

# IC-72 MOTOR INSURANCE

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IC-72

## MOTOR INSURANCE

### ACKNOWLEDGEMENT

This course is based on revised syllabus prepared with assistance of:  
Govind Johri

We also acknowledge Get through Guides, Pune for their contribution in preparing the study material.



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# भारतीय बीमा संस्थान INSURANCE INSTITUTE OF INDIA

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# MOTOR INSURANCE

## IC-72

Revised Edition: 2015

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Published by: P. Venugopal, Secretary-General, Insurance Institute of India, G-Block, Plot C-46, Bandra Kurla Complex, Bandra (E) Mumbai - 400 051 and Printed at

# PREFACE

This book is designed to equip insurance personnel to understand emerging risks in Motor Insurance involving damage to vehicles and implications of third party statutory liability vis-a-vis contract of Motor Insurance in India.

The book has been written considering vibrant insurance market scenario in India, present trends in road transport and up-and-coming international technologies like hybrid vehicles and driver less cars. A brief on international practice in Motor Insurance have also been incorporated. New chapters on Analytics in Motor Insurance including TAC as National Repository; Fraud Management in OD and TP claims, and Consumer delight covering service gaps in claims and customer service management have been added.

It is desirable that candidates appearing for the Associateship Examination of the Insurance Institute of India, should supplement their knowledge with additional material such as office manuals, operating instructions, insurance magazines etc., Habit of periodical surfing of net to find out evolving legal jurisprudence; developments in Road safety and impact of emerging technologies on underwriting, will be an added advantage.

The candidates are recommended to peruse India Motor Tariff 2002, various documents used in motor insurance including related Laws, Rules and Standards applicable in Auto industry, as it is not possible to incorporate all in the study course of this size.

The Book will also be useful to the insuring public who desires to know the legal practices and mandatory requirement of Motor Insurance in India.

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Certified TNA & DOT

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# Part I

## Own Damage Insurance



# CHAPTER 1

## INTRODUCTION TO MOTOR INSURANCE

### Chapter Introduction

In this chapter you will know about the history of Motor Insurance and the principles of insurance contracts applicable to Motor Insurance. You will also learn about the legal aspects of insurance including various definitions, role of permit, licensing provisions and the key issues of Motor Vehicles (Amendment) Bill, 2008.

### Learning Outcomes

- A. History of Motor Insurance and Principles of Insurance Contracts applicable to Motor Insurance
- B. Legal Aspects of Insurance and The Motor Vehicles (Amendment) Bill, 2008



## A. History of Motor Insurance and Principles of Insurance

### 1. History of Motor Insurance

#### a) Motor Insurance

Motor Insurance, a fascinating branch of insurance, had its beginnings in the United Kingdom in the early part of the last century. The first motor car was introduced into England in 1894.

- i. **Third party liability insurance:** The first motor policy was introduced in 1895 to cover third party liabilities.
- ii. **Comprehensive insurance:** By 1899, accidental damage to the car was added to the policy, thus introducing, the ‘comprehensive’ policy along the lines of the policy issued today.
- iii. **First motor insurance company:** In 1903, the **Car and General Insurance Corporation Ltd.** was established mainly to transact motor insurance, followed by other companies.
- iv. **Compulsory third party insurance:** After World War I, there was considerable increase in the number of vehicles on the road as also in the number of road accidents. Many injured persons in road accidents were unable to recover damages because not all motorists were insured. This led to the introduction of compulsory third party insurance through the passing of the **Road Traffic Acts, 1930 and 1934**. The compulsory insurance provisions of these Acts have been consolidated by the **Road Traffic Act, 1960**.

#### b) Law and Practice of Motor Insurance in India

- i. **Motor Vehicles Act, 1939:** The Motor Vehicles Act was passed in 1939 introducing the law relating to compulsory third party insurance (Refer Chapter 2).
- ii. **Motor Vehicles Act, 1988:** The Motor Vehicles Act, 1988 (Act No. 59 of 1988) has replaced the earlier 1939 Act, and it became effective from 1<sup>st</sup> July 1989.
- iii. **Transition from Tariff to non-Tariff:** The practice of motor insurance in India generally follows that of the UK market. The business was governed by a Tariff till March 2008, and now like the UK market, it is non-Tariff. However, IRDA, the Indian regulatory authority for insurance has directed insurers in India to continue to follow the Tariff policy wordings, principles of insurance and associated legal aspects of Motor Insurance contracts.



### c) Market Scenario

- i. **Loss ratio:** According to the IRDA, the loss ratio for the industry in 2010-11 was 213% but fell to 145% in 2011-12. The data clearly establishes that there is ample need to be alarmed with rate of death being 31.6 per 100 accident cases at the National level (See details in Chapter 7.6).
- ii. **Third-party premium rates** are fixed by the insurance regulator. IRDA increased third-party motor premium rates in 2011-12 on an average by 58%, in 2012-13 by 15% and for 2013-14, 20%.
- iii. **Triggers for future growth:** In the medium to long-term, increased automobile sales, higher penetration in the renewal business and the emergence of large organised collaborators such as ‘garage preferred’ provider networks, are expected to provide the growth momentum for this segment.

### d) New Trends in Motor Insurance

General insurance industry has seen new trends and motor insurance is one of the chief contributors.

#### i. Increased Volume of Claims

A high number of claims are to be processed in Motor TP segment. The insurance industry has achieved a very high growth rate.

#### ii. Lack of Standardised Processes

The industry is in strong need for benchmarking the processes to global best practices. The online sale of standard Motor Insurance Policies has contributed to almost 7-8 % of the total premium so far.

#### iii. Increased Litigation Costs

The current trend is 72% of TP claims go into litigations. A strong need is felt to have standard compensation packages for which the insurance industry is constantly pursuing, as it will lead to drastic reduction in number of cases going to the Tribunals making available instant compensation to hapless accident victims and their families and reducing the work load of judiciary.

#### iv. Technology

The advent of newer technology has brought in efficiency in processing claims, increased analysis is possible and a good deal of IT security has become necessary.

## v. Increasing Frauds

The current scenario has thrown multiple claims being made simultaneously from different insurers. This 'forum shopping' can be overcome by stipulating limitation period in the Act for making claims. There is a lack of common policy database, which has the curious situation where 70% vehicles are only insured despite mandatory provision and Dealers are being made to ensure delivery of the vehicle only after registration with RTA. We are in dire need to introduce some methodology which will ensure 100% Third party insurance be it levy on sale of petrol or Third party long term insurance enforced by RTA with Registration of Vehicle.

## vi. Increased Competition

As per The Motor Vehicles Act, 1988 the insurance of all motor vehicles is mandatory, if the insurance companies arrange insurance and renewal of the insurance policies of all these uninsured vehicles (which is their basic duty) then the incurred claim ratio would further come down.

As per the data published by Insurance Information Bureau ([www.iib.gov.in](http://www.iib.gov.in)) for 2012-13 for private cars and two wheelers the insurance companies are making profit in this segment. PSU as well as private sector players and Intermediaries pose a threat of customer ownership.

## 2. Applicability of Principles of Insurance

A motor insurance contract has all the ingredients of general contract in respect of insured's duty to disclose material facts and insured's right to insure any legal interest, legal liability or damage to third party property, besides insurer is bestowed with the duty to indemnify and as a corollary accrues right of subrogation and contribution.

### Definition

Insurance is a contract, recognised by the law, in which the insurer undertakes to run the risk to a pre-specified extent, subject to terms, conditions and warranties and pays compensation for an agreed consideration to the insured / owner of the property on the happening of the event insured against.

A positive occurrence of the event is an essential factor differentiating insurance contract from a wagering contract where a profit or benefit does not accrue to either party.

## Important

**Unique Contract:** Insurance of motor vehicle is unique as it combines in itself damage to insured motor vehicle and insurance against liability towards damage to third party property and / or any personal injury / death sustained by third party or passengers or persons in employment as described in the policy or arising out of the use of the insured property.

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The liability part of the motor insurance cover is a statutory duty cast by the Motor Vehicles Act, 1988 by which the owner of a motor vehicle cannot use or cause use of his vehicle in a public place, as prescribed in Chapter XI, Section 146 (1) of the 1988 Act. Motor insurance is a branch of Miscellaneous (Property and Casualty) insurance and like any other contract should satisfy the aforementioned fundamentals and also the implied principles of a contract of insurance. These principles of insurance contract are doctrine of utmost good faith, insurable interest, indemnity along with its corollaries subrogation and contribution and doctrine of proximate cause. A brief summary of the principles is discussed hereunder.

### a) Principle of Uberrimae Fides in Motor Own Damage Insurance

Contracts of motor insurance are governed by the doctrine of **uberrimae fides (utmost good faith)**. The doctrine of utmost good faith imposes a legal obligation on the proposer to disclose all material facts to the insurers, in order that the parties to the contract are placed in the same position or on an equal footing with reference to their knowledge of the subject matter of insurance.

## Example

In *Turner vs. Green*, the plaintiff was informed of an accident but he did not disclose the same to insurer. Had the defendant been aware of the happening of the accident, he would not have entered into a contract at all.

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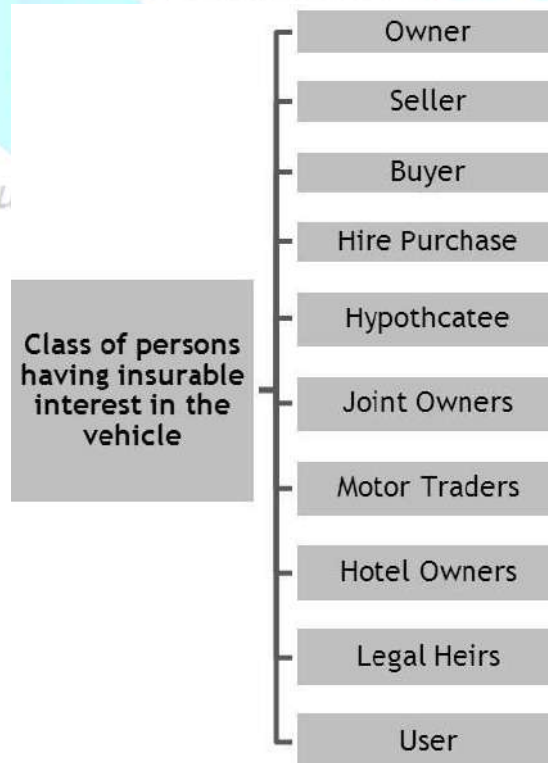
It would, therefore, be necessary for the proposer to submit **details of previous accidents** and imposition of terms like **compulsory excess** on own damage claims by the previous insurer, usage of vehicle, geographical area of use, the physical health of the driver, the driving history including traffic convictions of the driver. These terms will enable the insurer to decide the acceptance of the proposal and if necessary, will enable restriction to the scope of insurance cover or impose restriction on driving the vehicle by named persons only.

- i. **Contractual duty of utmost good faith:** The use of „proposal form“ is compulsory and the „declaration clause“ in the proposal form modifies the „Common Law duty“ into a „Contractual duty of utmost good faith“. The effect of this modification is that the answers given in the proposal form become continuing warranties. The answers are required to be literally true and correct. Any wrong answer, irrespective of its materiality, will render the insurance contract voidable by insurers, although the burden of proving concealment or misrepresentation rests on the insurance company.

## b) Insurable Interest

Insurable interest is the insured's legal right to insure. In Motor Insurance vehicle is the property, which is exposed to loss or damage. The insured also has a legal liability towards third parties; he may suffer financial loss if he incurs that liability under law through the use of the vehicle. Therefore, the insured has insurable interest, which entitles him to insure the vehicle against damage and liability risk. In motor insurance following class of persons have an insurable interest in the vehicle:

Diagram 1: Class of persons having insurable interest in the vehicle



### i. Owner

The Motor Vehicles Act, 1988 stipulates that the owner of a motor vehicle shall arrange for the registration of the vehicle with the **Registering Transport Authority**. For Registration of a vehicle evidence of valid insurance in the form of a **Certificate of Insurance or Cover Note** is a prerequisite to comply with the 1988 Act. Therefore, the owner of a motor vehicle by virtue of his title and possession has an insurable interest which must be existing throughout the ownership of a vehicle i.e.,

- (a) at the time of taking insurance,
- (b) during the currency of the period of insurance,
- (c) at the time of claim and
- (d) at the time of renewal of the policy

### ii. Seller

The seller of a motor vehicle has an insurable interest until the property, in the motor vehicle passes on to buyer. In certain cases e.g., an unpaid vendor of the motor vehicle can exercise the right of lien to the extent he has an insurable interest.

### iii. Buyer

The buyer of motor vehicle acquires insurable interest as soon as the contract of sale is completed, though he may not be in possession of the vehicle.

### iv. Hire Purchase

If a vehicle is purchased under a hire purchase agreement or lease agreement, the financier remains owner of the vehicle and insurance should be arranged in their name.

However, Section 51 of the 1988 Act requires registration of the vehicle in the name of user, with Owner's right endorsed in the registration document. In view of this, the insurance policy is issued in the name of the user incorporating Financiers (Owner's) interest clause as per India Motor Tariff IMT 5 & 6 in consonance with general regulations number 19 & 20 respectively.

The clauses provide that in respect of loss or damage to the motor vehicle (which loss or damage is not made good by repair or replacement) the monies shall be payable to the Owner, i.e., the Financiers. A hire purchase financier of a motor vehicle has an insurable interest until all the instalments are repaid. Financier is not the owner of the Motor vehicle for the purpose of the accident which requires possession of vehicle as the most important element in compliance of the requirement of 1988 Act. [(Godavari Finance Co v Degala Satyanarayanaamma) 2008 (5) MLJ 748 (SC): 2008 (5) SCC 107].

### **v. Hypothecatee**

In hypothecation agreement, the ownership in the vehicle is with the user only, but financiers continue to have an insurable interest to the extent of the loan outstanding to hypothecate. A clause is incorporated in the policy to protect the Pledgee's interest as per IMT 7 in consonance with General Regulations 21 incorporating an insurable interest to the extent of money so advanced or outstanding. The person advancing money in respect of motor vehicle under a hypothecation agreement remains a beneficiary.

### **vi. Joint Owners**

Joint owners of the vehicle or partners of a firm have insurable interest in the Motor Vehicle as per partnership provisions.

### **vii. Motor Traders**

Motor traders e.g., garage proprietors have insurable interest as baileys in respect of loss or damage to customers' vehicle that are in their custody for repair purpose. Motor Traders Policy covers such liability separately. This succinctly infers that the standard motor vehicle package / liability policy does not cover liability for loss or damage to vehicle while the vehicle and any third party liability accrued thereon during the period, whilst the vehicle is lying in a garage.

### **viii. Hotel Owners**

Hotel owners are baileys either for reward or otherwise of a vehicle and as the goods held in trust / possession have an insurable interest until the vehicle is in their possession or entrusted by them to hotel security agency.

### **ix. Legal Heirs**

Legal heirs to an intestate person, executor's administrators, official assignees, official receivers have an insurable interest.

### **x. User**

The owner insured may drive the vehicle on his own or may authorise other persons to drive his vehicle. Strictly speaking the user is liable under common law and law of torts to any third party liability, but the owner is deemed to act as an Agent under 1988 Act in arranging the indemnity on behalf of such other persons who may drive the vehicle with his permission and incur liability.

Otherwise, the injured third parties will have no recourse to recover damages. Under Section 146 of the M.V. Act 1988, no person shall allow any other person to use his vehicle in a public place, unless the vehicle is covered by an insurance policy complying with the requirements of the 1988 Act.

### **c) Indemnity**

Insurance contracts are contracts of indemnity, that is to say, the insured is placed after loss, as far as possible, in the same position as he was immediately before the loss. This principle ensures that the insured does not make a profit out of his loss. In motor insurance principle of indemnity is applied in following ways:

#### **i. Total Loss (TL) / Constructive Total Loss (CTL) / Theft Claims**

For TL / CTL / Theft claims, the principle of Insured's Declared Value (IDV) is applied. IDV does not take into consideration market value or depreciated value of the vehicle. It is the sum insured agreed at the commencement of the policy between insurer and the insured, based on manufacturers' price of new vehicle at the commencement of the policy period subject to depreciation at agreed rates as provided in the Motor policy document. IDV remains constant throughout the policy period and will not be subjected to further depreciation for TL / CTL / Theft claims during the policy period.

#### **ii. Repair Claims**

In case of claims for repair of the vehicle, the indemnity is computed on the cost of parts replaced less depreciation, taking into consideration the nature of parts, age and usage of the vehicle. The depreciation table for repairs as per General Regulation 9 of India Motor Tariff is different from the one applicable for TL / CTL / Theft losses as per General Regulation 8.

#### **iii. Third Party Liability**

In respect of Third Party liability, the incurred damages are awarded including the interest component as indemnity, including the limits of liability for Personal Accident (PA) owner driver claims as specified in the policy. The Policy also provides indemnity for legal costs as awarded.

### **d) Doctrine of Subrogation and Contribution**

#### **i. Subrogation**

Subrogation is the transfer of rights from the insured to the insurer when the loss or damage to the vehicle is caused by the negligence of another person. Insurers' exercise the rights to recover the loss from the person so responsible under common law. The doctrine of subrogation operates only



after the claim is paid. A policy condition, however, provides for subrogation before the payment of the claim.

In the case of theft of parts from a private car, the insurers are entitled to the stolen parts when recovered, by virtue of the application of the doctrine of subrogation. In practice, however, subrogation stands modified by **Knock for Knock Agreement** (Chapter 2) between insurers. The insured is required to extend full cooperation and join the insurer as co-plaintiff in any legal suit of recovery.

In case the insured himself recovers damages through legal proceedings without any assistance from the insurer and perchance the insurer has settled the claim, the insurer will be entitled to the benefit of recovery so made by the insured to the extent of amount of claims paid.

## ii. Contribution

Contribution arises when there is double insurance (refer GR.24), that is, when the same vehicle is insured under two policies. According to the policy condition, the loss is shared pro-rata between the two insurers.

The industry needs to clarify whether the liability be precluded if there were no instruction by the owner insured but the instructions were given by some other family member?

The contribution condition needs to be specially worded in Private Car Policies to cover the owner of the motor vehicle, for third party liability while driving cars not belonging to him.

## e) Proximate Cause

The doctrine of proximate cause applies to motor insurance similar to other classes of insurance. The loss or damage to the vehicle is indemnified only if it is proximately caused by any of the insured perils. The doctrine also applies to third party claims. The third party injury or damage must be proximately caused by the use of the vehicle, by or on the instructions of the insured, for which he is held legally liable to pay damages.



### Test Yourself 1

Which of the following statement is correct with regards to insurable interest of partners in a motor vehicle?

- I. Partners always have equal insurable interest in the motor vehicle
- II. Partners have insurable interest in the motor vehicle as per the partnership provisions
- III. As per the provisions of the Motor Vehicle Act, the partner with the highest stake in the partnership always has the entire insurable interest in the motor vehicle
- IV. As per the provisions of the Partnership Act, the partner with the highest stake in the partnership always has the entire insurable interest in the motor vehicle

### B. Legal Aspects of Insurance and The Motor Vehicles (Amendment) Bill, 2008

#### Legal Aspects of Insurance

The practice of motor insurance is influenced, to a large extent, by the erstwhile Motor Vehicle Act, 1939 which came into force in July 1939. This Act made provision for various matters relating to:

- i. The use, maintenance and operation of motor vehicles,
- i . Registration of motor vehicles,
- ii. . Construction equipment and maintenance of motor vehicles,
- iv. Control of traffic, etc.

**Chapter VII-A and Chapter VIII** of the Act 1939 provided for insurance of motor vehicles against third party risks under the provisions of Chapter VIII brought into force from 1st July, 1946 and those of Chapter VII-A made effective from 1st October 1982.

The Motor Vehicles Act, 1939 (No. 4 of 1939) was amended several times to keep it up to date. A need was; however, felt that this law should take into account also the:

- i. Changes in the Road Transport Technology,
- i . Pattern of passenger and Freight movements,
- i i. Development of road network and particularly
- iv. The improved techniques in Motor vehicles management

Various Committees like the National Transport Policy Committee, National Police Commission, Road Safety Committee, Low Powered Two-Wheelers Committee, as also the Law Commission went into the different aspects of road transport recommending updation, simplification and rationalisation of the law.

A working Group was, therefore, constituted in January, 1984 to review the provisions of the Motor Vehicles Act, 1939 and to submit draft proposals for suitable legislation to replace the existing Act.

### **1. Act No. 59 of 1988 (The Motor Vehicles Act, 1988)**

In 1985, General Insurance Corporation appointed a Committee of experts which examined the provisions of the MV Act 1939 thoroughly and submitted to the Central Government an exhaustive report suggesting constructive amendments to the Act. It had recommended removal of certain disparities with regard to the liability of the insurer to pay compensation depending upon the class or type of vehicle involved in the accident. The Motor Vehicles Act, 1988 (Act No. 59 of 1988) is the outcome of all the recommendations proposed by various Committees. It has replaced the earlier 1939 Act and it became effective from 1st July, 1989.

#### **a) Important provisions of the 1988 Act**

- i. Rationalisation of certain definitions with additions of certain new definitions of new types of vehicles.
- ii. Stricter procedures for grant of driving licences and period of their validity.
- iii. Laying down of standards for the components and parts of motor vehicles
- iv. Standards for anti-pollution control devices.
- v. Provision for issuing fitness certificates of vehicles also by the authorised testing stations.
- vi. Enabling provision for updating the system of registration marks.
- vii. Liberalised schemes for grant of All-India Tourist permits as also national permits for goods carriages.
- viii. Administration of Solatium Fund by General Insurance Corporation
- ix. Maintenance of State registers for driving licenses and vehicle registration.
- x. Constitution of Road Safety Councils.
- xi. Seeking to provide for more deterrent punishment in cases of certain offences.

**b) Amendment Act 54 of 1994**

The Act of 1988 was amended vide Amendment Act 54 of 1994 which consolidated and rationalised various laws regulating road transport.

- i. Modification and amplification of certain definitions of new type of vehicles;
- ii. Simplification of procedure for grant of driving licences;
- iii. Putting restrictions on the alteration of vehicles;
- iv. Certain exemptions for vehicles running on non-polluting fuels; Amendments were made for make special provisions under Sections 66 & 67 so as to provide that vehicles operating on eco-friendly fuels shall be exempted from the requirements of permits and also the owners of such vehicles shall have the discretion to fix fares and freights for carriage of passengers and goods. The intention in bringing the said amendments was to encourage the operation of vehicles with such eco-friendly fuels.
- v. Ceilings on individuals or company holdings removed to curb –benamill holdings;
- vi. States authorised to appoint one or more State Transport Appellate Tribunals;
- vii. Punitive checks on the use of such components that do not conform to the prescribed standards by manufactures, and also stocking / sale by the traders;
- viii. Increase in the amount of compensation of the victims of hit and run cases;
- ix. Removal of time limit for filling of application by road accident victims for compensation;
- x. Punishment in case of certain offences is made stringent;
- xi. A new pre-determined formula for payment of compensation to road accident victims on the basis of age / income, which is more liberal and rational.

The Law Commission in its 119th Report had recommended that every application for a claim be made:

- i. To the Claims Tribunal having jurisdiction over the area in which the accident occurred or

- i . To the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or
- i . Within the local limits of whose jurisdiction the defendant resides, at the option of the claimant.
- c) **Amendment Act 27 of 2000** set to reduce the vehicular pollution and to ensure the safety of the road users. Therefore, Act prohibited alteration of vehicles in any manner including change of tyres of higher capacity. However, the alteration of vehicles with a view to facilitating the use of eco-friendly fuel including Liquefied Petroleum Gas (LPG) is being permitted.
- d) **Amendment Act 39 of 2001** considered it essential to remove exemption provided under Sections 66 and 67 of the said Act to CNG operated vehicles so that vehicles which operate on eco-friendly fuels are also covered by the terms and conditions applicable to all other vehicles.

**Power of licensing authority to disqualify from holding a driving licence or revoke such licence:**

If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that the -

- i. is a habitual criminal or a habitual drunkard; or
- i . is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985; or
- i . is using or has used a motor vehicle in the commission of a cognizable offence; or
- iv. has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or
- v. has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or
- vi. has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or
- vi . has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of Section 22; or

- vi. . being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care, it may, for reasons to be recorded in writing, make an order
  - (a) Disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence ; or
  - (b) Revoke any such licence.

## 2. Chapters relating to Third Party and Own Damage Insurance

- i. **Chapter X Sections 140 to 144** of the MV 1988 Act deal with “**Liability without Fault in Certain Cases**”. (Dealt in the Act 1939 under Chapter VII - A Sections 92-A to 92-E and the provisions of Chapter VIII of the MV Act 1939 have now been covered under Chapter XI and XII of the MV Act 1988).
- ii. **Chapter XI Sections 145 to 164** of the MV ACT, 1988 deal with “**Insurance of Motor Vehicles against Third Party Risks.**”
- iii. **Chapter XII Sections 165 to 176** of the MV Act, 1988 deal with “**Claims Tribunals**”.

Whilst Chapters X, XI, and XII of Motor Vehicles Act, 1988 deal exclusively with compulsory third party insurance of motor vehicles, the other chapters deal with many other aspects of the road safety law. The act also provides the definitions of the various words and phrases which frequently appear in the insurance documents.

### a) Definitions

- i. “**Articulated Vehicle**” means a motor vehicle to which a semi-trailer is attached.
- ii. “**Certificate of Registration**” means the certificate issued by Competent Authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of the Act.
- iii. “**Conductor**”, in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed.
- iv. “**Conductor's License**” means the license issued by a Competent Authority authorising the person specified therein to act as a conductor

- v. **“Contract Carriage”** means a motor vehicle which carries passenger(s) for hire or reward and is engaged under a contract, **whether expressed or implied**, for the use of such vehicle as a whole for the carriage of passengers mentioned therein, and entered into by a person holding a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or agreed rate or sum on
- (a) a time basis, or - from one point to another,
  - (b) and, in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes
  - (c) a maxi cab; and - a motor cab
- vi. **“Stage Carriage”** means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey.

**Distinction between “Contract Carriage” and “Stage Carriage”:**

**The contract carriage** is engaged for the whole of the journey between two points for carriage of a person or persons hiring it, but it has not the right to pick up other passengers en route.

**The stage carriage**, on the other hand, runs between two points irrespective of any prior contract, and it is boarded by passengers en route who pay the fare for the distance they propose to travel.

