is the standard fire insurance policy. The fire insurance policy offers protection against any unforeseen loss or damage to/destruction of property due to fire or other perils covered under the policy.

Burglary Insurance A Burglary Insurance policy may be offered for a business enterprise or for a house. The policy covers property contained in the premises including stocks/goods owned or held in trust if specifically covered. It also covers cash, valuables, securities kept in a locked safe or cash box in locked steel cupboard if you specifically request for it. Apart from offering cover for the contents in the premises, a Burglary Insurance policy covers damage to your house or premises caused by burglars during burglary or attempts at burglary. The Policy pays actual loss/damage to your insured property caused by burglary/house breaking subject to the limit of Sum Insured. If Sum Insured is not adequate, Policy pays only proportionate loss. Hence, you must ensure that you value the property covered correctly to ensure that there is no underinsurance. A Burglary Insurance Policy can generally be extended to cover Riot, Strike, Malicious Damage and Theft.

All Risks Insurance All Risks Insurance generally offers cover for jewellery and/or portable equipment etc. This cover is generally offered selectively. The design of the policy may vary from company to company. It is important to note that an All Risks policy is not free from exclusions. So, the term "All Risks" doesn't mean that anything and everything is covere

The most popular Property Insurance is the Standard Fire & Allied Perils Policies which covers most of the perils the property is exposed to like fire, riots, flood, and storm. Loss of current assets due to burglary and theft can be covered under Burglary & House Breaking Insurance Policy. Valuables can be covered under All Risks Policies and there are 10 11 package policies for house owners and shopkeepers.

How does one fix the sum insured? A. Generally, there are two methods. One is Market Value (MV) and the other is Reinstatement Value (RIV). In the case of M.V, in the event of a loss, depreciation is levied on the asset depending on its age. Under this method, the insured is not paid amount sufficient to buy the replacement. In the RIV method, the Insurance Co. will pay the cost of replacement subject to ceiling of S.I. Under this method, no depreciation is levied. One condition is that the damaged asset should be repaired / replaced in order to get the claim. It may be noted that RIV method is allowed only for FIXED ASSETS and not for other assets like stocks and stocks in process

LIABILITY INSURANCE

Insurance not only protects the risk to life and property but also the risk of liability that a person may incur towards a third person. Liability insurance provides covers against various forms of legal liabilities towards third parties risks. Just as a person can insure himself against the risk of death and personal injury, or risk of damage, deterioration or destruction of property, similarly he can insure himself against the risk of incurring liability to third parties. The hallmark of liability insurance is that like property insurance, it is a contract of indemnity and therefore, no obligation arises on the part of the insurer to pay a claim until the insured has suffered a loss.

Liability policies are generally expressed as providing indemnity against 'liability at law'. This phrase 'liability at law' is invariably understood and primarily used to cover liability arising out of negligence. The Court of Appeal held in ***M/s A Swan Engg v. Iron Traders Mutual*** that

term covered besides liability in tort, the liability in contract under the Sale of Goods Act. The liability of a building contractor to a third party arising out of the faulty design of a structure was held covered though there is no negligence. In another case, it was held that, the word 'accident' in a householders' comprehensive insurance policy, covered nuisance liability which had occurred without any negligence on the part of the assured. This risk must be separately and specifically insured and that type of insurance comes within the category of what is commonly called 'liability insurance*.

The liability to third parties may arise by one's own conduct or in using his property. The privity of contract is exempted in case of third-party liability insurance and it is permissible for the third parties to recover directly from the insurer the damages awarded to him against the assured. The third-party actions and award of compensations under the Motor Vehicles Act is a direct example of such rights. However, third party stands in no better position than the assured in enforcing a contract of liability insurance against the insurer. Determination of rights necessarily involves the application of all the terms of the contract and the consideration of any defence, which would have been available to the insurers against the insured.

The policy usually provides that the total liability under that policy in respect of damages recovered or costs shall, under no circumstances, exceed a stated sum. Such a provision will be construed strictly since it could operate harshly against the assured if, for example, the insurer has the right to defend and does defend a doubtful case with the result that damages and costs are recovered far in excess of the sum insured, although in the first instance the claim might have been settled for a sum which would have been covered by the policy.

Liability insurance Includes:

1. Employer's liability insurance,
2. Professional negligence liability,
3. Public liability insurance,
4. Compulsory insurance,
5. Guarantee insurance.

1.) Employer's Liability Insurance

Employer's liability insurance is a form of cover which insures against liability for bodily injury or disease sustained by his employees and arising out of and in the course of their employment. Thus, it protects an employer against any claims for damages which may arise out of the injuries to employees in the course of their work. Various enactments such as Factories Act, Workmen's Compensation Act, impose a duty on the insured to prevent personal injury to his employees arising out of and in the course of their employment.

The employers are tempted to take out insurances against such liabilities. An insurance company undertakes to pay the claim for damages against an employee who is insured against such a risk on payment of premium. A contract of insurance is to be construed in the first place from the terms used in it. On construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation and so the insurer cannot be made liable to pay interest and penalty to the workmen unless there is a special contract between the parties to that effect.

Employers' liability policies are contracts of indemnity and are governed by general principles of insurance applicable to fire and other indemnity policies. The main question that arises in such cases is, whether a person is a workman of a particular employer. The general test for the purposes of liability is not who employs and pays the workman, but who has at the moment the right to control the manner of execution of the acts of the servant.

It is to be remembered that the insurers are not concerned with each and every minor incident but evolve a practical system of reporting accidents which results in an employee's absence from work for 3 days or more.

Section 4(l)(c) of the Workmen's Compensation Act, 1923 makes it clear that even for the injury not specified in Schedule I, if there is any evidence regarding permanent disablement, either total or partial, or there is any loss of earning capacity due to the injury/injuries, the applicant is entitled compensation under the Workmen's Compensation Act from the employer concerned. Under Section 149(1) there is a statutory liability on the part of the insurer even to pay interest, which is awarded in pursuance of any enactment, and even the parties cannot contract out of this liability. The Supreme Court had held that, the insurer's liability under the Workmen's Compensation Act extends to payment of principal amount of compensation computed by Commissioner and interest levied under Section 4A(3)(a) does not extend to penalty levied under Section 4A(3)(b).

2.) Professional Negligence Liability

Professional indemnity insurance is a very important subclass of liability insurance. This provides cover to professional people for any negligence in the course of their professions. The importance of this type of policies has increased, especially in the aftermath of the landmark decision of the House of Lords in ***Hedley Byrne & Co. v. Heller and Partners***, which they have held that in some circumstances a duty of care could be owed by those professionals, who made statements that are intended to be relied upon, to those who in fact relied upon such statements and suffered loss thereby.

In ***M. Veerappa v. Evelyn Sequevis***, the Supreme Court observed that, 'no legal practitioner who has acted or agreed to act shall merely by reason of his status as a legal practitioner be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.'

In India, the most prevalent form of professional indemnity insurance is in the field of medical negligence. The consumer cases against doctors are on the increase with a large number* of awards of compensation, as a result of which the indemnity insurance has taken deep roots among medical professionals. In other professions the trend is yet to catch up.

3.) Public Liability Insurance

'Public Liability' here does not mean liability of the state or its agencies but means liability imposed by law as opposed to self-imposed liability as in contract. The Public Liability Insurance Act, 1991 is intended to provide immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for matters connected therewith and incidental thereto. Bhopal Gas Leak case was a major reason for this enactment.

The growth of hazardous industries, processes and operations also brings with it the growing risks from accidents. Such accidents not only cause harm to the workmen alone but also the

innocent people who are in the vicinity. They cause death and injury to human beings and other living beings and damage private and public properties. While workers and employees of hazardous installations are protected under separate laws, members of the public are not assured of any relief except through long legal processes. Industrial units seldom have the willingness to readily compensate the victims of accidents and the only remedy now available to the victims is to go through prolonged litigation in a court of law. Some units may not have the financial resources to provide even minimum relief. It is felt that therefore, to provide for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to the victim. Such insurance, apart from safeguarding the interests of the victim of accidents, would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents.

Section 3 of the Act provides that where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the schedule for such death, injury or damage. The section further provides that the claimant shall not be required to plea and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. Public Liability Insurance also involves the concept of No-Fault Liability. In these cases, as a matter of public policy and social welfare, statutory liability is placed on the insurer and the assured to pay certain amount, without any liability being proved against them.

Section 4 of the Act imposes a duty on the employer to take insurance policies before he starts handling any hazardous substance in order to provide relief mentioned in Section 3.

Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity to be given in such manner as he deems fit, for inviting applications from the below:

(a) Persons who have sustained injury
(b) Owner of the property to which damage has been caused
(c) All or any legal representative of the deceased where death has resulted from the accident
(d) Any duly authorised agent of such person or owner of such property or all or any of the legal representative of the deceased, as the case may be.

On receipt of applications, the Collector shall after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid. When an award is made under this Act, the insurer who is required to pay any amount in terms of such award shall within a period of 30 days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct. The Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme under section 7 A, to the Person or persons specified in the award. The owner also shall within such period, deposit such amount in such manner as the Collector may direct.

Before an indemnity could be obtained under a Public Liability insurance policy, there had to be sums which the insured shall become legally liable to pay as damages or compensation in respect of loss of or damage to property; in this context "sums" means sums paid or payable to

third party claimants. Legally liable to pay must obviously involve payment to a third-party claimant and not expenses incurred by the insured in carrying out works on his land and the liability must be to pay damages or compensation. "Loss or damage to property" was a reference to the property of the third-party claimant and not the insured.

The relief under this Act does not affect the right of the individual to claim any compensation in respect of any death, or injury to any person or damage to any property under any other law for the time being in force. The right to relief under this Act shall be in addition to any other right, subject to the condition that where the owner is liable to pay any compensation under any other Act, the amount paid under this Act shall be deductible.

4.) Compulsory Insurance

The Employees State Insurance Act, 1948, makes it compulsory for the employer to insure his workmen by providing certain benefits to them in the event of their sickness, maternity and employment insurance. The employees insured under the Act and their dependents shall be entitled to:

Sickness Benefit: Periodical payment to any insured person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf.

Maternity Benefit: Periodical payments to an insured woman in case of confinement or miscarriage, or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf.

Disablement Benefits: Periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations.

Dependants' Benefit: Periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act.

Medical Benefit: Medical treatment for and attendance on insured persons. This benefit is extendable to the family of an insured person at the request of the appropriate government and subject to conditions laid down in the regulations.

Funeral Expenses: Payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person.

The funds for providing these benefits and for the administration of the scheme under the Act are derived mainly from contributions from employers and workmen in the nature of premiums for their insurance. Employees state insurance courts decide disputes and adjudicate on claims.

The Motor Vehicle Act also provides for compulsory insurance.

5.) Guarantee Insurance

Guarantee Insurance is recent in origin and is rapidly coming into practice. Though guarantee business is already working in society, and governed by the principles of Contract Act under which a friend or relative of the principal debtor used to stand as a surety for due performance of a promise or discharge of a loan in case where principal debtor makes default. Want of sureties proved to be setback to business and employment.

There are two methods by which this guarantee was given, namely;

(a) the insurance company or underwriter stands a surety for the due completion of a Contract or fidelity of an employee; and
(b) the underwriter insures the promisee or employer against the loss arising by non-performance of the obligor or the dishonesty of the employee.

The first type of contracts is simple contract of guarantee which has nothing to do with the law of insurance. It is only the latter type of arrangements with which insurance is concerned. The chief types of policies included in guarantee insurance are:

(a) **insurance for performance of contract** - The subject-matter of such contract is due performance of a contract.
(b) **insurance of debts** - A creditor may insure the repayment of a debt which he advanced or will advance in future. Such policies sometimes cover non-payments from specified causes only and in such cases only the causes for non-payment become relevant. When the creditor insures the repayment of a debt, on default by the debtor, the creditor can straight claim the money from the insurer.
(c) fidelity policies

INSURANCE UNDER MOTOR VEHICLES ACT

What is motor insurance claim? It involves damage to insured's vehicle, damage to the third-party motor vehicle, injury or death of the third party, this where a third-party claims compensation for injuries/death caused due to the negligence.