- vii. **“Driver”** includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.
- viii. **“Driving License”** means the license issued by a Competent Authority under Chapter II of the 1988 Act authorising person specified therein to drive, otherwise than as a Learner, a motor vehicle or a motor vehicle of any specified class or description.

**Note: Period or currency of driving license**

The amendment provides that in case of license to drive a transport vehicle carrying goods of dangerous / hazardous nature, the license shall be effective for a period of **one year** and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus. Other transport licenses are valid for **three years**.



In case of private cars, earlier, driving license used to be valid upto **twenty years** till a person attains age of 40 years. Now, as per amendment, the driving license of persons above the age of 50 years would be renewed for a period of **five years** at a time on payment of prescribed fees.

- ix. **“Gross Vehicle Weight”** means in respect of any vehicle, the total weight of the vehicle and load certified and registered by the Registering Authority as permissible for the vehicle.
- x. **“Maxi cab”** means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward.
- xi. **“Motor cab”** means any motor vehicle constructed or adapted to carry not more than six passengers, excluding the driver, for hire or reward.
- xii. **“Motor Car”** other than a transport vehicle, omnibus, road roller, tractor, motor-cycle or invalid carriage.
- xiii. **“Motor Vehicle”** or **“Vehicle”** means any mechanically propelled vehicle adapted for use upon road, whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or vehicles having less than four wheels fitted with engine capacity not exceeding 25 cubic centimeters (25 cc).
- xiv. **“Private Service Vehicle”** means a motor vehicle constructed or adapted to carry more than six persons, excluding the driver, and ordinarily used for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward, but does not include a motor vehicle used for public purposes.
- xv. **“Public Service Vehicle”** means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage and stage carriage.
- xvi. **“Public Place”** means a road, street, way or other place whether thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.
- xvii. **“Trailer”** means any vehicle other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.
- xviii. **“Policy Insurance”** includes a –Certificate of Insurance cell.

**xix. “Property”** includes goods carried in the motor vehicle, roads, bridges, culverts, causeway, trees, posts and milestones.

**xx. “Third Party”** includes the Government.

**xxi. “Goods Carriage”** means only motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

**xxii. “Light Motor Vehicle” (LMV)** means a transport vehicle or omnibus, the gross vehicle weight (GVW) of either of which or a motor car or a tractor or road roller, the un-laden weight of any of which does not exceed 7,500 Kg (earlier it was 6,000 Kg). Because of this, now the new classification is as under:

LMV	Up to GVW 7,500 Kg
MVW	GVW 7,500 Kg To 12,000 Kg
HGV	GVW above 2,000 Kg

#### **b) Registration of the vehicle**

Section 39 states that no person shall drive any motor vehicle and no owner of the motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the Motor Vehicle Act 1988.

#### **c) Fitness of vehicle**

Section 56 of the 1988 Act: if the fitness of the vehicle had expired before the date of accident, the vehicle shall not be deemed to be registered under Section 39 of 1988 Act (Central Motor Vehicle Rules 52 for renewal of certificate of registration and Rule 62 for the validity of the Certificate of Fitness).

#### **d) Permit**

Section 66 (1) of the Act 1988 Necessity for permits (see 3 a) below).

#### **e) Certificate of Insurance**

The 1988 Act requires issue of a Certificate of Insurance by the insurers as proof of Third Party insurance to satisfy the requirements of Chapter XI of the Act. The Certificate of Insurance (Form 51) must be in the form prescribed under the Motor Vehicle Rules framed under the Act.

Certificate is to be issued by –Authorised Insurer and Authorised Government Insurance Fund<sup>II</sup> who are authorised to be do general insurance business in India.



Certificate of insurance includes Cover Note and Policy of Insurance includes –Certificate of Insurance. Certificate of Insurance is to be produced when demanded by traffic police / Road Traffic Authority.

#### **f) Transfer of Certificate of Insurance**

The motor Insurance Policy is a personal Contract and is underwritten on the basis of purpose and manner of use of vehicle besides the physical features, therefore, the Policy cannot be transferred without the consent of the insurer insofar as it does not counter the provisions of the Motor Vehicle Act 1988. Section 157 provides for the provisions for the transfer of certificate of insurance as hereunder:

- (1) The Certificate of Insurance automatically gets transferred to the transferee once the ownership is changed.
- (2) The Transferee shall apply within 14 days to the insurer to insert his name in the Certificate of insurance.

Section 157 (1) states that such deemed transfer, shall include transfer of rights and liabilities of the said certificate of Insurance and Policy of Insurance. Under Section 157 of the Act, on transfer of ownership of the Vehicle, the Certificate of Insurance is automatically transferred in favour of new owner from the date of transfer of ownership of the vehicle. However, Supreme Court of India has held in 1996 that the automatic transfer is only for Third Party risks and not the full policy where policy covers insurance of Own damage i.e., damage to the vehicle cover.

*#You dream, we care. A new way of learning...*  
The transfer of insurance under Own damage section takes place transferee should apply within 14 days from the date of transfer in the prescribed form to the insurer for making the necessary changes in the 'Certificate of Insurance' and in the Policy, and the insurer is obliged to make such changes in the said documents to give effect to the transfer of insurance.

Now, under changed IMT as of 1/7/2002 GR 17 has come into force, as per this rule, 14 days period is stipulated for the transfer of contract of insurance. Hence, as of 1/7/2002, unless the policy of insurance was transferred in the name of purchaser, the insurer may not be liable for the OD claim.

#### **g) Grace period for OD claims**

Here also, TAC has clarified that during the 14 days period, it can be construed as grace period and insurers can consider OD claims, even if the contract of insurance was not transferred as on date of accident. In respect of Third Party claims, be it under the earlier IMT dispensation or the present one, insurers would be liable vide Sec.157 of MV Act, 1988.

### 3. Definition of Permit

Permit is an instrument issued by a State or Regional Transport Authority authorising the use of a motor vehicle as a transport vehicle in specified manner as per the relevant provisions of Motor Vehicle Act and rules framed thereunder. Section 66 (1) of Motor Vehicle Act, 1988 mandates for necessity of permit for transport vehicles.

#### a) Section 66 (1): Necessity for permits

No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a Stage Carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a good carriage either when carrying passengers or not:

Provided also that a Goods Carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

In view of the provisions of Section 66 (1) of Act 1988 the claim for OD may not be paid in the absence of a valid permit or a permit which has not been removed or in case the vehicle meets with an accident in an area beyond that allowed by the permit. The same is applicable to Motor Third Party claims. The requirement of the permit cannot be waived as per the proviso of sub section (1) of Section 66 of the Act 1988.

#### i. Exemption from the necessity of permit

However, transport vehicles belonging to Central or State Government, Police, Local body, Fire brigade, Ambulance, Cranes and Goods vehicle having gross vehicle weight not exceeding 3000 kilograms are exempted from the necessity of permit.

## ii. Action against violation of permit conditions

Action is taken by State Transport Authority (STA) against violation of permit conditions especially by Stage Carriage buses u/s 86 of MV Act 1988 for suspension / cancellation of permits. Action is taken by the STA Branch under Section 86/192A of the Motor Vehicle Act, 1988.

## iii. Forms for application of permit

Any registered owner of a transport vehicle can apply for the permit. However there are restrictions or permits are made available only after notification of Government. Normally permits can be applied any time. However the stage carriage permits are only issued at the time of notification as per policy.

Further Supreme Court's direction for switching over to CNG mode of fuel have also to be complied with at the time of issue (or renewal) of permits. The Enforcement Wing of Transport Department ensures the compliance of permit conditions. The Traffic Police has also been given the responsibility of Enforcement as per the direction of Court and Transport Department under the Motor Vehicle Act 1988 and Rules framed there under. The forms are prescribed under Central Motor Vehicles Rules, 1989 and Delhi Motor Vehicles Rules, 1993 as under:

Form 45	Application for grant of tourist vehicle
Form 46	Application for grant of authorisation for tourist permit or national permit
Form 48	Application for grant of national permit
Form PCA	Application for a contract carriage permit
Form P.G.A.	Application for a goods carrier permit
Form P.TEMP.A	Application for a temporary permit
Form P.S.A.	Application for a private service vehicle permit
Form P.R.A.	Application for renewal of permit / counter signature

## b) Types of Permit and its Condition

### i. Goods Carrier Permits

Such permit is granted under Section 79 of the Motor Vehicles Act, 1988, to a goods vehicle operating within the state. Permits granted to a particular vehicle for carrying a particular load has to be plied for that particular area only.

### ii. Counter Signatures of Goods Carrier Permits

These are the permits which are initially issued by one state and later on endorsed in another state by the concerned State or Regional Transport Authority under Section 88 of Motor Vehicle Act, 1988.

In view of the Delhi Government Notification number counter signatures are not being done under Section 88 of Motor Vehicle Act, 1988 for those goods vehicles registered in other states and having a gross vehicle weight up to 7500 kg, if not running on clean fuel. [F.PA/JCV/OPS/Tpt./1613/05/1447 dated 5th January 2006]

### **iii. National Permits**

National permits are issued to goods vehicles to enable them to go outside the home state. National Permit is issued for a minimum of four continuous states (including the home state) under Rule 86 & 87 of Central Motor Vehicles Rules, 1989. For obtaining such permits the maximum age of a particular vehicle should not exceed 12 years. However, maximum age in case of a multi-axle vehicle should not exceed 15 years. For the issue of National Permit, applicant has to apply on Form 46 and 48 along with other formalities.

### **iv. Permits for Passenger Vehicles**

#### **(a) Auto Rickshaw and Taxi permits**

Such permits are issued for carrying passengers to various places within a city. Fare is charged as per the fare meter mounted on such vehicles.

#### **(b) Maxicabs**

Such permit are issued by STA to vehicles carrying passengers to various parts of Delhi on a fixed route and as per the fare fixed. Total seating capacity of such vehicles should not exceed more than 12 excluding the driver.

#### **(c) Phat Phat Sewa**

The operators using the three wheeled Harley Davidson engine vehicles were issued Phat Phat Sewa permits. These vehicles have since been replaced with vehicles having maximum seating capacity of 9. They ply on a fixed route and charge the fare as per approval.

#### **(d) Eco Friendly Sewa**

Transport Department has issued permits to battery operated 3 wheeled vehicles having seating capacity up to 10.

## **v. Contract Carriage Buses Permits (Chartered Buses)**

This is the most common type of permit used for hire and reward purpose. The permit holder can operate under a contract with his client for a fixed destination within Delhi or outside Delhi. For this an agreement should be executed between the clients and the operators and the list of passengers should also be available with the driver of bus. The permit holder cannot pick passengers other than those mentioned in the list. Such types of buses are also known as Chartered Buses. These permits are issued under Section 74 of Motor Vehicles Act, 1988. The applicant has to apply on form PCA along with other formalities.

## **vi. Stage Carriage Permits**

These permits are issued under Section 72 of Motor Vehicles Act, 1988 depending upon the requirement of buses on different route of the city. The permit holders can operate their bus under their allotted routes for picking up passengers from one place to another. All Transport Corporation and private stage carriage buses come under this category. The fares are fixed.

## **vii. Temporary Permits**

A temporary permit is issued under Section 87 of Motor Vehicles Act, 1988 to transport vehicle for a limited period, enabling the vehicle to go outside:

- (a) For the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) For the purposes of a seasonal business, or
- (c) To meet a particular temporary need, or
- (d) Pending decision on an application for the renewal of a permit

The applicant has to apply on form P. TEMP. A.DLY/DLZ (ALL India Tourist Permits cab): This permit is given for motor cabs having seating capacity of five. The colours of the cabs are permitted as white only. The applicant for this permit should have an office having telephone at suitable tourist passengers booking place. The applicant should have authorised parking place to park these vehicles and adequate financial resources to purchase the vehicle. The road tax / passenger tax of vehicle is paid at state borders. DLZ permits are given to luxury cars.

## **viii. Rent-a-Cab Permits**

With the increase in the number of multinationals companies and tourists requirements, Rent-A-Cab scheme was launched in India in 1989. Under this scheme the passenger drives the vehicle himself and fare is charged on number of days the cab is used. The applicant should have a 24 hours accessible telephone, adequate parking space, experience of passenger transport business. The applicant in addition should have a fleet of 50 cabs

of which 50% should be air-conditioned. The permit of these schemes is also valid throughout India provided the passenger taxes were paid to the corresponding states.

#### **ix. Institution / School Buses**

The vehicles of Educational Institution registered under the Societies Act, 1960 (21 of 1960) are issued contract carriage permit by STA. These vehicles are also exempted from road tax. For identification these vehicles are painted in golden yellow paint. Special provisions have been incorporated in Delhi Motor Vehicles Rules, 1993 for additional safeguards in respect of the safety of the children.

#### **x. All India Tourist Permit**

This permit is given to luxury buses which have white colour with a blue ribbon of five centimeters width at the center of exterior of the body and the word 'Tourist' shall be inserted on two sides of the vehicle within a circle of sixty centimeters diameter.

A tourist permit shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes 9 years in the case of Motor Cab and 8 years where the motor vehicle is other than a motor cab, unless the motor vehicle is replaced by another, the latter vehicle shall not be more than 2 years old on the date of such replacement.

The seating layout shall be two and two or one and two or one and one on either side, all seats facing forwards. The Vehicles should also have other facilities like public address system, drinking water, push full back seats, fans, curtains, a separate driver cabin etc. The applicant has to apply on Form 45 & 48 along with other formalities.

Every motor vehicle or motor cab under the Authorization Certificate issued under these rules shall exhibit the words '**All India Tourist Permit**' on the back of the motor vehicle in contrasting colours, so as to be clearly visible. (as per the notification issued by Department of Road Transport & Highways on 26th June 2007).

#### **c) Positive effect on the traffic flow**

The motorists should be more careful while driving. Driving safely is the only way to control accident and related person and property losses. The trend worldwide shows that people become more cautious when the fines are high. The bill, drafted by the road transport ministry, has made penalties for traffic offences much more stringent.



- i. **Dangerous driving and not wearing seat belts or helmets** will also attract higher punishment. Rash driving for example is now likely to attract a civil liability of up to Rs. 5,000 in addition to punishment under the Indian Penal Code.
- ii. **Driving drunk, jumping the lights, speeding, and use of mobile phones** behind the wheel will attract higher fines and jail terms as envisaged under new rules. The proposed rules also include substantial hikes in compensation to accident victims. Drunk driving will attract a penalty of Rs. 5,000 and a two-year jail term.
- iii. For the first time, a concept of **graded fines for drunk driving** is likely to be introduced. This means that penalty will be directly proportional to the alcohol content found above the stipulated limit of up to 30 mg per 100 ml of blood in the driver's body.

#### 4. Licencing of Drivers

##### a) Section 4: Age limit for driving of vehicles

Section 4 of MV Act 1988, envisages age limit in connection with driving of motor vehicles.

- i. **Section 4 (1):** No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that (a motor cycle with engine capacity not exceeding 50 cc) may be driven in a public place by a person after attaining the age of sixteen years

- ii. **Section 4 (2):** No person under the age of twenty years shall drive a transport vehicle in any public place subject to the provisions of Section 18.
- iii. **Section 4 (3):** No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application, unless he is eligible to drive that class of vehicle under this section.

Age for driving licence entitlement: Not less than

16 years for non-geared Motorcycles
18 years for Geared Motorcycles and other vehicles
20 years for Transport Vehicles

**b) Section 7: Restrictions on the granting of learner's licences for certain vehicles**

- i. **Section 7 (1):** No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.
- ii. **Section 7 (2):** No person under the age of eighteen years shall be granted a learner's licence to drive motorcycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licences.

Effective driving licence shall include:

- i. Issue by an appropriate authority
- i . Valid on the date of accident
- ii. . Endorsement for the types of vehicle permitted to be driven
- iv. Transport endorsement for goods carrying vehicle
- v. Authorisation to drive the public service vehicle, in addition to transport endorsement, for such vehicles
- vi. For carrying goods dangerous or hazardous to human life, the licence should have an endorsement for driving vehicles carrying goods of dangerous or hazardous nature as provided under Rule-9 of Central Motor Vehicles Amendment Rules 1993.

**c) Section 10: Contents of Driving Licence**

Specifies the form and contents of Driving Licence Sub-section (2)(e) to (2)(h) have been removed and the expression [—Transport Vehicle] introduced by Amendment Act of 1994 w.e.f.14.11.94 to check whether Driver was holding valid and effective licence.

**d) Section 13: Extent of effectiveness of Licence**

The Licence shall be effective throughout India



**e) Section 14: Currency of Driving Licence**

Learner's Licence	Six months
Transport Licence	Three Years
Other Licences	For a period of Twenty years or till the person attains the age of 50 years whichever is earlier. After attainment of 50 years, the licence is renewed for five years at a time.
Licence for hazardous goods	One year. Driver to undergo refresher course before renewal.
Every licence issued under this Section will remain effective for a period of thirty days after expiry.	

**f) Section 15: Renewal of Driving Licence**

Section 15(1) of the MV Act 1988 in no uncertain terms states that the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal.

If an application for renewal is made within 30 days from the date of expiry, the renewal when is effected will be from the date of expiry.

If application for renewal is made after expiry of 30 days, the renewal will be from the date of application. If the application is made after more than five years, the licensing authority may refuse to renew the licence unless the applicant passes a test.

**g) Section 19: Disqualification for holding a Licence**

Conditions are laid down as under: If he

- i. Is a habitual criminal or a habitual drunkard; or
- ii. Is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or
- iii. Is using or has used a motor vehicle in the commission of a cognizable offence; or
- iv. Has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

- v. Has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or
- vi. Has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this; or
- vii. Has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of Section 22; or
- viii. Being a person under the age of eighteen years, who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care.

## 5. Procedure for Accreditation of Bus Body Builders

During the last two decades, there has been an exponential growth in the number of automobiles in India. The rate of the growth is manifold in personalised vehicles as compared to public transport vehicles. Unfortunately, number of roads and road space has not increased in tandem with the growth of vehicular population. This situation has posed a serious challenge to Road Safety and Environment.

During the last 20 years, efforts are on, under the aegis of Ministry of Shipping, Road Transport & Highways India to bring in new regulations to enhance safety. **Bus Body Building and Truck Body Building** is carried out not only by a few well organised sectors but also largely by Small Scale Industries and even road side garages. There is a need to implement Bus Body Code and Bus Body Building Accreditation System to ensure building of buses as per the stipulated safety norms. In order to implement Bus Body Builders Accreditation System, there is a need to establish a proper system for the effective implementation.

Government of India has notified "**Central Motor Vehicles (Accreditation for Bus Body Builders) Order, 2007** and notified in Gazette of India, Notification No. S.O.425(E) dated 23rd March, 2007). As per the notification, all the Bus Body Building units will have to obtain accreditation certificate to demonstrate their capabilities to build buses as per the safety norms. Bus Body Code, Testing and approval for the body building of buses AIS: 052 and Testing and approval for the body building of school buses AIS:063 was notified vide Notification No. GSR 589(E) dated 16 Sept, 2005 is available on [www.araiindia.com](http://www.araiindia.com).

### a) Procedure for Accreditation

Bus Body Builders will have to study the instructions in the above notifications carefully and proceed with their Application in Word Format. The applications should be accompanied with separate Demand Drafts of Rs. 1,000/- as Registration Charges and Rs. 50,000/- as Assessment Fees, favour of the Director, CIRT, payable at Pune.

- i. **For West & South zones:** The Director, Central Institute of Road Transport, (Zonal Accreditation Board) Post Bag No. 1897, Pune - Nasik Road, Bhosari, Pune 411 026.
- ii. **For East & North zones:** Contact Director, Automotive Research Association of India, (Zonal Accreditation Board), Post Box No. 832, Pune - 411 004,

## 6. The Motor Vehicles (Amendment) Bill, 2008

### a) Part A: Highlights of the Bill

The Motor Vehicles Act, 1988 is the principal legislation by which road transport is regulated in the country. The Act was amended thrice, in 1994, 2000, and 2001 in response to technological changes.

The Motor Vehicles (Amendment) Bill, 2008 seeks to amend the Principal Act by

- i. Enhancing fines,
- i . Devolving greater powers to state governments to regulate road transport,
- i . Streamlining provisions dealing with the payment of compensation to road accident victims, and
- iv. Prescribing a time bound process for disposal of appeals

**Enhancing fines:** The proposed Bill enhances penalties for offences, and provides different penalties for first and subsequent violations.

**Increased powers to State Governments:** The Bill gives increased powers to state governments in matters such as regulating Stage and Contract carriages, in regulating Service Operators, and creation of Authorised Testing Stations.

Automobile associations recognised by State Governments shall be allowed to issue driving certificates. Those holding driving certificates may be exempted from a driving test for the issue of a license.

**Change in awarding compensation for motor accident claims:** The Bill changes the method of awarding compensation for motor accident claims. If

the fault of the driver is sought to be established, the claim shall be decided by the civil court or Motor Accident Claims Tribunal. If the claimant does not seek to establish the fault of the driver, compensation shall be based on the victim's income and age.

**Suspension of licence:** Any authority empowered to check a driver's license can suspend it on the spot if the driver fails a breath analyser test. The courts have the power to estimate and award compensation for motor accident cases where the driver's fault is established.

The Bill introduces a fine for rash and negligent driving. The Standing Committee recommended an additional increase in the term of imprisonment provided under the Indian Penal Code, 1860. The Bill seeks to make a consignor liable for over-loading of goods. Several countries seek to make only the driver or the owner liable.

**Key Features:** The key changes proposed by the Bill are compared with the existing provisions of Motor Vehicles Act, 1988. Comparison of Motor Vehicles Act, 1988 Motor Vehicles (Amendment) Bill, 2007 is given hereunder:

- i. **Offences where fine has been stipulated:** Fines ranging from Rs. 100 to Rs. 5,000 have been enhanced to Rs. 500 to Rs. 20,000. Other violations of the Act: Maximum fine of Rs. 300 has been increased to Rs. 1,000 (for initial offences) and Rs. 5,000 (for subsequent offences).
- ii. **Licensing authority:** The sole licensing authority in the current Act 1988 is the Regional Transport Office, which conducts driving tests and then issues licenses. The amendment propose State Government to authorise automobile associations and institutions to issue driving certificates which may exempt a person from a driving test for getting a driving license.
- iii. **Time for disposal of appeals:** No time limit is specified for disposing of appeals as yet.

The amendment proposes the appeals to be disposed of within a period of 45 to 60 days. In the event of not doing so, reasons have to be recorded in writing.

- iv. **Powers of state governments:** The state government has the power to:
  - (a) Regulate the plying of carriages under directions from the central government,
  - (b) Issue licenses as per rules prescribed by the central government,
  - (c) Set up licensing and registering authorities as per the framework mandated by the central government

Powers have been proposed to be enhanced to regulate the plying of stage and contract carriages independently. Lay down quality of service rules for operators. Enter into agreements for inter-state road transport services without the approval of the central government. Allow the Transport Authority to grant special permits for plying of stage carriages outside the jurisdiction of that Transport Authority.

- v. **Compensation for Motor vehicle accidents:** Without establishing the fault of the driver (NFL) fixed compensation is provided at of Rs. 25,000 (death), Rs. 12,500 (permanent disablement).

Establishing the fault of the driver is to be calculated according to the guidelines of Second Schedule, based on victim's age and income. The schedule is proposed to be amended based on victim's age and income.

Establishing the fault of the driver is to be awarded by the court or the Motor Vehicles Tribunal by providing a simple interest of up to two percent per annum from the date of the claim.

- vi. **Rash and negligent driving:** Penalty under Section 279 and 304A of the IPC applies but the Offence is not recognised under the Motor Vehicles Act. However, the amendment recognises this offence and imposes a fine, as well as payment of compensation to victims.
- vii. **Solatium Fund:** A Solatium Scheme of 1989 existed under Section 163 of the Act, to disburse compensation to victims of motor accident cases. The amendment proposes to delete Section 163, and provisions for establishing a Solatium Scheme have been introduced, under the supervision of the Central Government and the Insurance Regulatory and Development Authority.

—The chapter deals with the Scheme for Solatium Fund and procedure to claim compensation for hit and run cases of accident caused by Motor vehicles driven in public place. The Central Government in exercise of powers conferred by Section 163 (1) of the Motor Vehicles Act 1988 (59 of 1988) vide S.O. 440 (E) dated 12 June 1989 has made a scheme for payment of compensation to the victims of hit and run motor accidents. This scheme is called „The Solatium Scheme 1989“.

Section 161 of 1988 Act defines hit and run motor accidents to mean an accident arising out of use of a motor vehicle whose identity cannot be ascertained despite reasonable efforts for the purpose of establishing legal liability under Section 166 for negligence and NFL under Section 140.

The Solatium scheme specifies the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, administration of the scheme and the payment of compensation. Motor Vehicle (Amendment) Bill 2007 has proposed Insurance Regulatory and Development Authority to administer The Solatium Scheme.

(2) Prescribes that a scheme made under sub-section (1) provides that Section 163

(a) a contravention of any provision, thereof, shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) Any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939, (4 of 1939.) as it stood immediately before the commencement of this Act: Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

**Procedure for making the claims application:** Rule 20 of Solatium Scheme 1989 envisages an application to be filed in Form I [clause 20 (I)] before ‘Claims Enquiry Officer’ of the Sub Division in which the accident has taken place. Therefore, Claims Tribunal has no jurisdiction as held in New India Assurance Company Ltd vs. Rajendra Prasad Bhati & ors. [2002 ACJ 1762]. The application has to be made within 6 months from the date of accident.

**Procedure to be followed by the Claims Enquiry Officer:** On receipt of claims application, the Claims Enquiry Officer shall immediately obtain a copy of the F.I.R. inquest report, post mortem report, or certificate of injury and hold enquiry in respect of claims arising out of hit and run motor accidents. Claims Enquiry Officer is required to decide the rightful claimants and to submit a report to ‘Claims Settlement Commissioner’ in Form III [Clause 20 (1) (B) 2] within one month along with duly discharged Form II [Clause 20 (1)] and an under taking in Form IV [Clause 22 (1)] along with his recommendation.



**The Claims Settlement Commissioner** is required to sanction the claim within 15 days and communicate the sanction to insurance company's nominated officer. The Legal representatives of the deceased / injured person are required to submit a certificate under Section 162 of Motor Vehicles Act 1988 as per Form V [Clause 20 (1)].

**viii. Insurance companies' defenses:** Insurance companies could not be parties to claims in motor vehicle accidents but they can become parties to motor accident claims, but only with the permission of the Tribunal / Court. Some additional defenses have also been provided in the proposed amendment.

## **b) Part B: Key Issues and Analysis**

### **i. Suspension of license for drunken driving**

Any authority authorised to check the driving license of a driver shall be empowered to suspend the driving license of a person on the spot for a period up to three months, if the driver fails a breath-analyser test. Under the existing provisions of the Act, the power to suspend the licenses is with the licensing authority and the court.

### **ii. Compensation for motor accidents**

Currently, if the fault or negligence of the driver is established, the court or Tribunal awards compensation by using the Second Schedule (based on average annual income, age and life expectancy).

The Bill replaces this mechanism, and proposes that where the fault or negligence of the driver is established, the compensation shall be estimated by the court or the Tribunal. However, no guidelines or framework for calculating compensation have been provided. This could lead to a wide divergence across courts in compensation paid for similar cases.

The Supreme Court had given certain guidelines while pointing out some anomalies in the existing Schedule. However, since those sections of the Act are being replaced, the applicability of the judgment to the proposed provision is unclear.

In cases where the driver's fault is not established, the Principal Act specifies the amount of compensation. The Bill changes this method, and proposes to use a formula based on the income of the victim multiplied by a factor (which is specified according to his age). This implies that there is no upper limit on the quantum of compensation which may be awarded, even if the driver can prove that he was not at fault.

**Alternatives to proposed penalties:** The Standing Committee and the Law Commission of India have recommended that for exceeding the speed limit or drunken driving, the penalty should be based on incremental slabs.

Slabs suggested for drunken-driving

Speed of the vehicle	Penalty	Quantity of Alcohol in the body	Penalty
20% more than speed limit	Rs. 500	30-60 mg per 100 ml of blood	Rs. 2000
50% more than speed limit	Rs. 1000	60-150 mg per 100 ml of blood	Rs. 4,000/- and / or imprisonment
100% more than speed limit and beyond	Cancellation of the License and held under Section 184 of the Act	Quantity exceeding 150 mg and above	Rs. 5,000 and imprisonment with a provision for cancellation of license

Other countries follow a system of awarding de-merit points in addition to fines / other penalties. Accumulation of a certain number of de-merits points within a certain period of time leads to the cancellation of the driving license. Some other Acts specify the minimum rank of the officer who can take certain actions.

For example, Sections 129 and 167 of the Code of Criminal Procedure, 1973 states that the empowered officer shall not be below a certain rank.

### iii. Provisions related to rash and negligent driving

The Bill introduces a penalty for rash and negligent driving, along with a compensation mechanism for victims of road accidents. Currently, the penalty prescribed under Section 279 of the Indian Penal Code, 1860 is a fine of up to Rs. 1,000/- and / or imprisonment up to six months.

The Bill proposes a further fine of up to Rs. 5,000/- which will be deposited in the Solatium Fund. Some countries prescribe penalties ranging from heavy fines to revocation of the license in addition to prosecution for any injury or destruction to property. The Standing Committee recommended that existing legislation should also be amended to treat deaths caused by drunken driving as culpable homicide not amounting to murder.



#### iv. Consignor liability for exceeding weight limits

Presently, the driver or the owner of a vehicle exceeding the stipulated weight limit is deemed to have committed an offence. The Bill seeks to impose additional liability on the consignor of the goods in some cases. Many countries impose liability only on the driver or the owner of the vehicle for exceeding the prescribed weight limit.

#### Practice of other countries with regard to imposing liability for exceeding weight limit:

**Penalty imposed in United Kingdom:** A person who fails to comply with regulations regarding size and weight and the load to be carried by them is held guilty.

**United States:** Several states make the driver and / or the owner liable for the vehicle exceeding the weight-limit.

**New Zealand:** Hold a person operating a motor vehicle or a combination of vehicles guilty for exceeding weight limits.

**Canada:** Both the driver and the owner of the vehicle (if the two are different) shall be held liable.

**Philippines:** No specific person is mentioned. Any vehicle with excess load is fined.

#### Test Yourself 2

In case of private cars, driving license of persons above the age of 50 years would be\_\_\_\_\_.

- I. Renewed for lifetime on payment of prescribed fees
  - II. Renewed for a year at a time on payment of prescribed fees
  - III. Renewed for a period of three years at a time on payment of prescribed fees
  - IV. Renewed for a period of five years at a time on payment of prescribed fees
-

## Summary

- a) The Motor Vehicles Act was passed in 1939 introducing the law relating to compulsory third party insurance in India.
- b) The Motor Vehicles Act, 1988 (Act No. 59 of 1988) has replaced the earlier 1939 Act, and it became effective from 1<sup>st</sup> July 1989.
- c) A motor insurance contract has all the ingredients of general contract in respect of insured's duty to disclose material facts and insured's right to insure any legal interest, legal liability or damage to third party property, besides insurer is bestowed with the duty to indemnify and as a corollary accrues right of subrogation and contribution.
- d) Insurance of motor vehicle is unique as it combines in itself damage to insured motor vehicle and insurance against liability towards damage to third party property and / or any personal injury / death sustained by third party or passengers or persons in employment as described in the policy or arising out of the use of the insured property.
- e) Contracts of motor insurance are governed by the doctrine of uberrimae fides (utmost good faith).
- f) The use of 'proposal form' is compulsory and the 'declaration clause' in the proposal form modifies the 'Common Law duty' into a 'Contractual duty of utmost good faith'.
- g) In motor insurance following class of persons have an insurable interest in the vehicle: Owner, Seller, Buyer, Hire Purchase, Hypothecatee, Joint Owners, Motor Traders, Hotel Owners, Legal Heirs, User
- h) In practice, in motor insurance subrogation stands modified by Knock for Knock Agreement between insurers.
- i) The contribution condition needs to be specially worded in Private Car Policies to cover the owner of the motor vehicle, for third party liability while driving cars not belonging to him.
- j) The loss or damage to the vehicle is indemnified only if it is proximately caused by any of the insured perils. The doctrine also applies to third party claims. The third party injury or damage must be proximately caused by the use of the vehicle, by or on the instructions of the insured, for which he is held legally liable to pay damages.

- k) Motor Vehicle Act, 1939 made provision for various matters relating to:
  - i. The use, maintenance and operation of motor vehicles,
  - i . Registration of motor vehicles,
  - ii. . Construction equipment and maintenance of motor vehicles,
  - iv. Control of traffic, etc.
- l) The Motor Vehicles Act, 1988 (Act No. 59 of 1988) is the outcome of all the recommendations proposed by various Committees. It has replaced the earlier 1939 Act and it became effective from 1st July, 1989.
- m) Amendment Act 54 of 1994: The Act of 1988 was amended vide Amendment Act 54 of 1994 which consolidated and rationalised various laws regulating road transport.
- n) Amendment Act 27 of 2000 set to reduce the vehicular pollution and to ensure the safety of the road users.
- o) Amendment Act 39 of 2001 considered it essential to remove exemption provided under Sections 66 and 67 of the said Act to CNG operated vehicles so that vehicles which operate on eco-friendly fuels are also covered by the terms and conditions applicable to all other vehicles.
- p) Chapter X Sections 140 to 144 of the MV 1988 Act deal with –Liability without Fault in Certain CasesII. (Dealt in the Act 1939 under Chapter VII - A Sections 92-A to 92-E and the provisions of Chapter VIII of the MV Act 1939 have now been covered under Chapter XI and XII of the MV Act 1988).
- q) Chapter XI Sections 145 to 164 of the MV ACT, 1988 deal with –Insurance of Motor Vehicles against Third Party Risks.II
- r) Chapter XII Sections 165 to 176 of the MV Act, 1988 deal with –Claims Tribunals.II
- s) Section 39 states that no person shall drive any motor vehicle and no owner of the motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the Motor Vehicle Act 1988.
- t) The 1988 Act requires issue of a Certificate of Insurance by the insurers as proof of Third Party insurance to satisfy the requirements of Chapter XI of the Act. The Certificate of Insurance (Form 51) must be in the form prescribed under the Motor Vehicle Rules framed under the Act.

- u) Permit is an instrument issued by a State or Regional Transport Authority authorising the use of a motor vehicle as a transport vehicle in specified manner as per the relevant provisions of Motor Vehicle Act and rules framed thereunder. Section 66 (1) of Motor Vehicle Act, 1988 mandates for necessity of permit for transport vehicles.
  - v) Types of Permit include: Goods Carrier Permits, Counter Signatures of Goods Carrier Permits, National Permits, Permits for Passenger Vehicles, Contract Carriage Buses Permits (Chartered Buses), Stage Carriage Permits, Temporary Permits, Rent-a-Cab Permits, Institution / School Buses, All India Tourist Permit
  - w) Section 4 of MV Act 1988, envisages age limit in connection with driving of motor vehicles.
  - x) Section 7 contains provisions for restrictions on the granting of learner's licences for certain vehicles.
  - y) Section 13: The licence shall be effective throughout India
  - z) The Motor Vehicles (Amendment) Bill, 2008 seeks to amend the Principal Act by:
    - i. Enhancing fines,
    - i . Devolving greater powers to state governments to regulate road transport,
    - i . Streamlining provisions dealing with the payment of compensation to road accident victims, and
    - iv. Prescribing a time bound process for disposal of appeals
-

**Answers to Test Yourself****Answer 1**

The correct answer is II.

Partners have insurable interest in the motor vehicle as per the partnership provisions.

**Answer 2**

The correct option is IV.

In case of private cars, driving license of persons above the age of 50 years would be renewed for a period of five years at a time on payment of prescribed fees.

**Self-Examination Questions****Question 1**

The owner of a motor vehicle by virtue of his title and possession has an insurable interest\_\_\_\_\_.

- I. At the time of taking insurance
- II. At the time of claim
- III. At the time of renewal of the policy
- IV. All of the above

**Question 2**

The provision for –Constitution of Road Safety Councilsll was made in which of the below?

- I. Act No. 59 of 1988
- II. Amendment Act 54 of 1994
- III. Amendment Act 27 of 2000
- IV. Amendment Act 39 of 2001

**Question 3**

Identify which of the below form is used for making application for grant of tourist vehicle.

- I. Form PCA
  - II. Form 45
  - III. Form P.R.A.
  - IV. Form 48
- 

**Answers to Self-Examination Questions****Answer 1**

The correct option is IV.

The owner of a motor vehicle by virtue of his title and possession has an insurable interest at the time of taking insurance, during the currency of the period of insurance, at the time of claim and at the time of renewal of the policy.

**Answer 2**

The correct option is I.

The provision for –Constitution of Road Safety Councilsll was made in Act No. 59 of 1988.

**Answer 3**

The correct option is II.

Form 45 is used for making application for grant of tourist vehicle.

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# CHAPTER 2

## MARKETING IN MOTOR INSURANCE

### Chapter Introduction

In this chapter you will learn about declined risk pool, knock for knock agreement, international issues in motor insurance market and some Indian market practices like motor insurance online, role of dealers, manufacturers and garages and pay as you drive, drive less pay less and rent a car.

### Learning Outcomes

- A. Motor Third Party Pool
- B. Knock for Knock Agreement and some Market Practices





## A. Motor Third Party Pool

### 1. Dysfunctional Motor Market

The introduction of private insurers in India in 2000 following the passing of the Insurance Regulatory and Development Authority (IRDA) Act has brought about intense competition in the market for insurance business. Non-life i.e., general insurance business too has been exposed to this competition. However the existence of the Tariffs in Fire, Motor Engineering and Workmen's Compensation muted this competition to some extent. There has been a cut-throat competition in the other non-life business and a scramble for the best risks in the Tariff business.

As the restrictions of the Tariff were seen to be a barrier for differentiation of product and development of new products, the insurers were demanding scrapping of the tariffs and freedom to devise policy wordings and determine rates to grow in the market.

Motor insurance commands a large slice of the miscellaneous insurance business in India. Unfortunately it also has the highest claim ratio due to Third Party Liability predominately due to Commercial Vehicles. The advent of private insurers saw a skewed development in the motor portfolio. The more profitable private car and two wheeler business was targeted by the private insurers and the commercial vehicles were left to the public sector insurers, who could not refuse to insure against Third Party risks as they were mandated to insure in terms of the Motor Vehicle Act 1988. They thus opposed detariffing.

### 2. Motor Third Party Pool

Motor Third Party outstanding liabilities were bleeding the insurance industry and the fear that de-tariff would result in public sector insurers going under due to this was also a grave possibility. Arising out of the need to see the development of the insurance market in India and ensuring that policyholder rights were not compromised by such developments, the IRDAI mandated the creation of a Motor Third Party Pool in December 2006. The pool is applicable only for Commercial Vehicles wherein an arrangement is made to share losses in proportion to the market share of the insurers.

#### a) Pooling Arrangement

As stated by IRDAI in its circular 035/IRDA/motor-TP/2006 of 4<sup>th</sup> December, 2006 –Whereas several complaints have been received regarding non-availability of motor third party insurance especially for commercial vehicles; and whereas insurers have been expressing difficulty to underwrite this business unless they are permitted to charge premium rates that they consider appropriate.

And whereas considering the mandatory nature of motor third party insurance business it is necessary for the Authority to monitor the rates, terms and conditions of cover for the time being; and whereas it is in public interest to ensure that all insurers registered to carry on general insurance business including motor insurance business actively participate in providing such cover to vehicle owners at rates as notified by the Authority from time to time; Now therefore, the Authority, after consultation with the Committee constituted under Section 110G of the Insurance Act, hereby directs that all general insurers registered to carry on general insurance business (including motor insurance business) or general reinsurance business shall collectively participate in a pooling arrangement to share in all motor third party insurance business underwritten by any of the registered general insurers in accordance with the following provisions.

## **b) Pooling Procedure**

### **i. Participation in pooling arrangement**

Every insurer registered to carry on general insurance business (including motor insurance business) or general reinsurance business shall automatically participate in the pooling arrangement to the extent set out herein.

### **ii. Underwriting insurers**

Every underwriting office of every insurer that is authorised to underwrite motor insurance business for the insurer shall also be authorised to underwrite motor third party insurance business that will be shared among all insurers through the pooling arrangement.

### **iii. Pooling mechanism**

The pooling of business among all insurers will be achieved through a multi-lateral reinsurance arrangement between the underwriting insurer and all the other registered insurers carrying on general insurance business (including motor insurance business) and general insurance reinsurers.

### **iv. Participation in motor third party insurance pooled business**

The participation of General Insurance Corporation of India (GIC Re) in the pooled business shall be such percentage of the motor business that is ceded to it by all insurers as statutory reinsurance cessions under Section 101A of the Insurance Act. The business remaining after such cession to GIC Re shall be shared among all the registered general insurers writing motor insurance business in proportion to the gross direct general insurance premium in all classes of general insurance underwritten by them in that financial year.

## v. Underwriting of business

Underwriting offices of insurers shall follow the underwriting instructions of the General Insurance Council of India in the matter of procedures for underwriting and documentation and accounting and settlement of balances. The business shall be underwritten at rates and terms and conditions of cover as notified by the Authority from time to time. No vehicle owner shall be denied third party insurance cover in respect of his vehicle which is holding a valid permit for use on public roads except on grounds of attempted fraud.

## vi. Claims processing and settlement

All claims in respect of third party death or injury or physical damage shall be processed for settlement in a speedy and efficient manner in accordance with the instructions of the General Insurance Council of India. For this purpose, the Council shall adopt a pro-active claims settlement policy adopting the most efficient claims processing practices possible.

## vii. Administration of the pooling arrangement

The GIC Re shall act as the administrator of the pooling arrangement. It will act under the guidance of the General Insurance Council of India. For this purpose, the Council may establish such Committees of insurers as are necessary to operate the pooling arrangement and process and settle claims in the most efficient manner.

## viii. Remuneration

There will be no agency commission or brokerage payable in respect of motor third party insurance business.

- (a) The underwriting insurer will be paid a **reinsurance commission of 10% on the premium ceded** by it to all the other insurers and reinsurers.
- (b) The **GIC Re as administrator shall be paid a fee of 2.5% of the total premium** on motor third party insurance business in respect of the business underwritten for the pooled account.

Each insurer shall bear the cost of hardware required to operate the pooling arrangement within its offices. The GIC will bear the cost of hardware necessary to administer the pooling arrangement in its offices. The cost of the operating software for the pooling arrangement shall be shared by all the insurers and reinsurers in the manner decided by the General Insurance Council of India. Each insurer shall bear the cost of travel of its executives to attend to the work relating to the pooling arrangement. However, any travel specifically to service a claim shall be recoverable as claims related expenses.

**ix. Agreement**

The insurers and GIC Re shall enter into a multi-lateral reinsurance arrangement to give effect to this pooling scheme.

**x. Review**

The Authority will review the operation of the pooling arrangement and the need for regulation of the premium rates and terms of cover and will issue such directions from time to time as may be considered necessary.

**xi. All non-life insurers will be a party to the pooling of the risk of TP insurance**

The directions of the IRDA thus specify that all insurers, in the non-life other than health insurance business will be a party to the pooling of the risk of TP insurance. All offices of insurers are required to underwrite such business.

**xii. Pooling of the business will be shared by a reinsurance arrangement**

The pooling of the business will be shared by a reinsurance arrangement involving the underwriting office as ceding insurer and other insurers and reinsurers; as GIC Re is the only operating reinsurer in the market at present, GIC Re will also participate in the pool, as ceded reinsurers. Future insurance and reinsurance companies will automatically participate in this pool.

**xiii. GIC's share is 15%**

The sharing arrangement will be in the case of GIC Re its statutory reinsurance sessions, this is presently 15 %, hence GIC's share will be 15% of the TP pool. With regard to other insurers, the balance 85% will be in proportion to their Gross Direct Insurance premium (GDPI) for the underwriting year.

**Example:** New India's GDPI is 17% and ICICI Lombard is 12%, they will share the balance 85% in proportion of 17% and 12% respectively.

**xiv. Role of the General Insurance Council: Laying rules and procedures**

The General Insurance Council of India- a body representing all non-life insurers- has been given the authority to lay down the rules and procedures for underwriting, accounting and settlement. The rates and terms for TP insurance are to be decided by the IRDA. In effect motor TP insurance will continue under tariff.

### **xv. Role of the General Insurance Council: Ensuring smooth functioning and timely claim settlement**

The General Insurance Council will also ensure smooth functioning and timely settlement of claims. The pool will be administered by the GIC. The IRDA notification also lays down the commission and remuneration fees for the arrangement.

### **xvi. Claim settlement only for commercial vehicle insurance**

The Motor Third Party pool came into existence in January 2007. However the pool is functioning only for claims reported for Commercial Vehicle insurance. The General Insurance Corporation is managing the funds received from the insurers as their share of the premium to the pool. The administration of the underwriting and the claims are managed by the respective insurers at all stages including settlement. On settlement they are submitting the details of the claims settled and recovering their share of payment from the pool.

### **c) Review of Pool**

As the time line between claims reported and settled in the case of Third Party Liability averages 5-7 years, a correct picture on the functioning and success of the pool cannot be ascertained at the present time. There is a provision for reviewing the arrangement and the General Insurance Council as the authority will convey its views to the IRDAI at the appropriate time.

#### **i. No profit - no loss business: No ceding commission**

Since the motor third party business is expected to run on a 'no profit no loss' basis, there shall be no ceding commission in respect of the business ceded to the pool with effect from 1/4/2010.

#### **ii. Investment of funds as per IRDA's Investment Regulations**

It will be obligatory on the part of the insurance companies to segregate funds on account of the pool business in their accounts and invest them in a manner as provided in the IRDAI's Investment Regulations.

#### **iii. Details to be confirmed by statutory auditors**

The business transacted by insurance companies on account of pool and also investment of the funds shall be specifically confirmed by the statutory auditors of the company in the annual accounts of the company.

**iv. Details to be confirmed by Appointed Actuary**

The Appointed Actuary of the insurance company shall also confirm in his annual report, the incorporation of the pool liabilities, including revisions in the company's accounts.

**v. Quarterly remittance of funds to the pool administrator**

Each member company shall be responsible for remittance of monies to the pool administrator on a quarterly basis along with the quarterly statements. Any delay in remittance shall attract interest for delayed payment @ 10% p.a. as agreed between the pool members in the meeting of the General Insurance Council.

The pool administrator shall continue to prepare and submit half yearly and annually audited accounts for the pool and also appointed actuary's annual report. The annual audited accounts shall also incorporate any revision in liabilities.

**vi. Periodical inspections of the member companies**

Pool administrator shall conduct periodical inspections of the member companies to assess their efficiency in settlement of claims and also verify the accuracy of the quarterly statements in respect of the pool business.

**vii. Fees of 1.25% of the premium to the pool administrator**

The fees of 1.25% of the premium to the pool administrator will continue until revised. As has been decided by the members in the General Insurance Council meeting held on 29/01/2008 all operational expenses (including hardware and software) shall continue to be met by the pool administrator.

**viii. Data upload from companies to pool administrator**

The automated transaction level data (data upload) will continue to flow from the companies to the pool administrator as at present.

**d) Dismantling of Third Party Pool**

- i. Arguments by private insurers:** The third-party pool, introduced in 2007, has been criticised by private insurers saying they are forced to bear the burden for sloppy due diligence done by public sector general insurers.
- ii. Arguments by state insurers:** But the state-run insurers say their presence across the nation, even in smaller towns unlike private ones that cherry pick customers in cities make them vulnerable to disproportionate claims.



Motor Third Party Pool had become the biggest insurance company in itself although; efficiency of managing claims was low. New India Assurance had plunged into losses in 2012 for the first time in 91 years due to the impact of third-party motor pool. The regulator has to relax solvency margin stipulations for next three years to keep general insurance companies afloat. The current pool is likely to see around 4 lakh claims this year, and is forecast to get a contribution of around Rs. 5,400 crores.

But the payout may be around Rs. 8,000 crore, inflicting losses on every insurer. Public sector general insurers have lost more than Rs. 25,000 crore in the past 20-30 years.

### e) Declined Risk Pool

The Indian Motor Third Party Declined Risk Insurance Pool operates in the auto arena for the commercial vehicles to have

- i. equitable and fair sharing by all insurers,
- i . simplicity to administer and
- ii. . to bring claims management efficiency

The policy of Declined Risk Insurance Pool applies to all commercial vehicles for standalone third party insurance (Act only Insurance).

The new pool structure is an important first step towards addressing the issues around commercial vehicle third-party insurance and reforming them, the structure is simple to implement and ensures there are no supply-side constraints on availability of insurance covers.

The new plan provides an option to insurance companies to choose the liabilities they would bear totally, meaning they would pay up 100% of the claims. Where they see high claims, such as on trucks, they can dip into the pool, where every insurer contributes depending on its market share.

The latest move by IRDAI will enable insurers to decide on whether they want to write the third-party liabilities in a policy involving a Maruti car, or a Mercedes Benz, or a Tata truck.

**Decline Risk Pool:** They could choose to pay up claims in cities where accidents may be less frequent, while transferring to pool those coming from hinterland, where there are more accidents. This, in insurance parlance, is called 'declining risk pool'.

Due to the high claims ratio of around 140 per cent from commercial vehicles, insurance companies are providing them cover from a common declined pool and not from their own books. The declined pool has completed two years which has given leverage to study loss trends and the kind of vehicles that come into the pool.



IRDA fixes tariffs for third party motor insurance premiums to ensure that there are no supply-side constraints, that is, vehicles considered high risk are not denied cover. The size of the declined pool, at Rs. 400 crores, is small which means that more insurance companies are underwriting risk on their own books moving away from a one-size-fits-all premium for vehicles.

### Test Yourself 1

The existence of the Tariffs in \_\_\_\_\_ muted competition to some extent?

- I. Fire
- II. Motor Engineering
- III. Workmen's Compensation
- IV. All of the above

### B. Knock For Knock Agreement and some Market Practices

#### 1. Knock for Knock Agreement

##### a) Claim under „Own Damage“ and „Third Party“ Section

If two vehicles are involved in collision and one of the vehicles is negligent, the owner of the other vehicle can recover damages from the negligent owner of the vehicle. If he chooses to claim from his own insurer under 'Own damage' section of the policy, then his insurer would be subrogated to his rights of recovery against the negligent owner. The latter would be having his insurance policy and his insurers may have to pay the claim under Third Party Section of the Policy.

This would mean that, in all cases, where insurance is involved, such claims are settled as between the respective insurers. Since question of negligence are involved these would have to be settled by litigation between insurers which is an expensive and time consuming process. Eventually the costs of litigation would be reflected in the premium rates.

##### b) Knock for Knock Agreement

Therefore, insurers have entered into an agreement (called Knock for Knock Agreement) according to which, irrespective of who was negligent, provided the damage is covered under the policy, the insurers covering the damage will not exercise subrogation rights against the party involved in the accident. Instead, they will indemnify their insured subject to the terms of policy.

Similarly, the other insurers will indemnify their insured provided the damage is covered under the policy. In other words, each insurer will indemnify their insured.

This agreement, however, does not apply to goods vehicles policies and Public Service Vehicles (i.e. Taxies, Buses) used for hire or reward, and technically the Insurers are free to enter into litigation to recover losses caused by such vehicles.

The knock for knock agreement benefits:

- i. the **insurers** as they avoid intercompany litigation and thereby save costs;
- i . it benefits the **insured"s** because they recover the claims straightaway from their insurers;
- i . it also benefits the **insuring public** because the reduction in the cost claims is eventually reflected in reduced premiums

Third-party insurance policy is a mandatory cover for any vehicle plying in the public place. The cover pays for the damages to a third person that is caused due to insured vehicle. But when the accident involves damage to the vehicles, the insurers pay for the damages through their own damage covers and not by invoking the third-party cover on the insurer whose insured customer is at fault. This is called the knock-for-knock agreement.

### Definition

The dictionary defines the term „**knock for knock**“ as an agreement between auto insurers that in the event of an accident each insurance company will pay for the damage to the vehicle insured with it, without attempting to establish blame for the accident. *India's No1 E-Learning Platform*

### c) Difference between Own Damage and Third-Party Covers

Own damage policy covers damages and theft of the vehicle.