The insured will refer all claims for third party claims against them to professional insurance. Insured shall not enter into any negotiation or agree to settle the claim outside insurance without the corporations consent.

What is third party insurance? There are two quite different kinds of insurance involved in the damages system. One is Third Party liability insurance, which is just called liability insurance by insurance companies and the other one is first party insurance.

A third-party insurance policy is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party. The insured is one party, the insurance company is the second party, and the person you (the insured) injure who claims damages against you is the third party.

The Motor Vehicles (MV) Act, 1988 mandates payment of compensation to the victims of accidents arising out of the use of a motor vehicle or motor vehicles, in public places by the owner or owners, as the case may. The MV Act further provides that no person shall use a motor vehicle in public places without a policy of insurance complying with the requirements of the MV Act. In such a policy of insurance, the insurer agrees to indemnify the user of the

vehicle against the legal liability to pay compensation payable to the victims (third parties) of accidents (death, injury, disability, property damages, etc.) arising out of the use of the motor vehicle.

Apart from the legal liabilities to third parties, the general insurers also cover pecuniary losses arising out of damages to the vehicle of the insured. This insurance cover is commonly known as Own Damage Cover. The motor insurance portfolio has, thus, two distinct sections - one relating to the cover for the vehicle and its physical damage (OD) and the other relating to injury or death of other parties (TP). The cover for OD is optional and the cover for TP is mandatory. The Motor Third Party policies have to comply with the requirements of the MV Act. The compensation payable to the claimants is determined by the Motor Accident Claims Tribunals (MACT) established under the MV Act.

The motor portfolio constitutes around 40 per cent of the non-life insurance premium underwritten in India. The motor policies were governed by the tariff prescribed by Tariff Advisory Committee.

Sections 140 to 144 provides for interim compensation on '**No Fault'** Basis. According to this provision Rs. 50,000/- is to be given to the kith and kin of the deceased and Rs. 25,000/- to the grievously injured victim. The compensation under Section 140 is made payable if prima facie evidence of following is available;

(1) Accident by the offending vehicle;
(2) Offending vehicle being insured;
(3) Death or grievous injuries have been caused.

(Section 145 to 164) provides for compulsory third-party insurance, which is required to be taken by every vehicle owner. It has been specified in Section 146(1) that no person shall use or allow using a motor vehicle in public place unless there is in force a policy of insurance complying with the requirement of this chapter. Section 147 provides for the requirement of policy and limit of liability. Every vehicle owner is required to take a policy covering against any liability which may be incurred by him in respect of death or bodily injury including owner of goods or his authorized representative carried in the vehicle or damage to the property of third party and also death or bodily injury to any passenger of a public service vehicle. According to this section the policy not require covering the liability of death or injuries arising to the employees in the course of employment except to the extent of liability under Workmen Compensation Act. Under Section 149 the insurer have been statutorily liable to satisfy the judgment and award against the person insured in respect of third-party risk.

Insurance Companies have been allowed no other defence except the following:

(1) Use of vehicle for hire and reward not permit to ply such vehicle.
(2) For organizing racing and speed testing;
(3) Use of transport vehicle not allowed by permit.
(4) Driver not holding valid driving license or have been disqualified for holding such license.
(5) Policy taken is void as the same is obtained by non-disclosure of material fact.

The Motor Vehicles Act, 1988: The Motor Vehicles Act, 1988 is an Act of the Parliament of India which regulates all the aspects of road transport vehicles. This Act came into force from 1 July 1989. This act replaced the previous motor vehicle act 1939 which earlier replaced the motor vehicle act 1914. Motor vehicles act created a new forum named motor accidents claims tribunals which substituted civil courts in order to provide cheaper and speedier remedy to the victims of accident of motor vehicles. Earlier to file a suit, suit for damages had to be filed with civil court, on payment of ad valorem court fee. But under the provision of motor vehicle act, an application claiming compensation can be made to the claim's tribunal without payment of ad valorem court fee.

Necessity for insurance against third party risk Section 146 of the above Act states that no person shall use, other than as a passenger or allow to use a motor vehicle in a public place unless a policy of insurance which covers the liability to third party on account of death or bodily injury to such third party or damage to any property of a third party arising out of the use of the vehicle in a public place. Therefore, it is mandatory for the owner of any motor vehicle to obtain, at the minimum, a policy from any General insurance company holding a valid licence from IRDA, which covers the risk of death or bodily injury to a third party arising out of usage of the vehicle in a public place.

The liabilities which require compulsory insurance are as follows:

(a) death or bodily injury of any person including the owner of the goods or his authorised representative carried in the carriage
(b) damage to any property of a third party
(c) death or bodily injury of any passenger of a public service vehicle
(d) liability arising under the Workmen's Compensation Act, 1923 in respect of death or bodily injury of the paid driver of the vehicle, conductor or ticket examiner (public service vehicles) and workers carried in a goods vehicle
(e) The limit of liability to third party property is Rs.6,000.

The Tribunal is to follow a summary procedure for adjudication of claims being provided, the sections do not deal with the substantive law regarding determination of liability. They only furnish a new mode of enforcing liability. For determination of liability one has still to look to the substantive law in the law of torts and Fatal Accident Act, 1855 or at any rate to the principles thereof." In the case of **oriental fire & general insurance co. vs. Kamal Kamini** , it was critically explained that the liability is still based on law of torts and enactment like the fatal accident act. Section 169 corresponds to Section 110-C of the motor vehicles act, 1959.

Issuance of Certificate of Insurance As per the Act, policy of insurance shall have no effect unless and until a certificate of insurance in the form prescribed under the Rules of the Act is issued. The only evidence of the existence of a valid insurance as required by the Motor Vehicles Act acceptable to the police authorities and R.T.O. is a certificate of insurance issued by the insurers.