- i. The sum insured or the maximum liability of the insurer in an **own damage cover** is determined by the insured's declared value (IDV).
- i . The **third-party cover**, on the other hand, has a limited liability of Rs. 7.5 lakh in case of damage to the vehicle or property of the third person and
- i . Unlimited liability in case of **bodily injury or loss of life**

Third-party cases are fought at the **Motor Accident Claims Tribunals** and the amount of compensation to the third party is decided by the Court.

### **d) Why do Insurers have this Agreement?**

Every year the insurers sign a knock-for-knock agreement with all other insurers. The insurers do so to avoid getting into litigation and unnecessary delays by dragging the matter to the court on account of third-party policies. So instead of finding whose fault it is and making the insurer compensate the victim, both the insurers of both the vehicles pay for the damages of their insured vehicles respectively. This is an internal understanding among the insurers and is not mandated by the regulator.

It's quite a toss-up between a quick turnaround time in claims settlement and no-claims bonus earned by the claimant. By invoking the own damage cover, the insured will end up forgoing the no-claim bonus that he is entitled to for every claim-free year. This bonus is a discount in the premium and can go up to 50% of the premium. So insured will need to evaluate what would you rather settle for:

- i. A quick turn around by allowing the insurer to cover damages under the own damage policy or
- i . Protecting the no-claim bonus on the own damage cover by going to the court considering you were not at fault.

## **2. International Issues in Insurance Markets**

### **a) International Driving Permit (IDP)**

An IDP is a permit for use in conjunction with your driving licence, not in place of it. In some countries, you risk being fined or worse for relying solely on an IDP.

IDP applications can only be made up to three months in advance. An IDP may be post-dated up to three months in advance but, under no circumstances can it be backdated.

If a person is going for more than three months, to live or to work, or for any reason other than tourism, one should make enquiries about his personal position before relying on a permit.

Driving licence requirements vary worldwide. Therefore, while hiring a car overseas ask the company concerned to confirm driving licence requirements of the country to be visited. In the absence of such information an IDP is just a precautionary measure, especially if travelling outside Europe.

International Driving Permit is issued to an applicant who holds a valid Indian Licence and who is a resident of India. The application has to be made in Form IDP or in writing to the RTO within whose jurisdiction the applicant resides, specifying the countries to be visited and the duration of stay etc. The validity of this permit is for one year. You are required to get your licence from the country you are visiting within one year period.

### **IDP Requirements**

- i. Valid Driving Licence held by the applicant and copies thereon.
- i . Copies of Passport, visa where applicable) and Air ticket verification.
- i i. Attested copy of valid address proof.
- iv. Five passport size photographs.
- v. Medical Form 1-A
- vi. Valid proof of Indian Nationals.
- vi . Fees as prescribed along with user charges

International driving document is intended to overcome the difficulties the drivers might have while traveling by car in other countries where license requirements may widely vary.

### **b) International Translation of Driver's License**

International driving document is a legal translation of national driver's license. By itself IDL is not valid for driving in United States. It's merely confirms that you hold a valid license in your home country.

Every time you drive you should have with you both things:

- i. Your National Driver's License and
- i . International Translation of Driver's License

The authorisation for the International driving document has its basis in International Conventions on Road Safety (in 1923, 1943, 1949 and 1968).

The basic information is translated into 8 languages. There is a list of countries which signed United Nations Convention on Road Traffic and accepted International driving document. International Translation of driver's License is accomplished by IADC in two parts:

- i. The booklet in dark-blue color is valid for 1 year
- i . The plastic card (membership card) is valid for 10 years

Current driver's license must accompany the international driving document in order for it to be valid.

**Ponder Over This**

Lamborghini, Ferrari, and Aston Martin are the illegally imported luxury cars in India. Foreign luxury cars carry a high import duty, prompting buyers to find ways of evading the payment. The government had raised the basic import duty on luxury cars to 100% in Budget 2013.

A Lamborghini costs upwards of Rs. 1.5 crores. After paying the basic customs duty, countervailing duty and other taxes, which effectively amount to around 160%, a buyer has to shell out around Rs. 3.9 crore to bring the car to India.

In western India alone, 137 luxury cars have been identified which have been imported fraudulently by misusing government norms. Most of the illegally imported cars that have been seized by DRI were sold off to rich, well-known individuals at a cheaper price.

The Daily News and Analysis (on 8 August 2012) reported that the Lokayukta special court in Bangalore had ordered a probe into the import of cars, especially of marquee brands such as the Bentley and Ferrari, into Karnataka.

An analysis of the cases booked in the last five years reveals that a majority of fraudulent luxury car imports have taken place through forged invoices and import documents and misuse of the transfer of residence facility.

**i. Transfer of residence facility**

The first route for such illegal import of vehicles is the transfer of residence facility which entitles duty concessions on personal and household goods to people who are returning to India from a foreign country after a stay of at least two years. On motor vehicles, it also allows for depreciation to be charged in slabs – 16% for the first year, 12% for the second year and so on.

Operators typically forge invoices by changing, for instance, the value of the vehicle and the year of manufacture which allows them to cut duty. In other cases, they forge import documents and impersonate people who have settled in India.

According to official, the key accused in a car import racket used to import vehicles from them in Mumbai and Delhi under fake names. He declined to give details.

## ii. Export Promotion Capital Goods (EPCG) scheme

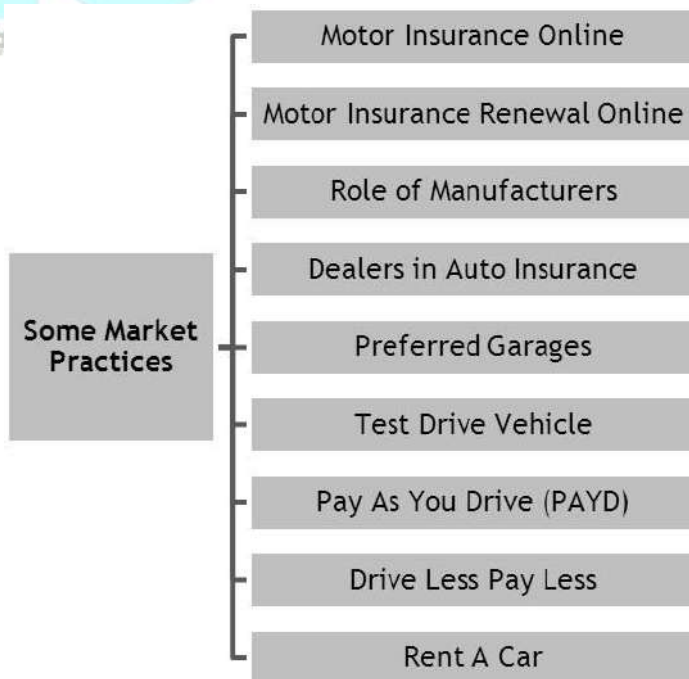
The second route to evade taxes is under the Export Promotion Capital Goods (EPCG) Scheme whereby hotels, travel agents, tour operators and companies owning or operating golf resorts – whose total foreign exchange earnings from their main business in the current and preceding three licensing years is Rs. 1.5 crore or more – can import sports utility vehicles at a 3% concessional rate of duty. The importers tend to overstate their foreign exchange earnings to meet the EPCG criteria and imported luxury cars that are later sold to local operators in India who, in turn, sell these cars to high net worth individuals (HNI) at a lower price. (First Published: Thu, Mar 21 2013 11:58 PM IST)

The whole activity needs to be closely watched while insuring such illegally imported vehicles met with an accident. The insurers have to be cautious while settling such claims based on fraudulent documents resulting in excessive out go.

## 3. Some Market Practices

The opening up of the insurance sector has brought innovation in products and practices in insurance industry. New intermediary channels like Corporate Agents, Bancassurance, Insurance Broking and new products are surfacing with new market practices to stay in competition.

**Diagram 1: Some Market Practices**





### **a) Motor Insurance Online**

When an insured buys Motor Insurance online, he get an instant policy, as there is no documentation or paperwork involved. In addition, he has the advantage of choosing from multiple payment options e.g. Credit card (Visa, Master, Amex card), Net banking, Debit card etc. Currently only private cars and two-wheelers can be insured online.

### **b) Motor Insurance Renewal Online**

The insured can renew his policy online, starting 60 days before expiry of existing policy. In case the vehicle insurance policy has already expired, authorised surveyor would require an inspection of the vehicle, before policy issuance. The policy would only be issued subject to a satisfactory inspection and submission of required documents.

### **c) Role of Manufacturers**

The auto manufacturers have always had an important role to play in marketing of motor insurance. From the time it provided ‘any colour of car as long as it was black’, graduating to ‘design your own car with all luxury and comforts’ and the legal requirement of safer, accident free vehicles has always been the obligation to be met by the manufacturer. In the process various statutory and mandatory approvals for containing pollution, crash test, CNG / LPG use, seat belt, helmet etc.

In USA it is not the banker but insurer who drives the sale of car depending on the premium to be borne based on technology used and reparability of vehicle. The manufacturers must disclose crash test results, duration and availability of spares, for a specific make of the vehicle, reparability of parts, man hours required for repair, workshop facility at dealers end, emergency services etc. to decide claims out go, thereby, determining adequate premium.

### **d) Dealers in Auto Insurance**

Auto dealers not only sell new vehicles but also provide servicing and maintenance of cars as authorised dealers. Dealers also sell used cars, either used by them for demo purpose as brand new vehicles and hand over vehicles without full payment and transfer of ownership to prospective buyers while accidental cars are sold as new cars with warranties.

Manufacturers provide standardised labour schedules to authorised dealers, based upon high overhead costs and wage factor. Insurers should discuss with manufacturers to keep a check on prohibitive cost of insurance. Manufacturers in USA approach insurers unlike India to keep cost of spares replacement and labour charge low.



The dealer is required to arrange for mandatory registration of the vehicle as per law; this has opened up the requirement of arranging compulsory insurance. Most of the auto dealers in India have tied up with a particular insurance company that provides car insurance. It is not mandatory to take up insurance from your car dealer. You can always buy car insurance from your choice of insurance provider.

The insurers tie up with dealers to provide remote access of their motor insurance platform allowing dealer to issue insurance policy with built-in validations. Some of the insurers authorise dealers to issue even renewals subject to adherence to break-in insurance rules, past loss experience etc. These dealers at times become Corporate Agents distributing insurance products while providing repair facilities in their manufacturer's authorised workshops.

Dealers giving bulk business as Corporate Agents have off late been found exaggerating charges for painting and labour and favouring replacement of parts on one hand while try to keep low salvage (value for scrap) and avoid repairs at the pretext of compromising the performance of the vehicle.

#### **e) Preferred Garages**

The insurers also tie up with preferred garages to extend cashless facility if the vehicle is brought to them. Some insurers have developed their own garage and research facilities which arrange repairs and provide alternate vehicle of same make to its insured claimant.

#### **i. Garages**

Garages are service centers which provide repair services to new or old vehicles alike. They sometimes sub-contract some specialised job work. These garages are graded and some of them are government approved. Sometimes even insurers also approve the garages and expect certain minimum service level to be adhered to by way of providing free towage and delivery of vehicles and free servicing etc.

The garages at time provide comprehensive services at cheaper rates compared to authorised dealers. These composite garages are labour oriented and use local make items, parts or disposal items. 75% of the accidental vehicles go to such composite garages for repairs. The overheads of these garages are low and repair work is distributed to sub-contractors according to their specialisation.

## ii. Whether we need cheaper repairs or proper repairs?

The cheaper repairs through replacement by sub-standard parts and such cooked (jugad) repairs lead to compromised performance of repaired vehicles and results in higher outgo later due to being prone to aggravation in accident cost in future.

Concept of standardisation of labour is based on man hours and man hour rate. Man hours are the normal time taken by the normal work force to complete the job. Man hour rate primarily depends upon wages, infrastructure overheads of the garage. Standardised Labour Schedules are prepared by manufacturers and implemented by their authorised dealers. 50% or in some case 100% more than the labour rates prevalent in local / composite garages. Labour charges of the dealers are cumulative whereas they should be overall and inclusive. This makes a difference of about 25% to 30%.

## iii. Dealers Garages

Dealer garages are replacement oriented. Replacements are costly as the parts are billed as per list price. Labour is charged on the basis of inflated overheads and wages resulting in a higher man-hour rate and need standardisation in labour cost.

### f) Test Drive Vehicle

The vehicles are marketed in streets and by lanes in our country to reach to customer at his door. Test drives are being advertised as a comfort zone provided by dealer to satisfy the consumer about new features of the vehicle. A new concept of selling on road side make shift arrangements is also coming in vogue.

### g) Pay As You Drive (PAYD)

Pay As You Drive (PAYD) motor policies are a new concept of insurance contracts ... also called **Usage Based Insurance (UBI)** because, instead of an annual premium be established, the premium is fixed according to the number of kilometers done by the car, besides other characteristics of the risk traditionally used in pricing. Therefore, those who use the car more are going to pay a higher premium because they are more exposed to the risk of accident.

In the face of high auto insurance premiums, insurance companies have been responding with potentially cheaper, pay-as-you-drive plans that, for billing purposes, undertake GPS tracking when, how, how much and where drivers use their vehicles instead of basing rates on statistics and past trends.

### Example

While cars with General Motors' On Star service and Ford's Sync can use those systems to transmit driving data to insurance companies, vehicles that don't have GPS-based computer standard, need to have GPS-based tracking devices retrofitted to their vehicles. Not only are some people worried about insurance companies watching their every move while driving - depending on the plan, providers can penalise drivers for when and where they drive their car - but the black box-like devices are somewhat expensive. Customers also have to pay every month to have data transmitted to their insurance providers.

It's almost inevitable that new cars will come equipped with GPS-based tracking devices in the foreseeable future, so some of the issues with pay-as-you-drive insurance plans could go away.

One can distinctly find three types of policies, based on how privacy-invasive they are.

- i. Some of them do not imply any breach of privacy since the data about the amount of kilometers traveled (no location information) needed to compute the premium, is provided only once a year from a fixed location.
- i . The second type, despite not recording location information, collects data in geographically distributed points, which allow the insurance to estimate the movements of the user.
- i . Finally, the last model collects GPS data to track all the car's movements.

In the rest of the section, we present real-world systems that fit in these three categories.

#### **h) Drive Less Pay Less**

Drive Less Pay Less are some of the concepts which are gaining ground due to rising fuel costs and increasing traffic congestions. The concept of underwriting on the basis of make model and carrying capacity do not provide equal ground. The Supreme Court of India has recommended the Government to provide identical ground to all users of vehicle on the basis of its use by mulling on petrol cess or kilometer traversed by a vehicle.

#### **i) Rent A Car**

The vehicles of various categories are available on rent from Motor Cycles / Scooters to Buses on Hire / Charter basis for the convenience of consumers. The consumer is required to possess valid and effective driving licence and pay a nominal amount as deposit to hire a vehicle duly insured for damage to the vehicle or liability to third party property damage or bodily injury.

**Test Yourself 2**

The insured can renew his policy online, starting\_\_\_\_\_before expiry of your existing policy.

- I. 60 days
  - II. 45 days
  - III. 30 days
  - IV. 15 days
- 



## Summary

- a) As the restrictions of the Tariff were seen to be a barrier for differentiation of product and development of new products, the insurers were demanding scrapping of the tariffs and freedom to devise policy wordings and determine rates to grow in the market.
- b) Motor insurance commands a large slice of the miscellaneous insurance business in India. Unfortunately it also has the highest claim ratio due to Third Party Liability, predominately due to Commercial Vehicles.
- c) Arising out of the need to see the development of the insurance market in India and ensuring that policyholder rights were not compromised by such developments, the IRDA mandated the creation of a Motor Third Party Pool in December 2006. The pool is applicable only for Commercial Vehicles wherein an arrangement is made to share losses in proportion to the market share of the insurers.
- d) The pooling of business among all insurers will be achieved through a multi-lateral reinsurance arrangement between the underwriting insurer and all the other registered insurers carrying on general insurance business (including motor insurance business) and general insurance reinsurers.
- e) Underwriting offices of insurers shall follow the underwriting instructions of the General Insurance Council of India in the matter of procedures for underwriting and documentation and accounting and settlement of balances.
- f) There will be no agency commission or brokerage payable in respect of motor third party insurance business.
- g) The GIC Re as administrator shall be paid a fee of 2.5% of the total premium on motor third party insurance business in respect of the business underwritten for the pooled account.
- h) The sharing arrangement will be in the case of GIC its statutory reinsurance sessions, this is presently 15 %, hence GIC Re's share will be 15% of the TP pool.
- i) The General Insurance Council of India has been given the authority to lay down the rules and procedures for underwriting, accounting and settlement.
- j) It will be obligatory on the part of the insurance companies to segregate funds on account of the pool business in their accounts and invest them in a manner as provided in the IRDA's Investment Regulations.

- k) Pool administrator shall conduct periodical inspections of the member companies to assess their efficiency in settlement of claims and also verify the accuracy of the quarterly statements in respect of the pool business.
- l) The Indian Motor Third Party Declined Risk Insurance Pool operates in the auto arena for the commercial vehicles to have
  - i. equitable and fair sharing by all insurers,
  - i . simplicity to administer and
  - ii. . to bring claims management efficiency
- m) The new pool structure is an important step towards addressing the issues around commercial vehicle third-party insurance and reforming them, the structure is simple to implement and ensures there are no supply-side constraints on availability of insurance covers.
- n) IRDA fixes tariffs for third party motor insurance premiums to ensure that there are no supply-side constraints, that is, vehicles considered high risk are not denied cover.
- o) According to Knock for Knock Agreement, irrespective of who was negligent, provided the damage is covered under the policy, the insurers covering the damage will not exercise subrogation rights against the party involved in the accident. They will indemnify their insured subject to the terms of policy.
- p) The knock for knock agreement benefits:
  - i. the insurers as they avoid intercompany litigation and thereby save costs;
  - i . it benefits the insured's because they recover the claims straightaway from their insurers;
  - i . it also benefits the insuring public because the reduction in the cost claims is eventually reflected in reduced premiums
- q) The dictionary defines the term 'knock for knock' as an agreement between auto insurers that in the event of an accident each insurance company will pay for the damage to the vehicle insured with it, without attempting to establish blame for the accident.
- r) The third-party cover has a limited liability of Rs. 7.5 lakh in case of damage to the vehicle or property of the third person.
- s) An International Driving Permit (IDP) is a permit for use in conjunction with a driving licence, not in place of it.

- t) International driving document is a legal translation of national driver's license. By itself IDL is not valid for driving. It's merely confirms that you hold a valid license in your home country.
  - u) Currently only private cars and two-wheelers can be insured online.
  - v) The insured can renew his policy online, starting 60 days before expiry of the existing policy.
  - w) The insurers also tie up with preferred garages to extend cashless facility if the vehicle is brought to them. Some insurers have developed their own garages and research facilities which arrange repairs and provide alternate vehicle of same make to its insured claimant.
  - x) Pay As You Drive (PAYD) motor policies are a new concept of insurance contracts ... also called Usage Based Insurance (UBI) because, instead of an annual premium be established, the premium is fixed according to the number of kilometers done by the car, besides other characteristics of the risk traditionally used in pricing.
- 





**Answers to Test Yourself****Answer 1**

The correct answer is IV.

The existence of the Tariffs in Fire, Motor Engineering and Workmen's Compensation muted competition to some extent.

**Answer 2**

The correct option is I.

The insured can renew his policy online, starting 60 days before expiry of your existing policy.

---

**Self-Examination Questions****Question 1**

The third-party cover has a limited liability of \_\_\_\_\_ in case of damage to the vehicle or property of the third person.

- I. Rs. 2.5 lakh
- II. Rs. 5 lakh
- III. Rs. 7.5 lakh
- IV. Rs. 10 lakh

**Question 2**

The GIC Re as administrator shall be paid a fee of \_\_\_\_\_ of the total premium on motor third party insurance business in respect of the business underwritten for the pooled account.

- I. 2.5%
- II. 5%
- III. 7.5%
- IV. 10%

### Question 3

In India, motor insurance has the highest claim ratio due to Third Party Liability, predominately due to \_\_\_\_\_.

- I. Private Cars
  - II. Commercial Vehicles
  - III. Two-wheelers
  - IV. All of the above
- 

### Answers to Self-Examination Questions

#### Answer 1

The correct option is III.

The third-party cover has a limited liability of Rs. 7.5 lakh in case of damage to the vehicle or property of the third person.

#### Answer 2

The correct option is I.

The GIC Re as administrator shall be paid a fee of 2.5% of the total premium on motor third party insurance business in respect of the business underwritten for the pooled account.

#### Answer 3

The correct option is II.

In India, motor insurance has the highest claim ratio due to Third Party Liability, predominately due to Commercial Vehicles.

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# CHAPTER 3

## TYPE OF MOTOR VEHICLES, DOCUMENTS AND POLICIES

### Chapter Introduction

In this chapter you will learn about the types of Motor Vehicles and various documents like proposal form, certificate of insurance, cover note, and policy forms used in Motor Insurance.

The chapter also covers types of Motor Policies, Liability Cover under Package Policies, coverage for various vehicles, Motor Trade Policies, Scope of Motor Trade Internal Risks Policies, New technologies in cars and in auto field.

### Learning Outcomes

- A. Types of motor vehicles
- B. Motor insurance documents
- C. Types of motor policies
- D. Coverage for motor policies
- E. Motor trade policies
- F. New Technologies

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## A. Types of Motor Vehicles

### Meaning and classification of motor vehicles

#### Definition

A –Motor Vehicle has been defined in the Motor Vehicle Act 1988, Section 2 (27) as a mechanically propelled vehicle adapted for use upon roads, whether power of propulsion is transmitted thereto, from an external or internal source and includes a chassis to which a body has been attached and a trailer, but does not include a vehicle running upon fixed rails.

**Classification of motor vehicles:** For the purpose of insurance, motor vehicles are classified into 3 broad categories, viz. Private cars, Motorcycles and Commercial vehicles. There are also sub-classifications in some of the categories.

#### a) Private cars

Vehicles used solely for social, domestic and pleasure purposes and business or professional purposes, but not for carriage of goods other than samples. Three wheeled cars for private purpose are also covered.

#### b) Motor cycles / scooters

**Motor cycles / scooters** are mechanically propelled two wheelers with or without side car: Mechanically propelled three wheelers with engine capacity not exceeding 350 cc.

#### c) Commercial vehicles

The erstwhile Tariff defined and described these vehicles subject to further rationalization vide IRDA/NL/ORD/MPL/077/03/2012 dated 29<sup>th</sup> March, 2012 and the categorization for the purpose of rating being followed in the market is as follows:

Class	Type of vehicle
A	Goods Carrying Vehicles
A-1	Public Carriers
A-2	Private Carriers
A-3	Goods Carrying Motorised 3 Wheelers And Motorised Pedal Cycle (Public Carriers)
A-4	Goods Carrying Motorised 3 Wheelers And Motorised Pedal Cycle (Private Carriers) and (i) Tractors, ii) Dumpers, iii) Milk vans, iv) Oil and Petrol transport vehicles ; v) Refrigeration/ pre cooling units ; vi) Tankers; vii) Tippers predominantly used for commercial purpose. (Earlier included in Class D vehicles).
B	Trailers
C	Public Passenger Service Vehicles For Hire Or Reward
C-1	3 or 4 wheeler PPSV_PCC less than < 6 (Taxis/Pvt. car type owned by Hotels & hired by them to their guests)
C-2	4 or more wheeled PSV - more than PCC 6> 3 wheeled psv _ pcc more than 17>
C-3	MOTORISED 3 WHEELD PSV LCC 6> , < 17 FOR HIRE OR REWARD
C-4	MOTORISED 2 WHEELD PSV FOR HIRE OR REWARD
D	MISC & SP TYPE 51 types of vehicle included
E	ROAD TRANSIT RISKS ONLY
F	Motor Trade (ROAD RISKS) ONLY
G	INTERNAL RISK ONLY

#### a) Goods carrying vehicles

These were earlier classified as –Private Carrier<sup>ll</sup> and –Public Carrier<sup>ll</sup> and are used for commercial purpose.

According to the Motor Vehicles Act 1988, goods carrying vehicle is called –Goods Carriagell. There is no categorisation of Public carrier and Private carrier. However, they are still classified as public & private carrier for rating purposes under class A.

#### b) Tankers

These vehicles are classified under class A-4. The tankers are used for transport of non-solid goods viz., Liquids like water, Milk, edible oils, Petroleum goods, chemicals, Bitumen etc. and as gases in liquid form like LPG oxygen, Nitrogen etc.

The tankers are built in the truck itself or as trailer depending on the capacity and its usage. The tankers are manufactured depending on the products, capacity and the law governing the particular product.

### **i. Water Tankers**

These are used for transportation of water is the simplest and either rectangular or elliptical with / without full / half baffle plates need no calibration. Tankers used for transportation of petroleum products are governed by various acts viz., Explosive act, Weight and Measures act (subject to calibration annually), generally of 12 KL or approx 9.6 MT capacity.

The tanks have three or four compartments and their front and rear end cover are called as Dish ends, whereas partition sheets used are called Baffles mainly meant to reduce the oscillation of liquid. The loading is done by gravity feed method for majority of the goods such as kerosene, Petrol, Diesel and edible oils. The inlet for the tankers carrying these types of goods will be normally on top of every compartment.

There are goods loaded only by pressurised flow. These goods will be loaded only through ports filled at the bottom of the tanks, ex. L.P.G. The outlet(s) of gravitational fed loads are provided at the bottom of the tanks. The control of outflow will be done by gate valves. A special feature is provided in the petroleum carrier. A special shut of value arrangement is provided for emergency purposes.

### **ii. Bitumen Tankers**

These are also similar to the other tanks except that there are very special features are inbuilt. Bitumen will be in solid form in normal condition. This material has to be semi solid form for it to flow for loading and unloading. The hot bitumen in semi solid form is loaded. The tanks are fitted with a furnace to heat the bitumen inside the tank enabling it to become semi solid form to flow out for unloading. Insulation is done around the tank to maintain its temperature inside the tank. The insulating material is covered by sheet metals.

### **iii. Milk Tankers**

These are used for transportation of milk are constructed in stain less steel and few of them are of refrigerated ones. The chemical carrying tanks will be lined with FRP, Glass, Rubber, Plastic etc., depending on the individual chemical and some of them are also insulated.

### **iv. Tankers Used For Transportation Of LPG**

These are tanks to transport gases and these are governed by various Statutes. The products are LPG, Oxygen, Ammonia, Nitrogen etc., and one such type of tank to carry is LPG Tank. The products such as HSD, Petrol and kerosene are loaded at atmospheric pressure while LPG is loaded at certain higher pressure.