"Hit and Run" Accident Section 161 defines "hit and run motor accident" as accident arising out of a motor vehicle or motor vehicles the identity of whereof cannot be ascertained in spite of reasonable efforts for the purpose. The Section provides for payment of compensation as follows in such cases:

(a) In respect of death of any person resulting from a "hit and run" accident, a fixed sum of Rs.25,000
(b) In respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of Rs.12,500
(c) Compensation known as Solatium is payable out of a "Solatium Fund" established by the Central Government.

CLAIM PROCEDURE FOR MOTOR INSURANCE

(a) Vehicle Accident Claims After the insured submit his claim form and the relevant documents, the insurer appoints a surveyor to inspect the vehicle and submit his/her report to the insurance company. Insured also get the details of the surveyor's report. In case of major damage to the vehicle, the insurer arranges for a spot survey at the site of accident.

The insured can undertake repairs only on completion of the survey. Once the vehicle is repaired, the insured should submit duly signed bills/cash memos to the insurance company. In some cases, companies have the surveyor re-inspect the vehicle after repairs. In such a scenario, the insured should pay the workshop/garage and obtain a proof of release document (this is an authenticated document signed by you to release the vehicle from the garage after it is checked and repaired).

Once the vehicle has been released, insured should submit the original bill, proof of release, and cash receipt from the garage to the surveyor. The surveyor sends the claim file to the insurance company for settlement along with all the documents and Finally, the insurance company reimburses the insured.

In case of an accident, the insurance company pays for the replacement of the damaged parts and the labor fees.

The costs that the insured has to bear include:

A. The amount of depreciation as per the rate prescribed
B. Reasonable value of salvage (to be discussed separately)
C. Voluntary deductions under the policy, if the insured have opted for any
D. Compulsory excesses levied by the insurer

In the insured uses the cashless repair facility, the claim money is paid directly to the workshop or garage. Otherwise, the amount of claim is paid to the insured.

(b) Third Party Insurance Claim In the event of a third-party claim, the insured should notify the insurance company in writing along with a copy of the notice and the insurance certificate. The insured should not offer to make an out-of-court settlement or promise payment to any party without the written consent of the insurance company. The insurance company has a right to refuse liabilities arising out of such promises.

The insurance company will issue a claim form that has to be filled and submitted along with:

(a) Copy of the Registration Certificate
(b) Driving license
(c) First information report (FIR)

After verification, the insurance company will appoint a lawyer in the defence of insurer and the insurer should cooperate with the insurance company, providing evidence during court proceedings. If the court orders compensation, the insurance company will then do it directly.

POWERS & FUNCTIONS

S.165. Claims Tribunals.

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation. --For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he--

1. Is, or has been, a Judge of a High Court, or
2. Is, or has been, a District Judge, or
3. Is qualified for appointment as a Judge of a High Court.

Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

S.168. Award of the Claims Tribunal.

(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

S.169. Procedure and powers of Claims Tribunals.

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. (2 of 1974.)

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

Scope of section 169

Section 169 simply vests tribunal with powers of civil court for particular purpose of taking evidence on oath and of enforcing attendance of witness. Held that it does not exclude either expressly or by necessary implications, application of other provisions of code. It also does not restrict inherent powers to secure ends of justice**. *oriental insurance co. ltd. v. Subrata Mitra***.

S.170. Impleading insurer in certain cases.

Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) There is collusion between the person making the claim and the person against whom the claim is made, or
(b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so imp leaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

S. 171. Award of interest where any claim is allowed.

Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

Procedure to Be Followed

Section 169 expressly empowers the claims tribunals to formulate its own procedure. since the claims tribunals has all the powers equal to high court, it may choose to follow the procedure laid down in the CPC. in holding an enquiry under the section 168 of the act, the claims tribunal is empowered to follow such summary procedure as it thinks fit. The intention is that the

enquiry should not take the shape of elaborate and long-drawn proceedings as a regular civil suit but should be concluded as much speedily as possible. the nature of enquiry should be more or less like a judicial enquiry. There can be no gain saying that vast power exists in the claims tribunal to determine its own procedure in dealing with the claim applications. The claims tribunal has all the trappings of a court and the proceedings before it closely resembles the proceedings in a civil court. the whole intention of the legislature is to ensure a speedy disposal of the claim applications filed by the injured persons or the legal representatives of the deceased. ***Krishna reddy v. ramalamma.***

And in case of absence of any restraining provisions the claims tribunal has the liberty to follow any procedure that it may choose to evolve for itself as long as it is consistent with the rules of natural justice and does not contravene the provisions of law.

S.172. Award of compensatory costs in certain cases.

172. Award of compensatory costs in certain cases. —

(1) Any Claims Tribunal adjudicating upon any claim for compensation under this Act, may in any case where it is satisfied for reasons to be recorded by it in writing that—

(a) (a) the policy of insurance is void on the ground that it was obtained by representation of fact which was false in any material particular, or
(b) (b) any party or insurer has put forward a false or vexatious claim or defence, such Tribunal may make an order for the payment, by the party who is guilty of misrepresentation or by whom such claim or defence has been put forward of special costs by way of compensation to the insurer or, as the case may be, to the party against whom such claim or defence has been put forward.

(2) No Claims Tribunal shall pass an order for special costs under sub-section (1) for any amount exceeding one thousand rupees.

(3) No person or insurer against whom an order has been made under this section shall, by reason thereof be exempted from any criminal liability in respect of such mis-representation, claim or defence as is referred to in sub-section (1).

(4) Any amount awarded by way of compensation under this section in respect of any misrepresentation, claim or defence, shall be taken into account in any subsequent suit for damages for compensation in respect of such misrepresentation, claim or defence.

S.174. Recovery of money from insurer as arrear of land revenue.

Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

ENACTMENT OF PUBLIC LIABILITY INSURANCE ACT, 1991

(For More Refer Module 4: Public Liability Insurance)

An Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

Most Important Reason For enforcement of this act:

Bhopal Gas Leak Case: This Act has been enacted subsequent to the Bhopal Gas leak disaster where MIC leaked from the plant of Union Carbide India Ltd. and caused the death of over 3000 persons and serious injuries to a large number of others. The government of India responded to the tragedy with a number of concrete legislative measures. Most notable was the umbrella Environment Protection Act 1986 which materially expanded the Central government's powers to enter, inspect and close down facilities that had formerly under inadequate supervision. The Factories Act 1987 and the Hazardous Wastes (Management and Handling Rules) 1989 also imposed various responsibilities on such industries. The innovative Public Liability Insurance Act of 1991 required factory owners to insure against potential personal injury and property damage in surrounding communities.

Section 3. Liability to give relief in certain cases on principles of no fault –

(1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage.

(2) In any claim for relief under sub-section (1) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Explanation - For the purpose of this section, -

(i) "workman" has the meaning assigned to it in the Workman's Compensation Act, 1923 (8 of 1923);
(ii) (ii) "injury" includes permanent total or permanent partial disability or sickness resulting out of an accident.

Section 4. Duty of owner to take out insurance policies - (1) Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (1) of section 3:

Provided that any owner handling hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.

(2) Every owner shall get the insurance policy, referred to in sub-section (1), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued.

(2A) No insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crore rupees, as may be prescribed.

Explanation: For the purposes of this sub-section, "paid-up capital" means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contract of insurance.

(2B) The liability of the insurer under one insurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance policy.

(2C) Every owner shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under section 7A, such further amount, not exceeding the sum equivalent to the amount of premium, as may be prescribed.

(2D) The insurer shall remit to the authority specified in sub-section (3) of section 7A the amount received from the owner under sub-section (2C) for being credited to the Relief Fund in such manner and within such period as may be prescribed and where the insurer fails to so remit that amount, it shall be recoverable from the insurer as arrears of land revenue or of public demand].

(3) The Central Government may, by notification, exempt from the operation of sub-section (1) any owner, namely:

(a) the Central Government;
(b) any State Government;
(c) any corporation owned or controlled by the Central Government or a State Government;
(d) any local authority:

Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under sub-section (1) of section 3.

Section 21. Advisory committee - (1) The Central Government may, from time to time, constitute an Advisory committee on the matters relating to the insurance policy under this Act.

(2) The Advisory Committee shall consist of -

(a) three officers representing the Central Government;
(b) two persons representing the insurers;
(c) two persons representing the owners; and
(d) two persons from amongst the experts of insurance of hazardous substances to be appointed by the Central Government.

(3) The Chairman of the Advisory Committee shall be one of the members representing the Central Government, nominated in this behalf by that Government.

MODULE 5

Social Security Insurance - Sickness, Old Age and Unemployment - ESI, Insurance for Seamen.

SOCIAL SECURITY INSURANCE

All the industrial countries of the world have developed measures to promote the economic security and welfare of individual and his family. These measures have come to be called as social security. Social security is dynamic concept and an indispensable chapter of a national programme to strike at the root of poverty, unemployment and diseases.

Social security may provide for the welfare of persons who become incapable of working by reason of old age, sickness and invalidity and or unable to earn anything for their livelihood. 3 It is necessary to analyze various definition of social security in order to appreciate the nature and concept of social security.

Friedlander defines social security as "a programme of protection provided by society against these contingencies of modem life, like sickness, unemployment, old age, dependency, industrial accidents, and invalidism against which the individual cannot be expected to protect himself and his family by his own ability or foresight".

In 1942, Sir William Beveridge headed a committee that reviewed the national schemes of social insurance in Great Britain during the post war period. In his report he defines social security as follows:

"The security of an income to take place of the earnings when they are interrupted by unemployment by sickness or accident to provide for retirement through age, to provide against the loss of support by the death of another person and meet exceptional expenditure, such as those connected with birth, death and marriage.

The Beveridge report argued that there were 'five giants' that were stalking the land and that should be tackled. They are want, disease, ignorance, squalor and idleness.

AIM OF SOCIAL SECURITY

Social. Security is for the people. Social Security is required for meeting certain needs which are basically rooted in lack, loss or inadequacy of income or assets due to unemployment, sickness, accidents, maternity, disability, old age or death. These incidents may affect an individual or community as a whole. Hence the aim of all social security measures is three - fold namely, compensation, restoration and prevention.

Compensation: It aims to substitute income when earning of an individual is interrupted temporarily or comes to an end permanently during spells of risk.

Restoration: Restoration is designed to provide certain services like medical to the sick and invalid, and rehabilitation in eases of need.

Prevention: Social security system not only provides necessary measure when it is required but also prevent the risks from arising in the first place itself. So as to help the individuals and families to make the best possible adjustment when faced with disabilities and disadvantages

which have not been or could not be prevented. So social security requires not only cash but also a wide range of health and social services.

CHARACTERISTICS OF SOCIAL SECURITY

The purpose of any social security measure is to provide individuals and families the confidence that their standard of living will not be eroded by meeting with such socio-economic contingencies in their life. The concept of social security varied from country to country. This is understandable in a way because of the differential social and economic development of societies in difference parts of the world. But the need for economic protection is universal and hence social security measures have three major characteristics even though they vary from country to country and from time to time according to the need of the people and countries resources. They are as follows:

1. Social security measures are established by law.
2. They provide cash benefit to replace at least a part of income in meeting contingencies such as unemployment, maternity, employment injury, sickness, old age etc.
3. These benefits are provided in three major ways such as social assistance, social insurance and public services.

The most well-known techniques adopted by social security at present are no doubt **social assistance and social insurance** which are discussed as follows:

Social Assistance

Social assistance is a devise organised by the state by providing cash assistance and medical relief, to such members of the society as they cannot get them from their own resources. The ILO defines social assistance scheme as one that provides benefits to persons of small means granted as of right in amounts sufficient to meet a minimum standard of need and financed from taxation.