All pressurised tanks will have safety valves. Temperature and Pressure gauges are fitted in the tanks along with rotor gauge to find the level of the liquid. Maximum 85% capacity is loaded. The loading pressure of LPG is 10 KSCM, while filling pressure is 14.4 KSCM. Therefore, manufacturer of LPG Tank is required to involve testing authorities from day one i.e., selection of raw materials while manufacturing LPG Tanks.

The drawing & Valves details of the Tank are furnished to Explosive department for issuance of Certificate. AS LPG is highly explosive in its nature, the government through the Controller of Explosives stress the safety of the tank by involving third party agencies like M/s IES, Bureau of VERITAS for inspection, from selection of sheets, up to the end of manufacturer of Tank. Tests carried out during the manufacture of tank are:

- (a) **Ultrasonic Test:** used to measure thickness of sheets
- (b) **X ray radiography test:** quality of welding at butt welded joint
- (c) **Stress relieving test:** for hardening carried out in hot oil or by injecting flue gas and burning to increase temperature at 580-600°C maintained for one hour.
- (d) **Hydro test:** by increasing the pressure to 1.3 times the design pressure which is 14.5 KSCM

#### c) Tippers

These are goods carrying transport vehicle used for carrying loose and bulk goods viz. mining materials, sand, blue metals, coal etc. These tippers normally operate for short distance only like Harbours, cement factories, Mines, Earth work, Road work etc. and are 2 cu meters of load areas up to 100 cu Meters presently working in mines.

These vehicles have power take off shaft in the gear box to drive the hydraulic pump which develops the pressure used for lifting the load body with the help of telescopic jack. The cabin for the tipper is almost similar to common truck.

#### d) Trailers

These vehicles Section 2 (28) are classified under class B.

### Definition

Trailer is any truck, cart, carriage or other vehicle, without means of self-propulsion including agricultural implements drawn or hauled by self-propelled vehicle.



Trailers are of two types

- i. One version has axels at both the ends coupled with tow bar arrangement or by fifth wheel coupling.
- ii. In another version the rear portion will have the axel and the front portion will be mounted on the prime mover.

Trailers can also be classified as:

- i. **Trailers Used For Passenger Transport:** the trailers used for passenger transport are always similar in nature in body construction. In goods transport, the trailers are connected with various types of bodies viz. load body, platform, tanker and special applications like asphalt mixing machines.
- ii. **Running Gear:** this is also a kind of trailer but without the loading area. One end of the loading compartment is mounted on the axle area of the running gear. This does not possess any drive. Air for brake and electrical connection is provided from the prime mover. This type of running gear is used in the LPG tankers (articulated vehicle).

The rear mounting beds of LPG tanker will be mounted on the running gear. The number of axles (single or double axles) in the running gear will be according to the load carrying capacity of LPG tank. The other trailers will have main chassis frame from the prime mover up to the rear end.

#### e) Passengers carrying vehicles

All vehicles used for hire or reward with different registered passenger carrying capacity are categorised under class C. These may be metered or non-metered. They also include vehicles owned by hotels and hired to guests. Three-wheeler motorized vehicles are also part of this class of vehicle.

#### f) Miscellaneous and special types of vehicles

These are categorised under class:

- ✓ Ambulances
- ✓ Breakdown Vehicles
- ✓ Cinema Film Recording & Publicity Vans
- ✓ Cranes Fitted with lift apparatus, breakdown vehicles
- ✓ Delivery Truck-pedestrian controlled
- ✓ Dispensaries

- ✓ Dust Carts, Water Carts, Road Sweepers etc
- ✓ Excavators
- ✓ Electric Trolleys or
- ✓ Fire Brigade & Salvage Corps Vehicles
- ✓ Footpath Rollers
- ✓ Fork Lift Trucks
- ✓ Hearses
- ✓ Levelers
- ✓ Mobile Shops & Canteen Vehicles
- ✓ Mobile Surgeries & Dispensaries
- ✓ Plane loaders
- ✓ Refuse Carts
- ✓ Road Rollers, Road Sprinklers also used as Fire Fighting Vehicles
- ✓ Site clearing and leveling plant
- ✓ Traction Engine Tractors - Angle Dozers, Bull Dozers etc. Tractors  
Pedestrian Controlled
- ✓ Tractors - used for agricultural, forestry, tar spraying etc
- ✓ Trailer fitted as Cinema Film Recording and publicity Vans. Dust carts,  
water carts, Fire brigade, mobile plants, mobile shops and canteen  
clearing and leveling plant, Tar spraying

**g) Road transit risks only**

**h) Motor trade (road risks) only**

**i) Internal risk only**

### Test Yourself 1

Which of the following test is used to measure thickness of sheets?

- I. X-ray radiography test
- II. Ultrasonic test
- III. Stress relieving test
- IV. Hydro test

## B. Motor insurance documents

The process of insurance involves different types of documents. From the time of acceptance of the risk, to the settlement of the claim for loss or damage, specific written documents are required. The main documents and their importance are detailed below:

### 1. Proposal form

The proposal form is the basis of motor insurance contract. It is so designed as to elicit all information necessary for a proper evaluation and for rating of the risk. The questions commonly asked in proposal forms are:

#### a) Particulars about the proposer:

- i. **Proposer's name in full** to establish the identity of the insured who is one of the parties to the contract, and may place the insurer on enquiry concerning the moral hazard.
- ii. **Address:** The proposer's address is necessary for communications and is a cross checks on the area of use of the vehicle.
- iii. **Occupation:** The answer to this question is important for underwriting private car and commercial vehicle risk and has an important bearing on the moral hazard. The answer is fair indication of the social status of the proposer and it will provide some indication of the extent and for what purpose the vehicle is likely to be used.
- iv. **Physical disability and mental infirmity:** The answers to these questions are important, but it is difficult to get precise answers particularly in respect of persons other than the insured who may drive the car.
- v. **Previous convictions:** A record of convictions for driving offences requires close investigations. The enquiry is generally limited to a period of five years.

#### b) Details of vehicles to be insured:

- i. **Registration letters and numbers:** For identification of the vehicles.
- ii. **Make of the vehicle - Engine and Chassis numbers:** These are required for verification in case of accident.
- iii. **Year of manufacture:** This is necessary because some insurers do not give comprehensive cover for vehicles manufactured earlier than a predetermined period or impose restrictions on older vehicles. It also helps in the calculation of IDV for purpose of insurance.

- iv. **Type of body, Seating Capacity and Cubic Capacity for private cars:** Rating is based on value and cubic capacity and Licensed Carrying Capacity (goods or passengers), as the case may be, in case of commercial vehicles.
- v. Date of Purchase and Price paid.
- vi. Insured's declared Value of the vehicle.
- vii. Colour of vehicle and speedometer reading, average distance traveled & frequency. This indicates usage and helps in determining wear and tear or over usage based on occupation/ business.
- viii. Additional fittings, modifications in the vehicle. This provides information on additional covers that can be offered or additional risk exposure.
- c) **Details of other vehicles:** owned by the proposer and details of accidents during the past 3 to 5 years. These details give some idea about the physical and moral hazard.
- d) **Details of insurance history:** This is required to ascertain whether there were any adverse features, such as decline of risk, cancellation of policy or imposition of special terms and conditions.
- e) **Questions relating to extra benefits:** for which additional premium is charged and of information for which discount of premium is granted, such as no claim discount earned, voluntary excess to be borne, etc.
- f) **Certain other particulars:** in case of commercial vehicles, are required - the type of permit and in the case of passenger vehicles, the total licensed passenger carrying capacity. It is essential that the proposer should decide within which class the vehicle falls because the certificate of insurance is worded accordingly.

If it is found that the vehicle is being used for a purpose not permitted by the certificate, the user is liable to penalties for contravention under the Motor Vehicles Act.

- g) **Declaration Clause:** The answers to the questions are followed by declaration which is in the nature of a warranty that the answers are correct and shall form the basis of contract with the company. The declaration makes it a contractual Duty of Good Faith.

## 2. Proposal form for „Liability Only Policy“

With a view to simplifying proposal forms, the IRDAI has, as a first step prescribed proposal form for ‘Liability Only Policy’. The proposal form explains briefly the coverage available under the Motor Vehicles Act 1988 and the respective provisions applicable thereto.

## 3. Certificate of Insurance

This is a document evidencing that a motor vehicle is insured against third party liability as required under the Motor Vehicles Act, 1988. It is an offence to use a vehicle without a proper Certificate of Insurance issued by an authorised insurer.

The insurance company is under a duty to inform the Registering Authority that the policy has not followed the cover note, within 7 days of the expiry of the cover note as required under section 147 (4).

The only exceptions are Government vehicles and such other vehicles as may be specifically excluded by the Government. The form of the Certificate of Insurance is prescribed in Form 51 of the Central Motor vehicle Rules 1989.

Certain common features appear in all types of certificates of insurance. These are:

- i. Policy Number .....Certificate Number.....
- ii. Name of Registration Authority
- iii. Particulars of vehicle insured: Registration mark and number or description of the vehicle insured
- iv. Geographical Area: INDIA
- v. Business or Profession
- vi. Effective date of commencement of insurance for the purpose of the Act
- vii. From ----- O'clock on
- viii. Date of expiry of insurance. Midnight on -----
- ix. Persons or classes of Persons entitled to drive\*
- x. Limitations as to use\*
- xi. Full address of the issuing office
- xii. Date of issue

These are followed by a certified declaration by the Insurer:

—I/we hereby certify that the Policy to which this Certificate relates as well as this Certificate of insurance are issued in accordance with the provisions of the Chapters X & XI of the Motor Vehicles Act, 1988.

\* The differences in the Certificate of Insurance for different types of vehicles are to be found in the items viii) and ix) above.

**a) Private Car and Motor Cycle Certificate of Insurance**

The wordings are as follows:

**i. Persons or classes of persons entitled to drive**

Any person including the insured Provided that the person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such licence.

Provided also that the person holding an effective Learner's Licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of Central Motor Vehicles Rules 1989.

When the vehicle is used for Transport of goods: add the following words:

- ✓ when not used for the transport of goods at the time of accident
- ✓ When the vehicle is used for Transport of passengers: add the following words
- ✓ when not used for the transport of passengers at the time of accident

**ii. Limitations as to Use:**

The policy covers use for any purpose other than

- I. Hire or reward or
- II. The carriage of goods (other than samples or personal luggage)
- III. Organised racing,
- IV. Pace-making,
- V. Reliability trials,
- VI. Speed testing,
- VII. Any purpose in connection with Motor Trade.

**b) For Commercial Vehicles**

For Commercial Vehicles, the wordings vary according to the type or class of vehicle. For Goods Carrying Vehicles (whether own goods or general cartage) and Passenger Carrying Vehicles, the description of Persons or classes of Persons entitled to Drive, and the declaration by the insurer is the same as in the case of Private Car above, but as regards Limitations as to Use, the wording differs, as under:

**i. Limitations as to Use: (for Goods Carrying Vehicle - own goods or general cartage)**

The policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub section 3 of section 66 of the Motor Vehicles Act, 1988

The Policy does not cover use for:

- (1) Organised racing, pace making, reliability trial or speed testing.
- (2) Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle.
- (3) Use for carrying passengers in the vehicle except employees (other than driver) not exceeding six in number coming under the purview of Employee's Compensation Act, 1923.

**ii. Limitation as to Use (For Passenger Carrying Vehicle)**

The policy covers use only under a permit (Contract Carriage or Stage Carriage) within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub section 3 of section 66 of the Motor Vehicles Act, 1988.

The Policy does not cover use for:

- (1) Organised racing, Pace making, Reliability trial or Speed testing.
- (2) Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle.

**c) Persons or classes of persons entitled to drive Misc & Special Types of vehicle**

**i. Agricultural & Forestry Vehicles**

Use only for Agricultural & Forestry purpose

**ii. Ambulances/Hearse**

Use only for Ambulance purpose or Hearse's purpose

**iii. Cinema Film Recording and Publicity Vans, Delivery trucks, Pedestrian controlled trolleys and Goods carrying Tractors, vehicle used for Driving Tuitions**

Use in connection with insured's business



- iv. **Cranes - Breakdown Vehicles**, Mobile cranes and Goods Carrying Vehicles having a crane as part of or fixed to the vehicle or trailer corps vehicle

Use in connection with insured's business

- v. **Dumpers dust carts**, Water carts, Road sweepers and tower wagons, Mechanical Navies, Shovels, Grabs, Excavators, Mobile plant, Road rollers, Site clearing and leveling plant and tar sprayers

Use in connection with insured's business

- vi. **Fire brigade and Salvage Corps Vehicles** - Use for \*\* purpose

- vii. **Mobile shops and canteens** - Use in connection with insured's business

- d) **Driver:** Any of the following:

- i. The insured.
- ii. Any other person who is driving on the Insured's order or with his permission

Provided that the person driving holds or had held and has not been disqualified from holding or obtaining an effective driving license at the time of the accident and is not disqualified from holding or obtaining such licence as per the Motor Vehicles Act 1988

Provided also that the person holding an effective Learner's Licence may also drive the vehicle \*\*\*\* and that such a person satisfies the requirements of Rule 3 of Central Motor Vehicles Rules 1989.

When the vehicle is used for:

\*\*\*\*Transport of goods: add the following words

- **when not used for the transport of goods at the time of accident**

\*\*\* Transport of passengers: add the following words

- **when not used for the transport of passengers at the time of accident**

- e) **Lost, destroyed or mutilated certificates**

Where the insured person:

- i) Lodges with an Insurer a declaration in which he declares that a Certificate of Insurance issued to him by such Insurer has been **lost, destroyed or mutilated** and sets out full particulars of the circumstances connected with the loss or destruction of the Certificate and the efforts made to find it; or

- ii) Returns to the Insurer the Certificate of Insurance issued to him by such Insurer in a defaced or mutilated condition; and
- iii) Pays to the Insurer a fee of Rs. 50/- in respect of each such Certificate.

The Insurer, shall if reasonably satisfied that such Certificate has been lost and that all reasonable efforts have been made to find it, or that it has been destroyed or is defaced or mutilated as the case may be, issue in lieu thereof, another Certificate of Insurance, which shall be plainly endorsed to the effect that it is a 'Duplicate Certificate', issued in place of the original.

When a fresh Certificate of Insurance has been issued, on representation that a Certificate of insurance has been lost, and the original Certificate of insurance is afterwards found by the holder, it shall be returned to the Insurer.

#### 4. Cover Note

A cover note is usually issued when the policy and certificates of insurance cannot be immediately issued for any reason. Cover note contents are prescribed in Form 52 (Rule 142 (1) of Motor vehicle Rules 1989).

A cover note which has to be issued in a prescribed form is valid for a period of 15 days. If for any reason the company is not able to issue the policy within the period, the validity of the cover note shall be extended by 15 days at a time but in no case the total period shall exceed 60 days.

#### Form of Cover Note

Motor Vehicle Insurance

Cover Note Number .....

The insured described in Form 52 referred to below; having proposed for insurance in respect of the Motor Vehicle(s) described in the Schedule and having paid the sum of Rs.... as premium, the risk is hereby held covered in terms of the Company's usual form of.... policy applicable thereto (subject to any special conditions or restrictions which may be mentioned overleaf) unless the cover be terminated by the company by notice in writing, in which case the insurance will thereupon cease and proportionate part of the annual premium otherwise payable for such insurance will be charged for the time the Company has been on risk.

Make & Reg. of the vehicle	Year of manufacture	Cubic capacity	Gross vehicle weight (Goods carrying vehicle)	Licence carrying capacity (Passenger carrying vehicle)	Insured's Declared Value	
					For vehicle Rs.	For accessories not included in Manufacturers listed selling price

Engine No., Chassis No.

Additional Risks, if any

Special Conditions

FORM 52

(See Rule 142 (1) of Motor vehicle Rules 1989)

Registered Mark and No. or description of the vehicle(s) insured

Name and address of Insured

Make and cubic capacity, type of vehicle(s) etc

Effective date of commencement of Insurance for the purpose of the Act Time

.....a.m/p.m Date

Date of expiry of insurance

Persons or classes of persons entitled to drive

Any Limitation as to use of Motor vehicle

The period of validity of the cover note will expire on .....

The Cover Note incorporates a Certificate:

I /We hereby certify that this cover note is issued in accordance with the provision of Chapter XI of the Motor Vehicles Act 1988.

Authorised Insurer

**5. Policy forms:** The policy form consists of the following sections:

**a) Recital clause**

This clause reads as follows

—Whereas the Insured by proposal and declaration dated as stated in the Schedule which shall be basis of this contract and is deemed to be incorporated herein has applied to the Company for insurance hereinafter contained and has paid or agreed to pay the premium as consideration for such insurance in respect of accident, loss or damage occurring during the Period of Insurancell.

**b) Operative clause**

**i. Operative clause of a private car package policy** specifies the risks covered and the risks excluded:

- I. Section I deals with the loss or damage to the vehicle;
- II. Section II deals with the liability to third parties;

**ii. Operative clause of Commercial Vehicle Policies:**

- (a) Section III deals with towing of any mechanically disabled vehicle.

- iii. **Operative Clause in Motor Trade Policies**, Section III deals with Trailer attached to the Vehicle.
- iv. **General Exceptions**: These are exclusions applicable to entire policy.

v. **Conditions**

c) **Schedule**

i. **The schedule of a Private Car Policy**

This consists of typewritten matter relating to individual details of the contract. The column provides for:

- ✓ Policy Number
- ✓ Name of the Company
- ✓ The insured's name and address and Business or Occupation
- ✓ Period of Insurance
- ✓ Geographical Area
- ✓ Registration Mark and other details of the vehicle
- ✓ Limitation as to use
- ✓ Driver
- ✓ Premium Computation
- ✓ Date of signature of Proposal and Declaration
- ✓ Signature of authorised officer

- ii. **The Schedule of Commercial Vehicle Policy** will contain 'Licensed Carrying Capacity' instead of 'Seating Capacity' and also an additional item showing 'Limits of Liability' under Section 11 - 1(i) and Section 11 - 1 (ii)

## 6. Endorsement

An endorsement is a written evidence of an agreed change in the policy. It is a document that incorporates changes in the terms of the policy. An endorsement can be of two types:

- a) **Premium bearing endorsement**: endorsement for which additional premium is charged.

### Example

Some of the examples are:

- ✓ Transfer of ownership
  - ✓ Addition of LPG/ CNG kit
  - ✓ Change of RTO location
-

- b) **Non-premium bearing endorsement;** endorsement for which no additional premium is charged.

### Example

Some of the examples are:

- ✓ Rectification in contact details
- ✓ Rectification in engine/ chassis number
- ✓ Addition of hypothecation

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An endorsement may be issued at the time of issuing the policy to provide additional benefits and covers (e.g. Legal Liability to Driver) or to impose restrictions (e.g. excess accidental damage in a public carrier policy). The wordings of these endorsements are as per erstwhile Tariff. An endorsement may also be issued subsequently to record changes such as change of address, change of name, change of vehicles etc. There are 72 Endorsements carried forward from the erstwhile tariff.

### 7. Renewal notice

It is the practice of companies to issue Renewal Notice to the insured usually one month in advance of the date of expiry of the policy. This notice provides details of renewal premium, including No Claim discount, if earned. As notice is prepared in advance, there could be a claim between the date of preparation and the date of expiry.

The renewal premium invited is subject to the provision that in the event of a claim suitable adjustments will be made in the premium. The insured's attention is also invited to revise the insured value of the vehicle in the light of current market values. The insured's attention is also invited to inform any material change as to use of vehicle.

### 8. E-insurance to come into existence from next year

CAMS Repository Services Ltd has stated that over 25 crore policy holders owning close to 37 crore policies would get their e-insurance in phased manner.

The Insurance Regulatory Development Authority of India (IRDAI) is likely to announce the roadmap to make it mandatory, by which insurance companies would have to compulsorily issue policies to their customers only in electronic form. According to an estimate, the current cost to insurer to service policies is over Rs. 600 per annum per policy.

However, with insurance repository, the initial incidental cost would come down to less than Rs. 100 per annum per policy, adding the initiative shall benefit both policy holders and insurance companies from convenience and cost front.

"Insurance policyholders would have the option to access their insurance policies online by opening an insurance account in the electronic form, free of cost. The benefits for policyholder holding an e-insurance are safety, convenience, service on demand, single KYC and aggregate view of all policies," he said.

Insurance repository system allows policy holders to keep insurance policies in electronic form and undertake changes and revision in the policy with speed and accuracy. Recently, IRDAI permitted five companies to act as repositories for managing e-policy. These are:

- ✓ NSDL Database Management,
- ✓ CAMS Repository Services,
- ✓ SHCIL Projects,
- ✓ Central Insurance Repository and
- ✓ Karvy Insurance Repository

### Test Yourself 2

The insurance company is under a duty to inform the Registering Authority that the policy has not followed the cover note, within \_\_\_\_\_ of the expiry of the cover note as required under Section 147 (4).

- I. One month
- II. 15 days
- III. 10 days
- IV. 7 days

### C. Types of Motor Policies

The introduction of private insurers in India in 2000 following the passing of the Insurance Regulatory and Development Authority Act has brought about intense competition in the market for insurance business. Non-life or general insurance business too has been exposed to this competition. However the existence of the Tariffs in Fire, Motor Engineering and Workmen's Compensation muted this competition to some extent.

There has been a cut-throat competition in the other non-life business and a scramble for the best risks in the Tariff business. As the restrictions of the Tariff were seen to be a barrier for differentiation of product and development of new products, the insurers were demanding scrapping of the tariffs and freedom to devise policy wordings and determine rates to grow in the market.

The Insurance Regulatory and Development Authority (IRDAI) has withdrawn the India Motor Tariff with effect from 1<sup>st</sup> April 2009. However the wordings of 'Liability Only' Policy are retained and the rates for 'Liability Only' policy are regulated by the IRDAI. With regard to 'Own Damage' covers the existing policy

wordings are to be continued but insurers are given freedom of pricing and permitted to provide add on covers after obtaining the Regulator's approval. The erstwhile India Motor Tariff wordings will remain as Standard cover.

The following two policy forms continue to be used:

- i. Liability only and
- ii. Package policy,

The Authority has prescribed proposal forms for third party 'Liability Only' policy for private car, two wheelers and commercial vehicles.

Motor Insurance business in India was governed by India Motor Tariff since the 1970's subject to amendments, the last being in July 2002. Although the Tariffs were discontinued from 1<sup>st</sup> January 2007, however the policy wordings are required to be continued until such time that IRDAI permits the change in policy wordings, terms and conditions. The existing policies are now termed as standard policies with insurers free to provide add-on covers as approved by IRDA under the –File and Use guidelines.

#### i. Liability Only Policy

This form covers, 'Act Liability' and 'Personal Accident risk to owner/driver'. 'Liability Only' Policy is called Standard Form for 'Liability Only' policy. This form applies uniformly to all classes of vehicles, whether Private Cars, Commercial Vehicles, Motor Cycles or Motor Scooters, with suitable amendments in 'Limitations as to Use', 'Drivers Condition' and some special Conditions.

#### ii. Package Policy

Package Policy form provides wider cover for 'own damage', 'Act liability' and 'PA to owner / driver', with suitable modifications based on the class of vehicle covered. It can also be extended to cover additional liabilities such as liability to employees of the insured who may be traveling in or driving the employer's cars, augmented Third Party Property Damage Liability, etc.

Insurers could, restrict the cover under the Own Damage section of Package Policy without reduction in premiums or increase the premium. However, 'Liability only' cover cannot be modified.

### 1. Own Damage Cover

- a) **Liability to third parties:** The policy covers the insured's legal liability for accidents occurring out of the use of the vehicle, in a public place, anywhere in India. This liability is subject to the Limit of Liability as laid down the Policy and Schedule are as follows:



- i. Death or Bodily injury to any person as far as is necessary to meet the requirements of the Motor Vehicles Act 1988----- Liability as incurred
- ii. Damage to property of any person up to Rs. 6000/-
- iii. In the case of goods carriage, the owner of the goods or his representative traveling with the goods is also covered.
- iv. In the case of Passenger Service Vehicles (hire or reward), the passengers are also covered.
- v. In Commercial Vehicles employees connected with running of the vehicle i.e. Driver, Conductor, Loading / Unloading Operators are entitled as per the Employee's Compensation Act, 1923.

**b) Personal accident to owner / driver**

- i. The owner of an insured vehicle is termed as 'owner-driver'. The Personal Accident to Owner/Driver cover is provided to owners of all individually owned vehicles. Vehicles registered in the name of a Company or organizations do not have compulsion of this cover. The provision was included in 'Liability policy', as it was observed that in most motor accidents, no other vehicle was involved while the owner, traveling in the vehicle suffering an injury, was not entitled to compensation.

The situation got accentuated, if the injured owner was not having any insurance to cover himself. The owner or family thus landed in financial distress. To mitigate the financial loss faced by the family, this coverage is provided.

- ii. The insurer undertakes to pay compensation to the owner-driver for bodily injury or death in the event of an accident directly connected with the vehicle or whilst driving or mounting or dismounting or traveling as a co-driver, caused by accidental, external, violent and visible means within 6 calendar months of such injury.

Nature of injury	Scale of compensation
Death	100%
Loss of two-limbs or sight of two eyes or one limb and sight of one eye	100%
Loss of one limb or sight of one eye	50%
Permanent Total Disablement (PTD)	100%

- iii. Provided that the total compensation does not exceed Rs 1,00,000/- in case of two-wheeler owners and Rs.2,00,000/- in case of other vehicles.
- iv. The injury must not be intentional and/or, the person must not be under the influence of intoxicating liquor or drugs.
- v. The owner-driver must be the registered owner of the vehicle insured and holding a valid and effective driving licence as per Rule 3 of the Central Motor Vehicle Rules 1989.
- vi. The Company will also pay all costs and expenses incurred with its written consent.
- vii. Any person driving the vehicle with insured's consent will also be covered as if insured under the policy.
- viii. In the event of death of Insured persons, the legal heirs or personal representatives will be treated as if insured and nominee is to be provided compensation as per PA Owner driver Liability policy.

#### **c) Companies' right to defend**

The Company may at its own option:

- i. Arrange for representation at any inquest or fatal Inquiry for any Third Party death and
- ii. Undertake the defense of proceedings in any Court of Law involving Insured Vehicle.