The special characteristic of this measure is that it is financed wholly from the general revenues of the state and the benefits are provided free of cost. But the beneficiary has to satisfy means test which means certain prescribed conditions. The first risk to be covered was that old age, but gradually non-contributory benefits were also introduced for invalids, survivors and unemployed persons as well. Today social assistance programmes cover programme like unemployment assistance, old age assistance, national assistance. Thus, the social assistance underlines the idea that the care of people could not be left to voluntary charity and should be placed on a compulsory and statutory basis. It represents, “the unilateral obligation of the community towards its dependent groups.

Social Insurance

Social Insurance was first introduced in Germany by Bismarck and since spread all over the world. Social insurance is a plan insurance which aimed for protecting the wages of those workers who do not have sufficient source to support their own self or their families in case of loss of income due to meeting contingencies in their work life.

Lord William Beveridge has defined social insurance as “plan of insurance of giving in return for contributions benefits upon subsistence level, as a right and without means test so that individuals made build freely upon it.”

From the above analysis the following ingredients may be regarded as basic features of scheme of social insurance:

- Certain risks which cannot be faced by the persons in their individual capacity are faced collectively by a group of persons;
- For that purpose, they have pooled together their resources;
- Benefits are provided to them in case of contingency;
- This makes them maintain their standard up to a subsistence level;
- Benefits are payable to them according to rates prevalent as a matter of right in accordance with their salary or income; and
- The payment of contribution is obligatory since they are insured against the risk compulsorily

Similarities and Differences between Social Assistance and Social Insurance

Social assistance and social insurance have some similar features because both are social in approach and are organised under a law passed in this behalf. Both provide a legal title to benefits. But both differ from each other in some respects.

First, social assistance is financed by the general tax payers, while social insurance is financed by tripartite or bipartite contributions.

Secondly, social assistance aims at to provide minimum subsistence to those who cannot make it on their own. Hence, the beneficiary has to satisfy a means test for being entitled to such benefits while social insurance schemes aim to protect a minimum standard of living related to beneficiaries' immediate standard of living as reckoned by his daily earning.

Thirdly, social insurance ignores the income and means of liable relations while social assistance makes the beneficiary a first charge on the liable relation. Benefits are paid only when the specified relations do not possess sufficient means to support the beneficiary. Thus, social assistance is a progression from private charity towards private insurance whereas social insurance is a progression from private insurance towards public welfare measures.

SOCIAL SECURITY AND HUMAN RIGHTS

The International Labour Conference emphasised that social security is the basic human right and the fundamental means for creating social position, thereby helping to ensure social peace and social inclusion. It is an indispensable part of government social policy and an important tool to prevent and alleviate poverty. Hence the concept of social security as a human right originated with the Universal Declaration of Human Rights.

The need for social security as human right has been enumerated as follows:

"Everyone, as a member of society, has the right to social security and is entitled to realisation, through national efforts and international cooperation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality". **[Art.22 of The Universal Declaration of Human Rights, 1948.]**

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to social security in the event of unemployment, sickness, disability,

widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection". **[Art.25 of The Universal Declaration of Human Rights, 1948.]**

CONSTITUTIONAL STATUS OF SOCIAL SECURITY IN INDIA

The constitution of India guarantees fundamental rights to every citizen including the right to life and as the Supreme Court in ***Olga Tellis v. Bombay Municipal Corporation*** has pointed out that the right to livelihood is inherent in the right to life. The ultimate aim of social security is to ensure that everyone has the means of livelihood and hence the right to social security and protection of the family are integral part of right to life. Further, the Supreme Court in ***S.K.Mastan Bee v. G.M., South Central Railway***, has also held that security against sickness and disablement and also right to family pension held to be forming part of right to life under Article 21.

The Directive Principles of State policy set standard of achievement of socialistic pattern of society as it embraces principles and policies pertaining to social security measures which are to be followed by the state in future. It is pertinent to discuss the following provisions which are relevant to social security:

To Secure a Social Order for the Promotion of Welfare of the People [Article 38]

It is the duty of the state is to promote the welfare of its people by securing and protecting social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art.38 incorporates part of the preamble within it concerning justice, social, economic and political. This class has often been relied upon to sustain and demand social welfare measures and to remain the state about the kind of society the constitution expects it to create.

Further, the constitution mandates the state to strive to minimise inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

Directives to the State to Secure Social Security Measures While Enacting Legislations [Article 39]

While enacting social security legislations the state has been directed to secure the following measures:

- Adequate means of livelihood;
- Proper distribution of ownership and control of the material resources of the community so that it may sub serve the common need;
- Prevention of the concentration of wealth and means of production;
- Equal pay for equal work for men and women;
- The health and strength of workers; and
- Childhood and youth are protected against exploitation.

Right to Work, to Education and to Public Assistance in Certain Cases [Article 41]

The state has been directed to ensure to the people within the limits of its economic capacity and development to secure the right work, employment, education and public assistance in

cases of **unemployment, old age, sickness and disablement and in other cases of underserved want**. It is usual to refer to matters specified in the directive as measures of social security.

The Article 41 has no bearing on the interpretation of Article 16 as it is manifest that the term public assistance or relief to people who are unemployed or old, or sick or disabled, or in other similar cases of undeserved want.

Provision for Just and Humane Conditions [Article 42]

It exhibits the concerns of the framers for the welfare of the workers by requiring the state to make provisions for securing just and humane condition of work and for maternity benefit.

While upholding the claim of non-regularised female workers for maternity relief, the Supreme Court has stated in ***Municipal Corporation of Delhi v. Female Workers***,: "Since Article 42 specifically speaks of 'just and humane conditions of work' and maternity relief, the validity of an executive or an administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complaint of."