#### **d) Avoidance of certain terms and right of recovery**

The Insured persons are entitled to the benefits in terms of the Motor Vehicle Act 1988. No provision in the policy shall affect the right of any person indemnified by the policy, to recover an amount by virtue of the Motor Vehicle Act 1988.

#### **e) Application of limits of indemnity**

In the event of any accident involving indemnity to more than one person any limitation in the forms of the policy on the amount of any indemnity shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the insured.

**f) General exclusions**

The Company is not liable for any claim when the vehicle is used:

- i. In breach of –Limitations as to Use‘
- ii. In contravention of –Drivers Clause for
- iii. Contractual liability claims
- iv. Liability to employees other than those connected with the operations of the vehicle. (It is in terms of the Employee’s Compensation Act 1923, for employees connected with the operations of the vehicle, provided the accident arises out of and in the course of employment.)
- v. Passengers carried by reason of or in pursuance of a contract of employment are covered.
- vi. Any liability to passengers traveling, entering mounting or alighting from the vehicle other than under the Motor Vehicle Act 1988. Employee traveling as passenger is not covered. (Note: passengers traveling in public passenger vehicles are required to be covered under the MV Act 1988. Passengers in private vehicles are not required to be covered separately.)
- vii. Losses arising directly or indirectly due to war and war like perils. However, any claim for damage, which the insured can prove is independent of such perils, will be payable.
- viii. Any liability arising directly or indirectly from nuclear weapon material.

**g) Conditions**

The policy and schedule shall be read together. All words defined under the policy shall carry the same meaning wherever they may appear in the policy or schedule:

- i. **Notification of claim:** Notice in writing to be given to the Company immediately on the occurrence of a claim. All summons, legal notices and similar documents, must be submitted to the Company. The Insured if aware of any prosecution Inquest or Fatal Inquiry relating to an accident which can result in future claim must inform Company in writing of such matters.

- ii. **No admission offer promise or payment:** The Insured cannot commit to any admission or settlement without insurance companies prior written consent.

Insurers can take over the defense or settlement at their discretion. In such event Insured must provide all assistance and cooperation. Any payment not covered under the policy can be recovered from the Insured.

- iii. **Maintenance of Vehicle:** Insured should take all steps to maintain the vehicle in efficient condition. The Insurer can examine the vehicle, driver or any employee of the insured at all times.
- iv. **Cancellation:** The insurer can cancel the policy by giving 7 days notice to the Insured, by recorded delivery at last known address. The insurer is permitted to retain premium on pro-rata basis for the period the policy was in force and refund the balance. Insured can cancel policy by 7 days notice by recorded delivery.

The insured is entitled to return of premium after deduction of amount on 'short period rates' provided no claim has occurred under the policy. The return of premium is subject to the Minimum premium retention by the Insurers. Cancellation on transfer of ownership cannot be done, unless proof of insurance being done elsewhere, is provided

- v. **Contribution:** If more than one insurance policy has been taken for the same liability, the Insurer will contribute a ratable proportion of any compensation, cost or expense.
- vi. **Arbitration:** All disputes on quantum on claim shall be referred to decision of sole arbitrator appointed by the parties to the dispute in writing within 30 days of invocation of Arbitration by any party. If they are unable to agree on sole arbitrator then panel of three arbitrators to be appointed -one each by each party to the dispute and the third by the two arbitrators. The third arbitrator will be presiding arbitrator and will conduct the proceeding according to the Arbitration Act 1996.
  - (a) If dispute is on liability then the matter cannot be referred to arbitration.
  - (b) No suit or action can be taken unless arbitration award has been obtained.
  - (c) If Insurer rejects claim and the insured does not file a suit in a court of law within 12 months of the rejection then it will be presumed that the claim has been abandoned and not recoverable.

### vii. Due Observance of terms and Conditions as precedent to Liability

The Insured is required to observe and fulfill all the terms and conditions of the policy. All statements and answers in the proposal form are to be made truthfully by the Insured.

### viii. Transfer of the policy in the event of death of the insured

In the event of the death of Insured, the policy will remain valid for three months, from the death or until expiry of the policy (whichever happens earlier). The legal heirs are required to have the policy transferred in their name or take a fresh policy within this period.

To obtain the transfer or new policy the legal heir is required to make an application to the Insurers within the time allowed and submit along with the application, following documents:

- (a) Death Certificate
- (b) Proof of title of the vehicle
- (c) Original Policy

### h) Schedule

The Schedule contains the following information:

- i. The Policy No.
- ii. The Insurer
- iii. The Insured Name, Address, Business or Profession
- iv. The period of insurance: From: time and date to midnight date
- v. The Motor Vehicle: Registration Mark, Engine & Chassis Nos., Make, Type of Body, Capacity, Year
- vi. Geographical Area
- vii. Limits of Liability

For injury or death	Decided by court (as incurred liability)
For property damage	Rs. 6000/- per accident

### viii. Limitations as to Use

This depends on the category of vehicle and will differ accordingly. This can be explained with the help of the following example:

**Example**

Stage Carriage/Contract Carriage/Goods Carriage/	<p>Use only under a permit within the meaning of the MV Act 1988 or such a carriage falling under sub-section (3) of the MV Act 1988.</p> <p>The policy does not cover use for:</p> <p>a) Organised racing</p> <p>b) Speed testing</p>
--	--

**ix. Driver Clause**

This states the person or class of persons entitled to drive the vehicle. This can be explained with the help of the following example:

**Example**

Stage Carriage/Contract Carriage/	<p>Any person including Insured:</p> <ul style="list-style-type: none"> <li>✓ Provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence</li> <li>✓ Provided also that the person holding an effective Learner's Licence may also drive the vehicle when not used for the transport of passengers at the time of the accident and that such person satisfies the requirements of Rule 3 of the Central Motor Vehicle Rules 1989</li> </ul>
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- x. The schedule incorporates the proposal and declaration. Thereafter the signature of the authorised insurer appears.

**2. Liability covers under package policies**

There are variations between the –Liability only policies and –Liability cover provided under the Package policies. The variations are as follows:

**a) Occupants / pillion rider; loading unloading of operators**

- i. In the case of private cars and two-wheelers the death or bodily injury includes occupants/ pillion rider carried in the vehicle.
- ii. For commercial vehicles it includes loading/unloading operators for goods carriage vehicles

**b) Wider property damage liability cover**

In the case of Property damage cover, wider liability is being provided.

- i. The limits specified for Motorised two-wheelers Rs. 100000/-
- ii. All other vehicles Rs. 750000/-

The limit of Rs. 6000/- is applied when the insured opts out of wider Third Party Property Damage (TPPD) cover (a discount in premium is allowed).

**c) Wider property damage belonging to others**

The policy does not cover property held in trust or in control of the insured. This implies that property belonging to others, lying with insured is not covered.

**d) Place where liability arise**

- i. The cover for liability is not restricted to –Public Placell for private cars and two wheelers used for personal use. In the –liability only –policy this restriction applies.
- ii. For commercial vehicles liability is restricted to public place, not beyond limits of any carriageway or thoroughfare for loading/unloading.
- iii. In the case of commercial vehicles damage to bridge, viaduct road, or anything beneath by vibration or weight of the vehicle or load carried is not covered.

**e) Towing of disabled vehicles**

Commercial vehicles policy permits this service provided it is not done for hire or reward. The policy will pay for liability arising out of such towing service.

**f) Limitations as to use for commercial vehicles**

- i. For Goods Carrying Vehicle: Use only for carriage of goods within the meaning of the MV Act 1988.

**g) The policy does not cover**

- i. Use for organised racing, pace making, reliability trial or speed testing.
- ii. Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle.



- iii. Use for carrying passengers in the vehicle except employees (other than driver) not exceeding six in number coming under the purview of EC Act 1923.
- iv. For Passenger carrying vehicle: Use only for carriage of passengers in accordance with the permits (Contract or Stage carriage) issued within the meaning of the MV Act 1988.
  - (a) Use for organised racing, pace making, reliability trial or speed testing
  - (b) Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle

#### **h) Additional covers**

The 'Liability only policy' can be extended to cover additional risks. These may be optional or essential. Inclusion of each of these covers involves incorporating an endorsement to the policy.

##### **i. Essential cover**

- (a) **Passenger Liability in Public Passenger service Vehicles:** This is an essential cover for all passenger vehicles i.e. taxi, buses, and rickshaws subject to additional premium.
- (b) **Bi-fuel vehicles:** This is also an essential cover for vehicles fitted with bi-fuel arrangement i.e., in addition to Petrol or Diesel they have attachments for CNG or LPG as fuel for running the vehicle, are subject to increased hazard in the event of accident. Such vehicles require an endorsement in the Registration Certificate by the RTA. In such cases an additional premium is to be charged for Third Party liability cover.
- (c) **Liability for persons employed in connection with the operation of the vehicle:** The MV Act 1988 provides for liability to employees connected with the operations of the vehicle i.e. driver, conductor, employees engaged in loading/unloading operations in goods vehicle. Liability for these employees arise under the Employee's Compensation Act 1923 is also an essential cover. This liability is covered by charging an additional premium.

##### **ii. Non-essential covers**

- (a) **Personal accident covers for un-named passenger:** The policy can be extended to cover PA benefits to passengers in the vehicle. The benefits are similar to that provided for the owner/driver. However the Sum Insured can be selected by the insured and ranges between Rs. 10000/- to 200000/- per passenger. The premium on the Sum Insured selected is

to be charged on the basis of the authorised passenger carrying capacity of the vehicle.

- (b) **Liability for non-fare paying passengers:** Employees other than those connected with the operations of the vehicle are *not entitled* to compensation under the MV Act 1988. Their liability would arise under the Employee's Compensation Act 1923, or if not an employee/ workmen under Common Law.

Non-fare paying passengers can be covered only when the permit of the vehicle allows such carrying or the MV Act 1988 permits.

### Example

Under Section 147 of the Act 1988, it is necessary to compulsorily cover Owner of Goods being carried in goods carrying vehicle.

### Test Yourself 3

In the event of the death of insured, the policy will remain valid for \_\_\_\_\_ from the death or until expiry of the policy (whichever happens earlier).

- I. Three months
- II. Six months
- III. Seven months
- IV. Nine months

### D. Coverage for motor policies

#### 1. Coverage for Private Car

**Package Policy:** There are minor variations in the coverage for Own Damage for Private cars and Two-wheelers under the Package Policy. The variations are being clarified as we go along.

#### Section I - Own Damage

##### a) Risks covered

The Company will 'indemnify' the Insured against loss

- i. Fire, explosion, self-ignition or lightening; (Note: As regards —explosion— peril, both external and internal explosions are deemed to be covered.)
- ii. Burglary, housebreaking or theft;
- iii. Riot and strike;
- iv. Earthquake (fire and shock damage);

- v. Flood, typhoon, hurricane, storm, tempest, inundation, cyclone, hailstorm, frost;
- vi. Accidental external means;
- vii. Malicious act;
- viii. Terrorist activity;
- ix. Landslide / rockslide.
- x. Whilst in transit by road, rail, inland waterway, lift, elevator or air;

#### **b) Contract to indemnify**

The contract is *not to* –pay the loss to the insured, but to –indemnify him against his loss. Thus if parts are damaged in an accident and are replaced with new parts, the new price will not be paid, rather the new cost will be depreciated for age of the vehicle i.e., new cost reduced by actual depreciation; and the balance will be payable.

#### **c) Loss or damage of accessories**

It is covered only if the accessories are on the Motor car.

#### **Example**

If the accessories are detached and kept separately in a garage and are destroyed as a result of any peril mentioned above e.g., fire to the garage, they will not be covered by the Motor policy. The term –accessories do not apply to the engine of a car, for it is an essential part of the vehicle.

- i. **Loss or damage to accessories in the case of two-wheelers**, theft of accessories is not covered unless the vehicle is also stolen at the same time. This can be covered as an add-on risk by charging additional premium. There is no satisfactory definition of the word –accessory.

#### **Definition**

The word –accessory, means generally those parts which are directly supplied by the manufacturer along with the car, but which are not essential for the running of the motor car, are considered as accessories.

It should be noted that music systems, air-conditioners and other electric or electronic items, etc. fitted nowadays by the motor car owners on their Cars, will not be considered as accessories, but they will be considered as extra fittings and will not be covered unless they are separately described and valued in the Schedule of the Policy.

- ii. **Extra fittings:** which are standard and provided as inclusive with the vehicle by the manufacturer need not be separately described and are deemed to be included in the value proposed for insurance. For example: a DX or LX model vehicle has built-in extra fitting like Air conditioner, Music system or Power steering/windows. These are part of the Manufacturers selling price and included in IDV. In this case the standard premium rate is charged and no extra-fitting premium rate is chargeable separately.

**d) Deduction for depreciation**

Depreciation is deducted for parts replaced following an accident as follows:

For all rubber/nylon/plastic parts, tyres and tubes, batteries and airbags	50%
For all fiberglass components	30%
For all parts made of glass	Nil
For all other parts as a percentage based on the age of the vehicle as follows:	
<b>Age of vehicle</b>	<b>% of depreciation</b>
Not exceeding 6 months	Nil
Between 6 months and 1 year	5%
Between 1 year and 2 years	10%
Between 2 years and 3 years	15%
Between 3 years and 4 years	25%
Between 4 years and 5 years	35%
Between 5 and 10 years	40%
Over 10 years	50%

**e) Exclusions under “own damage” section**

The insurer will not be liable to make any payment for:

- i. Consequential loss, Depreciation, Wear and Tear, Mechanical or Electrical Breakdown, Failures and Breakage; and
- ii. Damage to tyres unless the motor car is damaged at the same time when the liability of the insurer is limited to 50% of the cost of replacement;
- iii. Any accidental loss or damage suffered whilst the insured or any person driving with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs.

**f) Consequential loss**

The policy covers only direct loss caused by an accident to the car. The insured may suffer loss of use of the car during repairs, in the form of cost and expenses of alternate transportation. This is a consequential loss, which is not covered.

**g) Depreciation, wear and tear**

These losses are not in the nature of accidental fortuitous events. In course of time, motor vehicle, like any other property, suffers wear and tear due to use. Since wear and tear is inevitable, it cannot be insured. The word –depreciation used in the exclusion which claimant is expected to bear, in terms of the principle of indemnity. In the latter case, the policy clearly indicates the rates of depreciation to be applied in respect of parts replaced.

- i. **Depreciation caused due to accident:** However, when vehicle meets with a serious accident and is repaired to be placed in a satisfactory manner, even so it may have depreciated in value as a result of the accident, in the sense that, if it is offered for sale, the owner may realise lesser value than what it would have fetched prior to the accident. This kind of depreciation is excluded by the policy even though directly caused by the accident.
- ii. **Mechanical or electrical breakdown, failures, and breakages:** Mechanical breakdown is associated with wear and tear; as such a breakdown is caused by metal fatigue. However, subsequent damage following mechanical breakdown is covered by the policy. If the steering rod breaks and causes an accident resulting in damage to the car, claim in respect of breakage in steering is not payable, but subsequent or consequential damage to the car is accidental and claim in respect of that will be admissible.

**h) Protection and removal costs**

If the motor car is disabled by reason of loss or damage covered under the policy, the insurer will bear reasonable cost of protection and removal to the nearest repairers and of redelivery to the insured but not exceeding in all Rs. 1,500/- in respect of any accident.

**i) Authorisation for repair**

The insured may authorise repairs necessitated by damage covered under the policy, provided that:

- i. The estimated cost of such repairs does not exceed Rs. 500/-.

- ii. The insurer is furnished forthwith a detailed estimate of the cost, and
- iii. The insured gives the insurer full assistance to see that such repair is necessary and the charge reasonable.

**j) Sum insured - Insured's Declared Value (IDV)**

The IDV is deemed to be the Sum Insured for the purpose of the policy and is fixed at the commencement of each policy period for the insured vehicle. The IDV is generally treated as the Market Value throughout the policy period without further depreciation for Total (TL) or Constructive Total Loss (CTL) claims. CTL is understood as when the repair & retrieval cost of the vehicle as permitted under the policy exceeds 75% of the IDV.

The IDV is usually fixed on the basis of the manufacturers' listed selling price of the brand & model and is adjusted for depreciation (as per schedule below)

Age of the vehicle	% of depreciation
Not exceeding 6 months	5%
Between 6 months and 1 year	15%
Between 1 year and 2 years	20%
Between 2 years and 3 years	30%
Between 3 years and 4 years	40%
Between 4 years and 5 years	50%

**Example**

Maruti Swift 2007 Model to be renewed in 2011, Manufacturers selling price for new Swift in 2011 is Rs. 550000/-.

IDV for 2007 model will be 50% of 550000 = 275000/- with depreciation 50% (4 to 5 yrs).

IDV for vehicles over 5 years and obsolete vehicles is to be determined on the basis of an understanding between the insurers and insured.

## 2. Coverage for Two Wheeler

The coverage for a two wheeler is similar but with the following amendments.

- i. The two wheeler policy covers theft of accessories only if the vehicle is stolen at the same time.
- ii. Protection & removal costs to the extent of Rs. 300/- only
- iii. Authorisation for repairs restricted to Rs. 150/-.

**Section II - Liability to Third Parties:** This has been dealt with Liability To Third Parties supra.

It is to be noted that the coverage under the Package policy is wider as discussed under liability cover under package policies.

- a) **General exceptions** (application to all Sections of the policy). The Insurer shall not be liable in respect of:
  - i. Any accident, loss, damage or liability caused, sustained or incurred **outside the Geographical Area** (described in the Schedule of the Policy).
  - ii. Any claim out of any contractual liability.

It will be appreciated that the policy covers only legal liability; therefore, no other liability assumed by the insured under any agreement or contract is covered.

Whilst the insured vehicle is:

- (a) Being used otherwise than in accordance with the 'limitations as to Use'. The Schedule of the Policy describes these 'Limitations as to Use'.
- (b) Being driven by any person other than a Driver as stated in the Driver's Clause. The Clause is described in the Schedule of the Policy.
- iii. **Nuclear risks exclusion clause:** loss, damage, liability arising from ionizing radiations or nuclear waste process of nuclear fission.
- iv. **Any accident loss, damage or liability directly or indirectly, proximately or remotely arising** from War, and kindred peril.

The burden of proving that loss, damage or liability arose independently of the said occurrences shall be on the Insured. Unless this burden is satisfactorily discharged, there is no liability on the Insurer to pay such claims.

- v. **Deductible Franchise** (also known as excess): The Company shall not be liable for each and every claim under Section 1 (loss or damage to the insured vehicle) of the policy in respect of deductible as stated in the policy schedule.
- b) **Conditions of the policy:** The policy contains a number of conditions which are expressly stated to be conditions precedent to liability of the insurers.



**i. Notice of Loss**

Notice should be given immediately to the insurer upon the occurrence of any accident, loss or damage and, in the event of any claim the insured should give all information and assistance as the insurer may require.

Every letter, claim, writ, summons, etc. should be forwarded to the insurer immediately on the receipt of insured.

In the event of any impending prosecution, inquest or fatal inquiry, the insured should immediately inform the insurer in writing.

In case of theft or other criminal act, which may be the subject of a claim, the insured should give immediate notice to the Police and cooperate with the insurer in securing the conviction of the offender

**ii. No, Admission, Offer, Promise or Payment**

The insured should not settle or make any payment in respect of any claim, or admit liability or make any other admission with respect to the accident or any claim arising there from, without the written consent of the insurer.

The insurer shall be entitled, if he so desires, to take over and conduct in the name of the insured, the defence or settlement of any claim or to prosecute in the name of the insured any claim for indemnity. The insured should give any information or assistance which the insurer may require for the purpose of resisting or settling any claim.

**iii. Safeguarding The Vehicle From Loss Or Damage**

The insured is expected to take all reasonable steps to safeguard the motor car from loss or damage. He is also obliged to maintain it in an efficient condition.

In the event of any accident or breakdown the motor car should not be left unattended without proper precaution being taken to prevent further damage or loss.

If the motor car is driven before necessary repairs are affected, any extension of the damage or any further damage shall be entirely at insured's own risk.

#### **iv. Cancellation**

The insurer may cancel the policy by sending seven days notice by recorded delivery to the insured, and in such event he will return to the insured the premium paid less the pro rata portion thereon for the period the policy has been in force.

The policy may be cancelled by the insured on seven days notice and provided no claim has arisen during the currency of the policy, the insured shall be entitled to a return of premium, less premium at the insurance company's Short Period Rates for the period the policy has been in force.

However where the ownership of the vehicle is transferred, the policy cannot be cancelled, unless evidence that the vehicle is insured elsewhere is produced.

#### **v. Contribution**

If at the time any claim arises, there is any other existing insurance covering the same loss, damage or liability, then the insurer shall not be liable to pay or contribute more than its ratable proportion of such loss, damage, compensation, costs or expenses.

#### **vi. Arbitration**

This condition provides for settlement of disputes under the policy through arbitration which is a less expensive and faster method of settlement than litigation. Only disputes regarding the amount or quantum of the claim can be referred to arbitration. If the insurer has disputed or denied liability under the policy, then the insured will have to take recourse to a court of law.

The arbitrator has to be appointed in writing by the parties in difference. If the parties cannot agree upon a single arbitrator, then two disinterested persons are to be appointed as arbitrators, of whom one shall be appointed in writing by each of the parties. If either party shall refuse or fail to appoint an arbitrator within two calendar months after receipts of notice in writing by the other party in accordance with the provisions of the Arbitration Act, 1996 then the other party shall be at liberty to appoint a sole arbitrator.

In case of disagreement between the arbitrators, the difference will have to be referred to the decision of an Umpire, who has to be appointed by the arbitrators in writing before entering on the reference. The Umpire has to sit with the arbitrators and preside at the meetings.

It shall be a condition precedent to any right of action or suit upon the policy that award by such arbitrators or Umpire of the amount of the loss or damage shall be first obtained.

A claim will be deemed to be abandoned or time-barred if a suit is not filed in a court of law within 12 calendar months from the date the insurer declines liability for the claim. Thus this condition stipulates a time limit for filing suit.

**Note:** There is no bar on the claimant filing a case in Consumer Court due to this condition. However, it must be ensured that such a case is filed within two years of the accident.

Similarly if the policy is taken in the individual name, the claimant can have recourse to Insurance Ombudsman after 30 days of filing complaint with insurance companies Grievance Redressal Cell. However, time limit for filing application with Insurance Ombudsman is one year.

#### **vii. Observance of Conditions as precedent to liability**

This last condition stipulates that due observance and fulfillment of the terms, conditions and endorsements of the policy and the truth of the statements and answers in the proposal form shall be conditions precedent to any liability of the insurer under the insurance.

#### **c) The schedule of the policy**

The Conditions are preceded by a clause which states that the Policy and the Schedule shall be read together and any word or expression to which a specific meaning has been attached in any part of the Policy or of the Schedule, shall bear the same meaning wherever it may appear. The purpose and the effect of this clause is to link the Schedule to the policy.

#### **Salient information in the Schedule**

- i. Policy Number**, name and address of the insured, his business or profession.
- ii. Geographical Area.**
- iii. Details of the insured car viz.:** Registration mark - number, make of vehicle, type of body, cubic capacity, year of manufacture, seating capacity including driver, insured estimate of value (i.e. IDV) Chassis and Engine numbers.

- iv. **Limitations as to use:** - Use only for social, domestic and pleasure purpose and for the insured's business. The Policy does not cover use for hire and reward or for organised racing and pace, making, reliability trials and speed testing, the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the Motor Trade.
- v. **Driver's clause:** Driver: Any person including insured. Provided that the person driving is holding an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.

Provided also that the person holding an effective learner's licence may also drive the vehicle and such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

### Definition

The Motor Vehicles Act, 1988 defines "driving licence" as the licence issued by a competent authority as defined in Chapter II of the Act, authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

### Limits of Indemnity

Under Section II -1 (i)	As per Motor Vehicles Act 1988
Under Section II- 1(ii)	Rs.750000/- in respect of any one claim or series of claims arising out of one event.

**Note:** Motor Vehicles Act, 1988 provides for unlimited liability for third party death or bodily injury claims. The amount awarded becomes payable without limit.

### vi. Bonus Clause

The policy provides for a 'No claim discount' for each claim free year, on the own damage section of the premium of the policy. The discount starts at 20% rising to 50% over 5 years. The discount is available within a period of 90 days from the expiry of the policy.

## 3. Coverage for Commercial Vehicles

All vehicles plying for hire or reward are termed Commercial Vehicles. Indian Insurers continue to follow the classification of vehicles under this category as laid down in the erstwhile tariff. The policy wordings and parameters for rating are also continued to be followed with amendments as individually incorporated by insurers through –File and Use procedures.

The reluctance of private insurers to underwrite Commercial Vehicle insurance due to the high claim ratios in Third Party insurance and the need to discontinue tariffs in all classes of insurance drew the Regulator's attention to this aspect of motor insurance. Accordingly, to ensure that insurers did not price Motor TP premium to unreasonable levels, IRDA issued notification ensuring that TP premium rates would continue to be regulated and also announced creation of a Motor Third Party Declined Risk Pool for sharing of Third party claims by all insurers.

### **Scope of standard form for commercial vehicles package policy**

**Section 1 - Loss or damage:** The perils covered are identical, subject to the following additional exclusions:

- i. Loss or damage caused by overloading or strain of the motor vehicle, and loss or damage to accessories by burglary, housebreaking or theft unless the motor vehicle is stolen at the same time
- ii. Loss or damage to tyres tubes mudguards; lamps bonnet side parts painting of damaged portion. (This exclusion can be covered as an add-on).

The protection and removal cost values differ for the category of vehicle involved

**Section II - Liability to third parties:** As per 'Liability only policy' liability to third parties for bodily injury &/or death, Property damage and Personal accident cover for owner driver with additional cover for passenger liability, wider legal liability of Driver/ Cleaner and Labourers, Owner of goods or his representative whilst carried in goods carriage.

**Section III - Towing disabled vehicles:** The policy permits towing of a disabled vehicle and covers both liability and damage in the process of towing. However, the towing should not be carried out for hire or reward. It will also not cover damage to the towed vehicle or property carried on it.

**Section IV - Personal accident cover for owner/driver:** This is similar to the coverage mentioned above:

- a) **Personal accident to owner/driver:** Avoidance of Certain Terms and Rights of Recovery: The clause is identical to the Private car Package policy
- b) **General exceptions:** All the six exceptions are similar to Private Car package policy

- c) **Deductible (excess):** The OD section is subject to deductible for each and every claim. The amount of deductible differs based on category and class of vehicle.
- d) **Conditions:** The conditions of the policy are similar to the Private car Package policy. Condition 3, however, provides that if a valid claim for TPPD arises the insurer will pay up to their maximum liability and relinquish conduct defence or settlement of the case. The insured then has to manage defence and conduct for the balance liability and costs.
- i. **Carrying Hazardous Chemicals:** The commercial Vehicle policy provides for strict compliance to Motor Vehicle Rules for vehicles carrying hazardous chemicals. (Refer Annexure I)
  - (a) Rule 129-A (Spark arrestor) Goods carrying Vehicles transporting dangerous or hazardous goods are required to be fitted with a spark arrestor.
  - (b) Rule 131 to 133 places responsibility on consignor, transporter and driver carrying such hazardous or dangerous substances to take all precautions and comply with all safety aspects during transportation.

The steps include full information about the nature of the goods being carried, holding a Public Liability Act policy. Drivers Licence to be endorsement for Hazardous goods transportation. The schedule is similar to the Private Car except for the

- (a) Limitation as to Use clause- refer to Liability Chapter
- (b) Driver clause - as per Liability only Schedule

The above policy terms apply to Commercial vehicles for the carriage of Goods / Passengers, Trailers, Miscellaneous Class of Vehicles etc.

- e) **Extensions:** The OD sections of the motor policies can be extended to cover a number of benefits and also coverage for some exclusion under the policy:
  - i. **Additional electronic or electrical fittings:** Fittings installed in the vehicle by the insured can be covered by express description and Value. Premium will be charged additional
  - ii. **Installation of CNG/LPG Kit:** can be covered on payment of additional premium.
  - iii. **Fibre glass fuel tanks:** The trend to lighter vehicles means that such components are being installed in motor vehicles. The cost is substantial and hence can be covered under the policy on additional premium.

- iv. **Extension to cover burglary and theft of accessories for two-wheelers:** This extension can be provided by deleting the exclusion under the policy. For commercial vehicles loss or damage to tyres tubes lamps mudguards etc which is exclusion can be covered with additional premium. However expenses for these items will be subject to a 50% excess. Thus if these cost are around Rs. 32,000 only Rs. 16,000 will be payable.

#### Test Yourself 4

If the motor car is disabled by reason of loss or damage covered under the policy, the insurer will bear reasonable cost of protection and removal to the nearest repairers and of redelivery to the insured but not exceeding in all \_\_\_\_\_ in respect of any accident.

- I. Rs. 1,000/-
- II. Rs. 2,500/-
- III. Rs. 1,500/-
- IV. Rs. 5,000/-

#### E. Motor trade policies

##### 1. Motor trade policies

Policies are available to cater to the special requirements of Motor Trade. These policies are taken by a Motor Trader who may be either a dealer or distributor of brand new vehicles or secondhand vehicles or he may be engaged in their overhaul or repair. In the course of his business, he will have to demonstrate the vehicles to his prospective clients by giving a trial run.

To enable him to do so, the transport authorities allow him number plates which are known as Trade Certificates which he can temporarily attach to the vehicle being taken out on the public road for trial runs. Alternatively, these plates are allotted the names of the drivers who will be demonstrating the vehicles.

Normally, Trade Certificates are used in case of brand new vehicles which are unregistered and named driver plates are used for driving secondhand registered vehicles. The Motor Trade will handle a variety of vehicles which will be constantly changing. These vehicles are his stock-in-trade and therefore he has full insurable interest, either as owner or bailey.

A Motor Trader is also exposed to legal liability for accidental bodily injury, fatal or otherwise, and/or damage to property of third parties, caused by:

- ✓ Negligence in connection with the use of the vehicles, and/or
- ✓ Defects in the plant or premises of the Motor Trader.



Two types of policies are available:

- ✓ Standard Form of Motor Trade 'B' Policy, and
- ✓ Standard Form of Motor Trade Internal Risks Policy

## 2. Standard Form of Motor Trade 'B' Policy

The cover provided by the policy is in respect of accident, loss or damage sustained whilst the motor vehicle is:

- ✓ In public place, or
- ✓ Temporarily garaged during the course of a journey elsewhere than in or on any premises owned by or in the occupation of the insured.

### Section I - Loss or Damage: Risks Covered and Exclusions

These are identical to those covered under the Commercial Vehicle Package Policy.

- a) **Deduction for depreciation:** The deduction percentages are identical to those applying to Private Package Policy.
- b) **Costs of Protection and Removal:** The insurer will bear such costs up to Rs. 150/- any one accident.
- c) **Depreciation for Arriving at IDV:** The Deduction percentages are identical to those applying to Private Car Package Policy. The clause allowing the insured to authorise minor repairs up to certain limits does not appear in this policy.

### Section II - Liability to Third Party

- a) This Section provides similar cover as under Commercial Vehicles 'B' Policy. Also, the exclusions (a) to (e) are identical to those in the Commercial Vehicles 'B' Policy. Exclusion (f) found in the latter policy is absent from the Motor Trade 'B' Policy.
- b) The insurer will pay all costs and expenses incurred with its written consent.
- c) The insurer will indemnify any Driver, provided that such Driver:
  - i. Is not entitled to indemnity under any other policy,
  - ii. Shall, as though he were the insured, observe, fulfill and be subject to the terms, exceptions and conditions of the policy.

Provisions 4 and 5, i.e. provisions relating to representation at any inquest etc. and indemnifying legal representative are identical to those in the Commercial Vehicles 'B' Policy.

### Section III - Trailers

The indemnity provided by Section I (Own Damage) and Section II (Liability to Third Party) is extended to any vehicle (Mechanically propelled or otherwise) attached to the Motor Vehicle for the purpose of being towed.

This extension is subject to the following provisions:

- i. The Limits of Liability shown in the Schedule of the Policy are not increased by this extension;
- ii. The insurer shall not be liable in respect of damage to property conveyed by the towed vehicle;
- iii. There is no liability in respect of loss, damage and/or liability sustained or incurred whilst the motor vehicle is towing a greater number of vehicles than is permitted by law.

**Note the difference:** This Section differs from Section III of Commercial Vehicles 'B' Policy, which deals with "Towing Disabled Vehicles".

#### a) Avoidance of certain terms and right of recovery

This is the usual Clause that appears in all other policies. It was explained in detail when we were considering the scope of Private Car 'Package' Policy.

#### b) Application of limits of indemnity

In the event of any accident involving indemnity to more than one person, any limitation of the amount of indemnity shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the insured.

#### c) General exceptions applicable to all sections of the policy

All the six General Exceptions are the same as in the Commercial Vehicles 'Package' Policy. The exclusion regarding "influence of intoxicating liquor or drugs" appears in the last extension together with the exclusion of War and allied perils.

#### d) Deductible

Insurer is not liable for each and every claim under Section-1 (Loss of or damaged to the vehicle insured of this policy in respect of the deductible stated in the schedule)

**e) Conditions of the policy**

The conditions are the same as under Commercial Vehicles 'Package' Policy. However, with the introduction of Insured's Declared Value, the said conditions have become identical for both Commercial Vehicle Package Policy as well as Motor Trade Policy.

- f) All trade certificate or all named drivers** must be declared for insurance. The Tariff does not permit giving subsequent Trade Certificates or Named Drivers a different type of cover from that issued in connection with the first Trade Certificate or Named Driver.

**g) The schedule of the policy**

The insured motor vehicle is described as any motor vehicle, property of the insured or in his custody or control bearing a particular Trade Certificate number. All steam-driven vehicles are excluded. Limits of liability are stated separately for:

- i. Own Damage
- ii. Death or bodily injury of third parties, which is unlimited as per the Motor Vehicles Act, 1988
- iii. Third Party Property Damage. The Motor Vehicles Act limits it to Rs. 6,000/- per accident or event. Higher limits up to Rs. 750000/- are available at additional premium.
- iv. The insured "Motor vehicle" is categorised under:
  - (a) Named Driver basis, and/or
  - (b) Trade Certificate basis.

**h) Limitation as to use**

**Use only for motor trade purposes:** The policy does not cover use for hire or reward or for organised racing, pace-making, reliability trials or speed testing.

**i) Driver**

Any of the following: Any person including insured - Provided that the person driving is holding an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence, Provided also that the person holding an effective learner's licence may also drive the vehicle and such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989

### j) No claim discount

In the revised Tariff, No Claim Bonus is not applicable to trade Policies (Road, Transit Risks, Road Risks and Internal Risks) as mentioned in G.R. 27 of the IMT.

### 3. Motor Trade Internal Risks Policy

In contrast to the Motor Trade Road Risks Policy (which offers cover in respect of vehicle in a public place but not in or on the premises of the Insured or in his occupation), this policy applies to accident, loss or damage or liability arising out of an event occurring only on the Insured's business premises.

This insurance has not become popular in India owing to the fact that motor repairers, garage owners and dealers have relied on the disclaimer clause which is inserted by them in the agreement whilst accepting customers' vehicles for repairs, etc. **Though, they remain exposed to common law liability which cannot be avoided with inclusion of disclaimer clause.**

**Section I - Damage:** Subject to the Limit of Liability shown in the Schedule of Policy, the indemnity under this Section in respect of damage to any motor vehicle, including its accessories, whilst thereon:

- i. The property of the insured or any member of the insured's family or household,
- ii. Caused by accidental external and visible means, and
- iii. Occurring in or on the premises - that is, insured premises mentioned in the policy,
- iv. Insurer reserves the option to repair, reinstate or replace the vehicle or any of its parts or its accessories or to pay in cash the amount of the damage.

Exceptions of the own-damage Section: The Insurer shall not be liable to pay:

- i. For loss of use, depreciation, wear and tear, mechanical or electrical breakdowns, failures or breakages,
- ii. For damage to tyres by application of breaks or by puncture, cuts or bursts.

- a) **Excess:** Section I - damage to own vehicles - is subject to an "excess" of Rs. 50/- for two wheelers and Rs. 500/- for others any one accident or a number of accidents arising out of one cause.
- b) **Limit of liability for own damage:** The Tariff provides for a limit of Rs. 50,000/- any one accident.

**Section II - Liability to the Public Risks:** This Section indemnifies the Insured against all sums, including claimant's costs and expenses, which the Insured shall become legally liable to pay in respect of:

- a) **Accidental death or bodily injury** to any person other than a person in the Insured's service or a member of the Insured's family or household;
- b) **Accidental damage to:**
  - i. Any motor vehicle (including its accessories whilst thereon) held in trust by or in the custody or control of the Insured;
  - ii. Other property not being property belonging to or held in trust by or in the custody or control of the Insured; occurring, in on or about the premises through:
    - (a) The negligence of the Insured or any person in the service of or acting on behalf of the Insured, or
    - (b) By or through any defect in the premises or in the ways, works, machinery or plant therein.

The Insurer will pay all costs and expenses incurred with his written consent. In the event of the death of the Insured, the indemnity is available to his legal personal representatives.

### c) Limits of liability

Under Section II (1) in respect of any one claim or number of claims arising out of one cause. ....As per Motor vehicles Act, 1988 is unlimited.

Under Section II (2) in respect of any one claim or number of claims arising out of one cause.... Rs.6, 000.

The Tariff however provides for following higher limits:

- i. Property damage excluding damage to vehicles..... Rs. 1, 50,000/- any one accident.
- ii. Damage to vehicles property damage.... Rs. 1, 50,000/- any one accident.

The policy bears certain similarities with Motor package policy and general public liability policy.

- (a) Firstly, the policy covers accidental damage to the insured's own vehicles under the own damage section. This cover applies only when the vehicle is on the premises. If the vehicle is on the road, then the Motor Trader's road Risk Policy will be applicable.
- (b) Secondly, the policy covers insured's legal liability for death of or bodily injury to third parties or damage to their properties due to negligence. This is similar to the cover provided by general public liability for accidental damage to vehicles, which are entrusted to him, say, for repairs, due to negligence. Here the insured is a bailee and hence liable for accidental damage to vehicles through his own or his employee's negligence.

**d) General exceptions** (applicable to both the Sections)

The Insurer shall not be liable in respect of:

- i. Accident, loss, damage or liability due to:
  - ✓ War and allied perils
  - ✓ Flood, volcanic eruption, earthquake and other convulsions of nature
- ii. Damage to property caused directly; or indirectly by fire or explosion.
- iii. Any consequence of burglary, housebreaking or theft or any attempt thereat (such a risk can be covered under a separate Burglary Policy)
- iv. Damage to property sustained while it is being worked upon and directly resulting from such work,
- v. Any defective workmanship,
- vi. Death, injury or damage caused by or through any demolition or of structural alteration or addition to the premises or by or through the installation of any equipment.
- vii. Death, injury or damage caused by or through or in connection with the use by the insured of power driven cranes, elevators, lifts or hoists other than car hoists having a lift not exceeding six feet or its equivalent,
- viii. Any liability which attached by virtue of an agreement but which would not have attached in the absence of such agreement,

- ix. Death, injury or damage resulting from the driving elsewhere than in or on the premises of any vehicle by the Insured or any person in the service of or acting on behalf of the Insured,
- x. Damage to any motor vehicle or its accessories caused by weather conditions.
- xi. Any accident, loss, damage to any property or any loss or expenses resulting or arising there from or consequential loss.
- xii. Any liability caused, contributed, arising from radiations or contamination by radioactivity nuclear fuel or nuclear waste.

**e) Deductible**

Insurers are not liable under Section - I of this policy in respect of the deductible stated in the Schedule in respect of each and every claim.

**f) Conditions of the policy**

- i. The Policy and the Schedule shall be read together as one contract.
- ii. Every notice or communication shall be delivered in writing to the Insurer.
- iii. Notice of claims: This should be given as soon as possible to the Insurer with full particulars, Every letter, claim, writ, summons and process should be notified to the Insurer immediately on receipt. Any impending prosecution, inquest of fatal injury should also be notified immediately to the Insurer.
- iv. No admission, offered, promise or payment shall be made by the Insured without the consent of the Insurer. The insurer is entitled if he so desire, to take over and conduct in the name of the Insured the defence or the settlement of any claim and he shall have full discretion in the conduct of any proceedings and in the settlement of any claim the Insured is obliged to give all such a information and the assistance as the insurer may require.
- v. The Insured shall exercise care in the selection of competent employees and shall take all reasonable steps to safeguard from damage the insured property and maintain the premises in good repair. The insurer shall have full access at all reasonable times to the premises and to examine by their authorised representative any vehicle insured under the Policy.



**g) Premium**

For Motor Trade Internal Risks Insurance, rates of premium are based on:

- i. Superficial area of premises, that is, land and buildings occupied by the insured for the purpose of motor trade business. Different are provided for areas ranging from 200 sq. m. to 2000 sq. m. with an additional premium of 1,000 sq. m. or part thereof in excess of 2000 sq. m.
- ii. Wages: A percentages premium on the wages paid to employees subject to adjustment at expiry of the policy.

For this purpose, Condition no. 6 of the Policy is relevant, briefly, it states:

- i. The first and all renewable premiums are to be regulated partly upon the amount of wages, salaries and other earnings paid by the insured to employees during each period of insurance.
- ii. The name of every employee together with the amount of wages, salaries and other earnings shall be properly recorded by the Insured.
- iii. The Insured shall at all times allow the Insurer to inspect such a record. The Insured is required to submit to the Insurer a correct account of such a wages, salaries and other earnings paid during the period of insurance within one month from the expiry date of such a period of insurance
- iv. If the amount of so paid shall differ from the amount on which premium has been paid, the difference in premium shall be met by further proportionate payment to the Insurance Company, or subject to the Company's usual scale of minimum premiums, by refund of the company, as the case may be.
- v. In the event of any extension or alteration of the premises during the currency of the Policy, the Insured shall be immediately notify the Company thereof and shall pay to the Company any adjusted premium required in a respect of such extension or alteration.

**h) Cancellation**

The Insurer may cancel the Policy by sending seven day's notice to the Insured and in such an event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force.

**i) Contribution**

If there is any other insurance covering the same damage or liability, the Insurer shall not be liable to pay more than his rate able proportion of any damage, compensation, costs or expenses.

In connection with any one claim or number of claims arising out of one cause, the Insurance Company may pay to the Insured the amount of indemnity payable under the policy, and upon such payment being made, the Company shall relinquish the conduct and control of proceedings, and be under no further liability in connection with such claim or claims except for the payment of costs and expenses of litigation incurred prior to the date of such payment.

#### **j) Arbitration**

If any difference shall arise as to the quantum of the claim, such difference shall be referred to arbitration, as per the provisions of the Indian Arbitration Act, 1996. It is clearly understood that no dispute could be referred to arbitration if the company has disputed or not accepted liability under the policy.

If the company shall disclaim liability to the insured and such claim shall not, within 12 calendar months from the date of such disclaimer have been made the subject matter of suit in a Court of Law, then the claim shall for all purpose be deemed to have been abandoned and shall not thereafter be recoverable under the policy.

The due observance and fulfillment of the terms, exceptions, conditions and endorsements of the Policy and the truth of the statement and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.

The Schedule of the Policy: Amongst the other standard details, the Schedule contains the estimated annual Wage roll of all the employees.

**Address and superficial area of the Premises is also stated in the Schedule.**

Limits of Liability under both the Sections of the Policy are shown and these limits have already been discussed with the consideration of the two Sections of the Policy.

#### **Test Yourself 5**

A motor trade internal risks policy applies to accident, loss or damage or liability arising out of:

- I. An event occurring at a public place
  - II. An event occurring on the insured's business premises
  - III. Both I and II
  - IV. None of the above
-

## F. New Technologies

### 1. New technologies in cars

Here is a collection of technologies already offered that could be mainstream just a year or two from now. Eight great new car gadgets:

- a) Rear-mounted radar
- b) Night vision with pedestrian detection
- c) Automatic high-beam control
- d) Parental control
- e) GPS vehicle tracking
- f) Cameras
- g) Driver capability
- h) In-car Internet

#### a) Rear-mounted radar

Backing out of a parking space in a busy lot can be an adventure. Although rear-pointing radar has been around for a few years alerting drivers to unseen objects immediately behind them -- a fence, wall, tree or another vehicle -- new radar technology searches for approaching cross traffic.

When it "sees" traffic approaching while you're backing up, it sounds an alarm. Chrysler's version is available in its minivans and is called Cross Path Detection System. It includes visual indicators in the outboard mirrors. Ford's system is called Cross Traffic Alert. Offered in the just-released 2010 Fusion and Mercury Milan, it also has outboard mirror alarm indicators.

#### b) Night vision with pedestrian detection

Although night vision in vehicles isn't a new technology, Cadillac offered it in 2000. The Mercedes-Benz updated version is called Night View Assist Plus. Unlike the Night View Assist, which has been available in the S-Class since 2005, the new system pinpoints pedestrians, highlighting them on a dashboard display. It's offered in the 2010 E-Class in showrooms late this spring.

BMW has a similar system with a pedestrian identifier that also shows the direction the pedestrian is moving. As the distance closes between pedestrian and vehicle, a warning appears on the night vision monitor as well as the head-up display on the windshield if so equipped. BMW offers this system on the 2009 7 Series.

### c) Automatic high-beam control

In the redesigned RX, Lexus offers a system that automatically illuminates and dims the high-beam headlights in relation to approaching traffic. A camera mounted on the rearview mirror detects when the vehicle is closing in on oncoming traffic, as well as vehicles ahead traveling in the same direction, and disengages the high beams.

Mercedes-Benz takes the technology one step further with its Adaptive High beam Assist. Also found in the new E-Class, it doesn't merely switch between low and high beams, but reacts by gradually increasing or lowering the light distribution based on the distance of approaching traffic. It also dims the high beams for sharp turns and then re-engages the high beams if there is no approaching traffic once the turn is completed.

### d) Parental control

Parents who are afraid their teen driver might speed or be distracted by playing the vehicle's audio system at an excessive volume can use Ford's new MyKey system to limit speed and volume. When programmed, MyKey limits the speed to 80 miles per hour. It can also be programmed to limit the audio volume and to sound a continuous alarm if seat belts are left unfastened. Eventually available in all Fords, MyKey is offered in the recently released 2010 Escape Hybrid and Mercury Mariner Hybrid.

### e) GPS vehicle tracking

Parents wishing to expand on the Big Brother theme can purchase the Live View GPS Live Trac PT-10. Retailing for \$550 with a \$40 per month subscription fee, it is a GPS tracking system that updates a vehicle's position every 10 seconds. Watching it live requires only Internet access.

Small and portable, the tracking device can be moved from vehicle to vehicle. It can also alert parents through their cell phone if the vehicle's preset speed threshold is exceeded or if the vehicle enters/exits certain areas. It and similar Live View GPS products are also handy tools for businesses that need to track their fleet vehicles.

### f) Camera

Not so many years ago there was an undeclared competition among vehicle manufacturers to see who could scatter the largest number of cup holders around a vehicle's interior. Now the competition seems to have switched to cameras. Camera systems that provide a view behind the vehicle when shifted into reverse are things of yesterday.

The new trend is toward multiple cameras providing enlarged field of view. Available on its current 7 Series, BMW's Valeo multi-camera system employs three to five cameras, depending on the version, to display a panoramic view when parking.

Precise distances are indicated by lines on the image. It also sounds an alarm when the vehicle closes in on an unseen object during the maneuver. Infiniti's Around View Monitor has four wide-angle cameras mounted in the front, rear and sides, providing a bird's-eye, 360-degree view for parking purposes. Distances are illustrated by color graphics, and a beeping alarm sounds when the vehicle closes in on an object. It's available on the EX35 and FX.

#### **g) Driver capability**

Although it might be beneficial to have a system that evaluates driver's aptitude and shuts down the vehicle when incompetence is detected, we aren't there yet. But technology exists that measures a driver's fitness and issues warnings when a driver is judged overly tired or impaired. Attention Assist, found in the 2010 Mercedes-Benz E-Class, remembers a driver's normal behavior behind the wheel and establishes it as the driver's baseline profile.

Continually measuring factors such as speed, lateral acceleration, steering wheel angle, pedal use and so forth, the system determines if there is any deviation from the baseline. If so, it alerts the driver visually and audibly that it's break time. Even external influences such as crosswind and road surface are factored in.

#### **h) In-car Internet**

Although pure Wi-Fi Internet access from a moving vehicle is still in the future -- albeit the near future -- there are systems that allow for surfing using cell phone technology. The first system to turn your vehicle into a Wi-Fi hotspot is Auto net Mobile. Using a portable router mounted in the trunk or other out-of-the-way location, this system uses a 3G network to supply an uninterrupted signal regardless of cell tower blind spots, tunnels and so forth. In addition to the router, there is a monthly subscription fee based on estimated usage.

Chrysler currently offers its UConnect Web system in several models while Ford offers a system called 'Ford Work Solutions' on the current F-150 pickup truck that primarily targets contractors. It dovetails several technologies into an integrated system that can complete a variety of tasks from maintaining your tool inventory to sending out invoices, creating spreadsheets and surfing the Internet through the Sprint Mobile Broadband Network.

## 2. In-car Technologies

Strong interest in new In-Car Technologies by consumers in emerging economies could influence demand, decelerate rollout of next-generation connected vehicle.

High interest in next-generation **in-car technologies** among drivers in emerging economies could help shape future demand for sales and provide the automotive industry with a sustained revenue stream, a new survey by Accenture indicates. The survey shows that drivers are twice as likely to choose a car based on **in-vehicle technology options**, than its performance, demonstrating the continued importance of the connected vehicle to the automotive industry.

—Connected vehicle technology is rapidly becoming a key car-purchasing criterion

The survey of 14,000 drivers in Brazil, China, France, Germany, Indonesia, Italy, Malaysia, South Africa, South Korea, Spain, the UK and the United States examined their current use of connected vehicle technologies and expectations for future use. Technologies and digital services covered by the survey included:

- i. Navigation and traffic services;
- ii. A range of autonomous driving aids;
- iii. In-car services, including entertainment,
  - (a) Work tools and learning;
  - (b) Safety services;
  - (c) Black box-type monitoring of a person's driving patterns that can help reduce insurance premiums; and a number of
  - (d) Passenger-related services.

Thirty-nine percent of the drivers surveyed said that their primary consideration in choosing a new automobile is in-car technology, compared with 14 percent who said driving performance had the greatest influence on their choice.

According to the survey, drivers in China, Brazil, Indonesia and Malaysia expressed the strongest interest in all of the connected vehicle technologies and digital services currently available, which are used widely by consumers in more mature markets. Among the respondents in emerging economies, Chinese drivers had the highest current usage and greatest desire for future use of most of the technologies and services, followed by drivers in Brazil, Indonesia, Malaysia and South Africa.

—Combined with the increased use of connected vehicle technologies and digital services among consumers in mature markets, the high demand across the emerging world will no doubt speed the development and influence the rollout of next-generation products and services by the global auto industry.



This is especially significant considering that nearly 40 percent of drivers surveyed indicated that in-car technology is the primary factor they consider in purchasing a new car.

While there is ongoing debate about the future and safety of driverless cars, Accenture's research shows that, on average, 90 percent of the survey respondents have an interest in some autonomous driving options, primarily those related to safety. The most popular features include:

- i. Lane-changing warning systems,
- ii. Collision-warning systems,
- iii. Lane-keeping systems,
- iv. Automatic braking systems that prevent hitting an object and
- v. Fully automatic parking.

Accenture believes that the demand for individual aspects of autonomous driving will encourage original equipment manufacturers (OEMs), regulators and industry organizations to address the issues that are currently preventing the widespread use of driverless vehicle technology.

The research uncovered strong interest among consumers in vehicle health reports and vehicle lifecycle management services. According to Accenture, OEMs that are able to tap into this demand could open up new revenue streams around maintenance-related digital services and engine and parts wear and tear. While only 13 percent of drivers surveyed said they currently use a vehicle health report and 12 percent use vehicle lifecycle management services, 39 percent and 37 percent, respectively, expect to start using these services soon.

This increasing level of demand could lead to the rise of concierge-type digital services as drivers outsource the real-time monitoring of engine performance to third-party service providers, expanding the OEM after-sales revenue model. However, as drivers increase their demand for next-generation connected vehicle technologies across:

- i. Navigation,
- ii. Infotainment,
- iii. Safety,
- iv. Autonomous driving and
- v. Mobile device integration,

Vehicle manufacturers face a challenge in being able to meet the complex integration requirements of a broad array of technologies in each range of vehicles. They must also look at maximizing sales by incorporating the right technologies into the appropriate vehicle range in each country.