Living Wage, etc. for Workers [Article 43]

Article 43 requires the state to strive to secure to the worker work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Distinct Benefits under Provided Acts

Types of Benefits	Provided Acts
Employment Injury Benefit	Workman's Compensation Act,1923 and Employee's State Insurance Act,1948
Disablement Benefit	Employee's State Insurance Act,1948
Dependants Benefit	Employee's State Insurance Act,1948
Maternity Benefit	Maternity Benefit Act,1961 and Employee's State Insurance Act,1948
Sickness Benefit	Employee's State Insurance Act,1948
Medical Benefit	Employee's State Insurance Act,1948 and Labour Welfare Fund Act
Retirement Benefit	Employees Provident Fund and Miscellaneous Provisions Act, 1952
Invalidity Benefit	Employees Provident Funds and Miscellaneous Provisions Act, 1952
Survivors Benefit	Employees' State Insurance Act,1948 and Employees' Provident Fund and Miscellaneous Provisions Act, 1952
Terminal Benefit	Payment of Gratuity Act,1972
Retrenchment Compensation	Industrial Disputes Act
Funeral Expanses	Employee's State Insurance Act,1948
Rehabilitation Allowance	Employee's State Insurance Act,1948

Employment Injury Benefit

In India, occupational injury or work injury benefits are payable under two laws: the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948. The main

objective of both the Acts is to impose an obligation upon the employers to pay compensation to workers for accidents arising out of and in course of employment. It is based on the principle of employer's liability whereby the liability for payment of the various benefit admissible under the Act is that of the employer. He may insure the liability but the ultimate responsibility rests with the employer.

Coverage under the Employees' State Insurance Act

The Employees' State Insurance Act, 1948 provides for health care and cash benefit payments in the case of employment injury, sickness and maternity. The Act is applicable to non-seasonal factories using power and employing 10 or more employees and non-power using factories and certain other establishments employing 20 or more employees.

EMPLOYEES' STATE INSURANCE (ESI)

The promulgation of the ESI Act, by the Parliament was the major legislation on social security for workers in independent India. It was a time when the industry was still in a nascent stage and the country was heavily dependent on an assortment of imported goods from the developed or fast developing countries.

History

In March 1943, B. P. Adarkar was appointed by Government of India to create a report on health insurance scheme for industrial workers. The report became the basis for the Employment State Insurance (ESI) Act of 1948. The promulgation of Employees' State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantees reasonably good medical care to workers and their immediate dependents. Following the promulgation of the ESI Act the Central Govt. set up the ESI Corporation to administer the Scheme. The Scheme, thereafter was first implemented at Kanpur and Delhi on 24 February 1952. The Act further absolved the employers of their obligations under the Maternity Benefit Act, 1961 and Workmen's Compensation Act 1923. The benefit provided to the employees under the Act are also in conformity with ILO conventions.

The act was initially intended for factory workers but later became applicable to all establishments having 10 or more workers. As on 31 March 2016, the total beneficiaries are 82.8 million.

ESI Act

Employees' State Insurance Corporation (ESIC), established by ESI Act, is an autonomous corporation under Ministry of Labour and Employment, Government of India. As it is a legal entity, the corporation can raise loans and take measures for discharging such loans with prior sanction of the central government and it can acquire both movable and immovable property and all incomes from the property shall vest with the corporation. The corporation can set up hospitals either independently or in collaboration with state government or other private entities, but most of the dispensaries and hospitals are run by concerned state governments.

Benefits

For all employees earning ₹21,000 (US$290) or less per month as wages, the employer contributes 4.75 percent and employee contributes 1.75 percent, total share 6.5 percent. S This fund is managed by the ESI Corporation (ESIC) according to rules and regulations stipulated there in the ESI Act 1948, which oversees the provision of medical and cash benefits to the employees and their family. ESI scheme is a type of social security scheme for employees in the organised sector.

The employees registered under the scheme are entitled to medical treatment for themselves and their dependents, unemployment cash benefit in certain contingencies and maternity benefit in case of women employees. In case of employment-related disablement or death, there is provision for a disablement benefit and a family pension respectively. 67 Outpatient medical facilities are available in 1418 ESI dispensaries and through 1,678 private medical practitioners. Inpatient care is available in 145 ESI hospitals and 42 hospital annexes with a total of 19,387 beds. In addition, several state government hospitals also have beds for exclusive use of ESI Beneficiaries. Cash benefits can be availed in any of 830 ESI centres throughout India.

New Amendment

The Employees' State Insurance Corporation (ESIC) raised the monthly wage limit to Rs. 21,000, from the existing Rs. 15,000, for coverage with effect from 1 January 2017.

Applicability

Under Section 2(12) the Act is applicable to non-seasonal factories employing 10 or more persons. Under Section 1(5) of the Act, the Scheme has been extended to shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing 10 or more persons. Further under section 1(5) of the Act, the Scheme has been extended to Private Medical and Educational institutions employing 10 or more persons in certain States/UTs.

Areas Covered

The ESI Scheme is now notified in 526 Districts in 34 States and Union Territories, which include 346 complete District, 95 District Headquarters and in 85 Districts. The scheme is implemented in centers. The scheme is yet to be implemented in Arunachal Pradesh and Lakshadweep.

Administration

The comprehensive and multi-pronged social security programme is administered by an apex corporate body called the **Employees' State Insurance Corporation**. It comprises members representing vital interest groups, including, employees, employers, the Central and State Government, representatives of Parliament and medical profession.

The Corporation is headed by the Union Minister of Labour, as its Chairman, whereas the Director General, appointed by the Central Government functions as its Chief Executive Officer. The broad-based corporate body is, primarily, responsible for coordinated policy planning and decision making for growth, development and efficacy of the scheme. A Standing Committee, constituted from amongst the members of the Corporation, acts as an Executive Body. The Medical Benefit Council, constituted by the Central Government, is yet another Statutory Body that advises the Corporation on matters related to effective delivery of medical services to the Beneficiary Population.

The Corporation, with its Central Headquarters at New Delhi, operates through a network of 63 Regional and Sub- Regional located in various States. The administration of Medical Benefit is taken care of by the respective State Government except in case of Delhi and Noida/Greater Noida area in Uttar Pradesh where the Corporation administers medical facilities directly. The Corporation has taken over the administration of 36 ESI Hospitals in various States for developing them as ESIC Model Hospitals.

Finance

ESI Scheme, like most of the Social Security Schemes the world over, is a self-financing health insurance scheme. Contributions are raised from covered employees and their employers as a fixed percentage of wages. As of now, covered **employees contribute 1.75%** of the wages, whereas, the **employers contribute 4.75%** of the wages, payable to their employees. Employees earning upto Rs.137/- a day are exempted from payment of their share of contribution. The State Governments, as per provisions of the Act, contribute 1/8th of the expenditure of medical benefit within a per capita ceiling of Rs. 1500/- per Insured Person per annum. Any additional expenditure incurred by the State Governments, over and above the ceiling and not falling within the shareable pool, is borne by the State Governments concerned.

Contribution

E.S.I. Scheme being contributory in nature, all the employees in the factories or establishments to which the Act applies shall be insured in a manner provided by the Act. The contribution payable to the Corporation in respect of an employee shall comprise of employer's contribution and employee's contribution at a specified rate. The rates are revised from time to time. Currently, the employee's contribution rate (w.e.f. 1.1.97) is 1.75% of the wages and that of employer's is 4.75% of the wages paid/payable in respect of the employees in every wage period. For newly implemented areas, the contribution rate is 1% of wages of Employee and 3% payable by Employers for first 24 months (w.e.f. 06.10.2016) Employees in receipt of a daily average wage upto Rs.137/- are exempted from payment of contribution. Employers will however contribute their own share in respect of these employees.

Collection of Contribution

An employer is liable to pay his contribution in respect of every employee and deduct employee’s contribution from wages bill and shall pay these contributions at the above specified rates to the Corporation within 15 days of the last day of the Calendar month in which the contributions fall due. The Corporation has authorized designated branches of the State Bank of India and some other banks to receive the payments on its behalf.

Contribution Period and Benefit Period

There are two contribution periods each of six months duration and two corresponding benefit periods also of six months duration as under. Contribution period Corresponding Cash Benefit period

Contribution Period	Cash Benefit Period
1st April to 30th Sept.	1st Jan of the following year to 30th June
1st Oct to 31st March of the year following.	1st July to 31st December.

Benefits

The section 46 of the Act envisages following six social security benefits: -

(a) Medical Benefit : Full medical care is provided to an Insured person and his family members from the day he enters insurable employment. There is no ceiling on expenditure on the treatment of an Insured Person or his family member. Medical care is also provided to retired and permanently disabled insured persons and their spouses on payment of a token annual premium of Rs.120/-.

1. System of Treatment
2. Scale of Medical Benefit
3. Benefits to Retired IPs
4. Administration of Medical Benefit in a State
5. Domiciliary treatment
6. Specialist consultation
7. In-Patient treatment
8. Imaging Services
9. Artificial Limbs & Aids
10. Special Provisions
11. Reimbursement

(b) Sickness Benefit(SB) : Sickness Benefit in the form of cash compensation at the rate of 70 per cent of wages is payable to insured workers during the periods of certified sickness for a maximum of 91 days in a year. In order to qualify for sickness, benefit the insured worker is required to contribute for 78 days in a contribution period of 6 months.

1. **Extended Sickness Benefit (ESB) :** SB extendable upto two years in the case of 34 malignant and long-term diseases at an enhanced rate of 80 per cent of wages.

2. **Enhanced Sickness Benefit :** Enhanced Sickness Benefit equal to full wage is payable to insured persons undergoing sterilization for 7 days/14 days for male and female workers respectively.

(c) Maternity Benefit (MB) : Maternity Benefit for confinement/pregnancy is payable for Twenty Six (26) weeks, which is extendable by further one month on medical advice at the rate of full wage subject to contribution for 70 days in the preceding Two Contribution Periods.

(d) Disablement Benefit

1. **Temporary disablement benefit (TDB) :** From day one of entering insurable employment & irrespective of having paid any contribution in case of employment injury. Temporary Disablement Benefit at the rate of 90% of wage is payable so long as disability continues.

2. **Permanent disablement benefit (PDB) :** The benefit is paid at the rate of 90% of wage in the form of monthly payment depending upon the extent of loss of earning capacity as certified by a Medical Board

(e) Dependants Benefit(DB) : DB paid at the rate of 90% of wage in the form of monthly payment to the dependants of a deceased Insured person in cases where death occurs due to employment injury or occupational hazards.

(f) Other Benefits :

- **Funeral Expenses:** An amount of Rs.10,000/- is payable to the dependents or to the person who performs last rites from day one of entering insurable employment.

- **Confinement Expenses:** An Insured Women or an I.P.in respect of his wife in case confinement occurs at a place where necessary medical facilities under ESI Scheme are not available.

In addition, the scheme also provides some other need-based benefits to insured workers.

1.) Vocational Rehabilitation: To permanently disabled Insured Person for undergoing VR Training at VRS.

2.) Physical Rehabilitation: In case of physical disablement due to employment injury.

3.) Old Age Medical Care: For Insured Person retiring on attaining the age of superannuation or under VRS/ERS and person having to leave service due to permanent disability insured person & spouse on payment of Rs. 120/- per annum.

Rajiv Gandhi Shramik Kalyan Yojana : This scheme of Unemployment allowance was introduced w.e.f. 01-04-2005. An Insured Person who become unemployed after being insured three or more years, due to closure of factory/establishment, retrenchment or permanent invalidity are entitled to: -

- Unemployment Allowance equal to 50% of wage for a maximum period of upto Two Years.
- Medical care for self and family from ESI Hospitals/Dispensaries during the period IP receives unemployment allowance.
- Vocational Training provided for upgrading skills - Expenditure on fee/travelling allowance borne by ESIC.

Incentive to employers in the Private Sector for providing regular employment to the persons with disability:

- Minimum wage limit for Physically Disabled Persons for availing ESIC Benefits is 25,000/-.
- Employers'' contribution is paid by the Central Government for 3 years.