Accenture believes that the ability to source data from vehicles will enable a range of new business-to-business and business-to-consumer digital services. For OEMs, detailed data from vehicles could help them:



- i. Improve their engineering processes,
- ii. Reduce warranty costs and
- iii. Improve their relationships with dealers by helping dealers manage parts inventory and service.

Data sourced from vehicles could also be used to enable a portfolio of value-added B2C services, including vehicle diagnostics, driving dashboards and concierge services, delivered to drivers through multiple devices: a vehicle's head unit, a driver's Smartphone and/or tablet.

### **3. Future car technologies**

Automobile propulsion technologies under development include:

- i. petrol / electric and plug-in hybrids,
- ii. battery electric vehicles,
- iii. hydrogen cars,
- iv. bio fuels, and various alternative fuels

Research into future alternative forms of power include the development of fuel cells, Homogeneous Charge Compression Ignition (HCCI), Sterling engines, and even using the stored energy of compressed air or liquid nitrogen.

New materials which may replace steel car bodies include duraluminum, fiberglass, carbon fiber, and carbon nano tubes.

Telematics technology is allowing more and more people to share cars, on a pay-as-you-go basis, through car share and carpool schemes.

Communication is also evolving due to connected car systems.

### **4. New technology in auto field**

#### **a) Zero accident rate**

Google's driverless car has now clocked more than 300 000 miles without a single accident whilst under the computer's control, raising the possibility of a future of driverless vehicles. Should such technology be widely adopted which could be the answer to reducing the road accidents and may even result in reduced insurance premiums.

Experts believe that due to the system's accuracy, driverless vehicles could help reduce the number of fatalities that occur on the roads daily. —The extent of motor vehicle accidents remains a serious problem in India and is most often the result of human error. Consequently, a driverless system could help to eradicate careless and negligent driving behaviour, thereby reducing the number of accidents. If this is the case, and fewer accidents occur, then the cars could also be built lighter, allowing for less fuel consumption.¶

If the risks posed by driverless vehicles do prove to be less than those posed by traditional vehicles, the insurance premium charged should also reduce.

### **b) Constant cross communication**

In theory, this would make the industry even more competitive, forcing insurance companies to include additional value added services to make their respective offerings more attractive. However, while the traditional risks posed by driver driven vehicles may be substantially mitigated, the reality is that it will take a long time for cars to be introduced with the new driverless system and to be able to drive on the streets with absolute autonomy. Compatibility of all vehicles to enable constant cross communication with each other is the crux here as otherwise the sizeable benefits offered by such a system would soon to be obsolete.

### **c) Sluggish take up of this technology**

As a result, a major concern for any insurance company that opts to provide a reduced premium in response to the driverless system being implemented is that a sluggish take up of this technology would mean that the risks posed by other drivers on the roads would remain as widespread as before.

Even with a high take-up of driverless vehicles, the introduction of such technology would mean insurance contracts would certainly have to be revisited. —With an insurance policy being a contract between the insurer and the insured, certain terms and conditions may need to be tweaked in order to ensure that comprehensive cover is not compromised.¶

Exclusions such as driving under the influence of alcohol (DUIA) may no longer need to be applied. However, one of the most contentious legal issues may be that of third party claims. The fact that you are no longer driving the car, but rather the car is driving it raises a number of questions:

- ✓ Can someone still be sued in his or her personal capacity?
- ✓ Would the owner or driver of the vehicle now assume the negligent position of the vehicle?

The qualifying criteria for negligence to exist may now have to question:

- ✓ Would the reasonable person (vehicle) have foreseen the consequence of his/her (its) actions?
- ✓ Would the reasonable vehicle have taken the necessary steps to safeguard against this consequence? and lastly
- ✓ Did this vehicle take the necessary steps to safeguard against such a consequence?||

The introduction of this new mode of transport would also require transport laws to be revisited. –This will include legislation regarding speaking on the cell phone whilst driving, licensing of vehicles and drivers, as well as the possible impact on claims submitted against the Road Accident.

–The principle behind driverless technology is very positive and so far the technology appears to be proving a success. However, the phasing in of this type of technology will take a long time, especially in emerging markets where older cars remain on the roads for far longer||.

### Test Yourself 6

According to a survey which of the following country's drivers had the highest current usage and greatest desire for future use of most of the technologies and services?

- I. Malaysian
- II. Brazilian
- III. Chinese
- IV. South African

## Summary

- a) For purposes of insurance, motor vehicles are classified into 3 broad categories, viz. Private cars, Motorcycles and Commercial vehicles.
- b) From the time of acceptance of the risk, to the settlement of the claim for loss or damage, specific written documents are required. The main documents are listed below:
  - i. Proposal form
  - ii. Proposal form for ‘Liability only policy’
  - iii. Certificate of insurance
  - iv. Cover note
  - v. Policy forms
  - vi. Endorsement
  - vii. Renewal notice
  - viii. E-insurance to come into existence
- c) The Insurance Regulatory and Development Authority of India (IRDAI) has withdrawn the India Motor Tariff with effect from 1<sup>st</sup> April 2009. However the wordings of ‘Liability Only’ Policy are retained and the rates for ‘Liability Only’ policy are regulated by the IRDAI.
- d) The following two policy forms continue to be used:
  - i. Liability only and
  - ii. Package policy,
- e) The Authority has prescribed proposal forms for third party ‘Liability Only’ Policy for private car, two wheelers and commercial vehicles.
- f) ‘Own damage’ policy covers the insured’s legal liability for accidents occurring out of the use of the vehicle, in a public place, anywhere in India.
- g) Liability covers under package policies: There are variations between the –Liability only policies and –Liability cover provided under the Package policies.
- h) Coverage for private cars: There are minor variations in the coverage for Own Damage for Private cars and Two-wheelers under the Package Policy.
- i) Coverage for commercial vehicles: The scope of standard form for commercial vehicles package policy comprises of various sections.
- j) Motor trade policies are taken by a Motor Trader who may be either a dealer or distributor of brand new vehicles or secondhand vehicles or he may be engaged in their overhaul or repair.

- k) A Motor trade internal risks policy applies to accident, loss or damage or liability arising out of an event occurring only on the Insured's business premises.
- l) New technologies in cars cover eight great new car gadgets:
- i. Rear-mounted radar
  - ii. Night vision with pedestrian detection
  - iii. Automatic high-beam control
  - iv. Parental control
  - v. GPS vehicle tracking
  - vi. Cameras
  - vii. Driver capability
  - viii. In-car Internet
- 



**Answers to Test Yourself****Answer 1**

The correct answer is II.

Ultrasonic test is used to measure thickness of sheets.

**Answer 2**

The correct answer is IV.

The insurance company is under a duty to inform the Registering Authority that the policy has not followed the cover note, within 7 days of the expiry of the cover note as required under Section 147 (4).

**Answer 3**

The correct answer is I.

In the event of the death of insured, the policy will remain valid for three months, from the death or until expiry of the policy (whichever happens earlier).

**Answer 4**

The correct answer is III.

If the motor car is disabled by reason of loss or damage covered under the policy, the insurer will bear reasonable cost of protection and removal to the nearest repairers and of redelivery to the insured but not exceeding in all Rs. 1,500/- in respect of any accident.

**Answer 5**

The correct answer is II.

A motor trade internal risks policy applies to accident, loss or damage or liability arising out of an event occurring only on the insured's business premises.

**Answer 6**

The correct answer is III.

Chinese drivers had the highest current usage and greatest desire for future use of most of the technologies and services, followed by drivers in Brazil, Indonesia, Malaysia and South Africa.

**Self-Examination Questions****Question 1**

The cabin for the tipper is almost similar to which of the following?

- I. Trailer
- II. Common truck
- III. Water Tanker
- IV. Bitumen Tanker

**Question 2**

A cover note which has to be issued in a prescribed form is valid for a period of \_\_\_\_\_.

- I. 7 days
- II. 15 days
- III. 30 days
- IV. 3 months

**Question 3**

Recently, IRDA permitted five companies to act as repositories. Which of the following is not one of these?

- I. NSDL Database Management
- II. CAMS Repository Services
- III. Insurance Repository of India
- IV. SHCIL Projects



**Answers to Self-Examination Questions****Answer 1**

The correct option is II.

The cabin for the tipper is almost similar to common truck.

**Answer 2**

The correct option is II.

A cover note which has to be issued in a prescribed form is valid for a period of 15 days.

**Answer 3**

The correct option is III.

Insurance Repository of India is not permitted to act as a repository.

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# CHAPTER 4

## UNDERWRITING IN MOTOR INSURANCE

### Chapter Introduction

The chapter covers market practice of motor insurance in India; guidelines applicable in India; amendments subsequent to discontinuance of Tariff; international practice in motor insurance; underwriting criteria, principles and practice of premium computation; motor underwriting - key to the health of the industry including data collection, developing underwriting scores methodology and its impact on motor insurance profitability.

### Learning Outcomes

- A. Market practice of Motor Insurance in India
- B. Guidelines applicable in India
- C. Amendments subsequent to discontinuance of Tariff
- D. International practice in Motor Insurance
- E. Underwriting in Motor Insurance
- F. Principles and Practice of Premium Computation
- G. Motor Underwriting

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## A. Market practice of Motor Insurance in India

Motor Vehicle insurance in India was governed by India Motor Tariffs effective from 01-08-1989 till December 2006. The Authority vide circular no. 021/IRDA/F7U/Sep 06 dated 28-09-2006 stated that w.e.f. 01-01-2007 all the tariffs stand withdrawn subject to the condition that insurers shall not vary the coverage, terms and conditions, wordings, warranties, clauses and endorsements in respect of covers that were under tariffs.

Further rationalisation has been done vide IRDA/NL/ORD/MPL/077/03/2012 dated 29<sup>th</sup> March, 2012. Insurers were given freedom to quote individual rates for the Motor insurance products excluding Third Party Liability. The Third Party Liability premium is still being regulated by the IRDAI. All other terms conditions and rules of the erstwhile India Motor Tariff are still in use. However, the rates they proposed to quote for Own Damage section were required to be filed with the regulator before circulation.

The third party liability premium is being regulated by the IRDAI for the reason that being a loss making portfolio on the one hand and being statutory insurance as per law on the other, freeing the pricing would have lead to spiraling of Third Party Premium to the detriment of policyholder.

### 1. Caveats for filing add-on covers

The IRDAI subsequently permitted insurers to file add-on covers to the main product from 1<sup>st</sup> April 2009 with the following caveats:

- a) Insurers are permitted to file variations in deductibles from those prescribed under the erstwhile Fire, Engineering, IAR and Motor OD Tariffs subject to written disclosures and acceptance by the insured prior to finalisation of the insurance policy.
- b) Insurers are permitted to file add-on covers over and above the erstwhile tariff covers in Fire, Engineering, IAR and Motor OD with appropriate additional premiums. ‘\_Loss of Use’ and ‘\_Waiver of Depreciation’ under motor OD insurance is some example.
- c) Revised products, subject to approvals under File & Use guidelines may be offered to the current policy holders on renewal. In other words, insurers are not permitted to cancel/withdraw existing insurance products to replace them by the revised products. However, insured shall have the option to cancel their existing policies on short period scales and go in for the revised products.
- d) In the development process of motor insurance products and prices, the Insurance Regulator has laid down File & Use guidelines as given hereunder:

- i. Design of products should be on sound and prudent norms in a transparent manner and provide value to the customer.
- ii. Simple language should be used in all literature of the product. The terms should be clearly defined and in a simple easy language.
- iii. The product should be a genuine insurable risk product with a real risk transfer element.
- iv. It should comply with the rights of IRDA (Protection of Policy Holders Interest) Regulation -2002.
- v. Similar wordings for similar products or requirements across various products to be maintained e.g., renewal terms, cancellation, and arbitration clauses must be alike across all products.
- vi. Pricing should be based on appropriate data and sound technical justifications.
- vii. Terms and conditions should be fair.
- viii. Margins built into rates should be consistent with insurers' experience.
- ix. Unprincipled rate cutting and inappropriate underwriting to combat competition should be avoided.

Although the insurers have been freed from the tyranny of tariff norms for Motor OD rating, they continue to follow the erstwhile Tariff guidelines including wordings.

### Test Yourself 1

Motor Vehicle insurance in India was governed by India Motor Tariffs effective from 01-08-1989 till\_\_\_\_\_.

- I. December 2005
- II. December 2006
- III. December 2007
- IV. December 2008

### B. Guidelines applicable in India

#### 1. India Motor Tariff 2002

All terms conditions and rules of the erstwhile India Motor Tariff 2002 are still in force. It is to be noted that the risks of motor manufactures, motor assembly factories and risk comprising solely of motor body builders and petrol filling stations are not subject to this tariff.

##### a) Business not provided for (GR1)

Motor Insurance in India is currently under limited detariff and includes Private cars, Motorised two wheelers, Commercial vehicles. Motor insurance is not applicable to vehicles running on rails.

**b) Vehicles requisitioned by government or other public authority (GR 38)**

Vehicles requisitioned by government are automatically held covered during the period of requisition without any additional premium. In the event of loss/damage during such period of requisition the insurer shall pay losses/liabilities in excess of the amount made good by government.

**c) Standard documentation and General Regulations (GR#)**

- i. **Proposal form (GR2):** is required to be submitted by the insured before the commencement of cover, and at renewal in case of material alternation or in case of change of insurer. At each renewal, however, a fresh proposal form is not necessary for change of IDV.

The insurer may include additional questions in the proposal form for their information and use. Written proposal form is mandatory as per Protection of Policy holders Interest Regulations IRDA.

- ii. **Policy forms (GR3):** There are two type of Policy Form as per Section 6 of India Motor Tariff. These are

- (a) **Liability only policy:** The Policy covers Third Party Liability for bodily injury &/or death, Third Party property damage and Personal Accident cover for owner driver, arising out of the use of the vehicle in a public place.

**Third party property damage cover (GR 39)**

**Limits for TPPD** for other than goods carried in insured vehicle is Rs 1 lakh for private & commercial vehicles & 2 wheelers; and Rs 7.50 lakhs for all other Commercial Vehicles & 3 Wheelers, Taxis, Private cars & 2 wheelers ratable under Commercial Vehicle. The proviso is not applicable to Class G (Motor Trade Internal Risks) as per IMT 20.

At the insured can opt out-statutory limit of Rs 6000 will apply. Premium discount is allowed but Mid-term term change of TPPD is not permitted.

**(b) Package policy**

This Policy covers loss or damage to the vehicle (Section - 1- Own Damage - OD) by specified perils restricting the scope of cover under Section - 1 (loss of or damage to the vehicle insured) of the package policy. Restricting the scope of cover for loss/damage to vehicle under Package Policy-without any reduction in rates is permitted. No other alteration, change, extension allowed without prior approval. For adverse claims experience of the vehicle & individual risk perception the rate can be loaded by 100%. Further loading of 100% also permitted if experience is still adverse.

**(c) Fire and / or Theft Only (GR 45 A)**

Restricted cover for Fire and/or Theft Only peril's is permitted only if the vehicle is laid up; other than due to accident as per IMT 26; The premium chargeable for both the perils would be around 0.75% of IDV. A single peril would be charged at 0.50% of IDV.

The customer may be advised to obtain a –Not in Use endorsement from the RTA on the RC book before such policy is offered. Restricted perils cover is prohibited for all vehicles under Class D (Miscellaneous & Special Type); Class E, F & G (Motor Trade Risks). IMT 26

**(d) Third Party, Fire & Theft Cover (GR 45 B)**

This cover is normally offered by insurers for vehicles over 7 years, prohibited for Class D (Miscellaneous & Special Type) vehicles. Proposers wishing restricted coverage can also choose this option as per GR 16. There is a discount given off the OD premium. The discount ranges between 50% and 75% depending on the perils selected. Thus coverage for TP +Theft will include the liability premium and 30% of the OD premium to cover theft. Coverage of Liability and Fire & theft will result in 50% discount on OD premium.

**iii. Cover note (GR 22)**

Motor cover Notes are to be issued only in Form 52 in terms of Rule 142 (1) of Central Motor Vehicle Rules 1989 as reproduced in Section 6 of India Motor Tariff. A Cover Note shall be issued for 15 days and valid for a period of 60 days from the date of its issue and the insurer shall issue a policy of insurance before the date of expiry of the Cover Note. (Details in Chapter 3 Proposal and Policy forms).

**iv. Certificate of insurance (GR 23)**

This document is to be issued only in Form 51 in terms of rule 141 of the Central Motor Vehicle Rules 1989 (Details in Chapter 3 Proposal and Policy forms)

**v. Cancellation of insurance and double insurance (GR 24)**

Policy can be cancelled by giving 7 days notice by either party by recorded delivery to the last known address. Premium is retained on short period scale for period for which cover was in existence; subject to:

- ✓ No claim have been taken; &
- ✓ Minimum premium as per Tariff.

Refund in premium will be allowed subject to there being no claims under the policy. Cancellation can be effected only on proof of the vehicle being insured elsewhere, at least for Liability Only cover & on surrender of original Certificate for cancellation. Road Transport Authority (RTA) is to be informed by recorded delivery of such cancellation.

**If double Insurance** for the same vehicle is for identical period, one policy may be cancelled. If the period is different, the policy commencing at a later date is to be cancelled. If the policies are with two different offices of same insurer, 100% refund on policy commencing later. If the policies are with two different insurers, pro-rata refund on policy commencing later.

If due to bank/financial institution requirement submitted in writing, earlier policy is required to be cancelled: premium retention will be on short period scale for which cover was in force. In all cases minimum premium as per Tariff is to be retained & no refund of premium is permitted, if the claim was preferred on either policy, when both policies were in operation but prior to cancellation of one of them.

**vi. Cancellation and issuance of fresh certificate of insurance (GR 25)**

Following any changes in the policy during its currency, affecting the information shown in the Certificate of Insurance, is to be returned to the insurer for cancellation. The information regarding change of number of Engine &/or Chassis when duly endorsed on registration certificate a new Certificate of Insurance is issued on remittance of Rs 50/-.

**vii. Certificate or cover note destroyed, torn, soiled, defaced or mutilated (GR 26)**

If an insured lodges a declaration for loss or destruction of Certificate of Insurance or Cover Note; a duplicate Certificate or Cover Note can be issued on remittance of Rs 50/- towards administrative charges. If original is found the same needs to be surrendered to Insurer.

**viii. Extension of geographical area (GR4): (IMT 1)**

Motor insurance is provided for the use of the vehicle within India. Temporarily usage in neighboring SAARC countries Bangladesh, Bhutan, Nepal, Pakistan, Sri Lanka, Maldives, can be covered by payment of extra premium. The policy is to be endorsed suitably.

The Package cover under this extension will, however, not pay for damage or liability when the vehicle is being transported to these countries. Third party liability will be payable as per the laws of the respective countries. For Package Policies Premium is flat Rs. 500/-per vehicle, irrespective of the class of the vehicle, while for Policies other than Package Policy Rs. 100/- per vehicle, irrespective of the class of the vehicle.



### ix. Geographical zones (GR 10)

India has been divided into the following zones for the purpose of rating, depending on the location of the office of registration or maximum use of the vehicle.

**Private cars / Motorized two wheelers / Commercial vehicles rated as Taxis (not exceeding 6 passengers)**

Zone A:	Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi and Pune
Zone B:	Rest of India

### Commercial Vehicles other than vehicles covered above

Zone A:	Chennai, Delhi/New Delhi, Kolkata and Mumbai
Zone B:	All other State Capitals
Zone C:	Rest of India

These broad outlines of zoning are followed by insurers. Some insurers have formed further sub-zones based on their claim experience. e.g., Commercial vehicles and Two-wheelers in major cities are classed for the higher zones than above or sub-classed with higher- rate than the class they fall under.

Italy is a small country having 640 sub zones just to draw your kind attention to appreciate the concept of Zoning.

### Author note

The author feels that in India ‘Geographical Zones’ needs serious consideration for rating purpose review, depending on the ‘Risk exposure’ based on heavy traffic, theft prone, rural, semi urban, and accident prone areas.

### x. Insured's declared value IDV (GR 8)

IDV is the amount for which the vehicle is insured. It is deemed to be the Sum Insured for the policy period. This is defined in the policy as detailed below and is therefore, part of the policy terms.

IDV is fixed on the basis of the manufacturer's listed selling price of the brand and model, as the vehicle is proposed for insurance at the commencement of insurance/renewal and is adjusted for depreciation (as per schedule below). The IDV for sidecar(s) and/or accessories fitted to the vehicle but not included in the manufacturer's listed selling price of the vehicle is also to be fixed likewise.

The schedule of age-wise depreciation as shown below is applicable for the purpose of Total Loss/Constructive Total Loss (TL/CTL) claims only. A vehicle is considered to be CTL, where the aggregate cost of retrieval and/or repair exceeds 75% of the IDV.

**xi. Schedule of depreciation for arriving at IDV**

Age of the vehicle	% of depreciation for fixing IDV
Not exceeding 6 months	5%
Exceeding 6 months but not exceeding 1 year	15%
Exceeding 1 year but not exceeding 2 years	20%
Exceeding 2 years but not exceeding 3 years	30%
Exceeding 3 years but not exceeding 4 years	40%
Exceeding 4 years but not exceeding 5 years	50%

IDV of vehicles over 5 years old and obsolete vehicles are to be decided by the insured and insurers mutually.

For the purpose of TL/CTL claim settlements, IDV does not change during the currency of the policy. It is clearly understood that the liability of the insurer shall in no case exceed the IDV subject to reduction of the value of the wreck on –as is where isll condition.

**xii. Depreciation on parts for partial loss claims (GR 9)**

The following rates of depreciation are applied for replacements of parts for partial loss claims for all categories of vehicles/accessories:

i.	Depreciation for all rubber/nylon/plastic parts, tyres & tubes, batteries and airbags	50%
ii.	Depreciation for all fibre glass components	30%
iii.	Depreciation for parts made of glass	Nil

Rate of depreciation for all other parts including wooden parts is as follows:

Age of the vehicle	% of depreciation
Not exceeding 6 months	Nil
Exceeding 6 months but not exceeding 1 year	5%
Exceeding 1 year but not exceeding 2 years	10%
Exceeding 2 year but not exceeding 3 years	15%
Exceeding 3 year but not exceeding 4 years	25%
Exceeding 4 year but not exceeding 5 years	35%
Exceeding 5 year but not exceeding 10 years	40%
Exceeding 10 years	50%

This depreciation tables form part of the policy terms.

**xiii. Period of insurance (GR 11)**

No policy is permitted to be issued or renewed for any period longer than 12 months. It is however, permissible to extend the period of insurance for any period less than 12 months, for the purpose of arriving at a particular renewal date.

**xiv. Premium rates for short period cover (GR 12)**

All premiums charged under Motor Insurance Policies are on annual basis. Insurance for less than twelve months is granted by charging premium on Short Period Scale followed by the insurers as a general rule. Short period covers are not granted for Liability Only Policies.

**xv. Short period scale**

Period	% of annual premium rate
Not exceeding 1 month	20%
Exceeding 1 month but not exceeding 2 months	30%
Exceeding 2 months but not exceeding 3 months	40%
Exceeding 3 months but not exceeding 4 months	50%
Exceeding 4 months but not exceeding 5 months	60%
Exceeding 5 months but not exceeding 6 months	70%
Exceeding 6 months but not exceeding 7 months	80%
Exceeding 7 months but not exceeding 8 months	90%
Exceeding 8 months	Full annual premium

**xvi. Rating**

The OD rates are detariffed but third party premium is being regulated by the IRDAI. Loading on tariff premium rates by 100% may be applied for adverse claims experience of the vehicle insured and individual risk perception as per insurer's assessment. If the experience continues to be adverse, a further loading of 100% on the expiring policy may be applied.

- (a) **Display of Premium (GR 13):** The own damage and liability components of premium and all permissible loadings on / discounts are required to be displayed, rounded off to nearest rupee, separately.
- (b) **Computation of Premium (GR 14):** premium is computed as appearing in tariff with reference to relevant GR's as well as regulations.
- (c) **Payment of Premium (GR 15):** It is not permissible to collect premium in installments.

- (d) Minimum Premium & Minimum Values (GR 16):** The minimum premium applicable for vehicles specially designed or modified for use of the blind, physically challenged and mentally challenged persons, For all other vehicle the applicable minimum premium per vehicle is Rs 100/-.

A minimum premium applicable for vehicles specially designed or modified for use of blind, handicapped and mentally challenged persons, will be Rs 25/- and for all other motor vehicle insurance to cover administrative costs Minimum Premium to be charged is Rs. 100/-.

- (e) Personal Accident Covers For Owner-Driver (GR 36):** This cover is compulsorily given to Owners of individually owned vehicles, other than vehicles insured under commercial vehicles, Trade Risk policies applicable to both Liability Only & Package Policies. The cover is not applicable to commercial vehicles under Sections E, F & G of Tariff. The owner must be holding an effective driving licence. The cover is provided to the owner - driver whilst driving the vehicle, including mounting or dismounting from or traveling in the insured vehicle as a co-driver.

The scope of cover and sum insured for death, loss of 2 limbs or sight of two eyes or loss of 1 limb & sight of one eye or permanent total disablement is 100% of Sum Insured, loss of one limb or sight of one eye is 50% of sum insured. The maximum sum insured for two wheelers is Rs. 100,000/- and for Private cars and commercial vehicles Rs. 200,000/-. IMT 15 is used.

- (f) PA Cover for Persons Other Than Owner-Driver:** This cover is available as an optional cover for all persons traveling in the vehicle, subject to its maximum carrying capacity. The cover can be taken on named or unnamed basis for outsiders or employees.

The maximum sum insured permitted is Rs. 200,000/- per person, in multiples of Rs 10,000/- IMT 18, 17, are used. The premium is charged on the carrying capacity of the vehicle and the sum insured is selected. The scope of cover is similar to PA cover for owner-driver.

- (g) Vehicles Requisitioned by Government:** The Vehicles requisitioned by Government are automatically held covered during requisition period, without any additional premium. The Loss/ claim is payable by insurer, in excess of amount paid by government

## xvii. Discounts

- (a) **Automobile Association Membership Discount (GR 28):** Individual, joint owners, hire purchaser or companies who are members of recognized Automobile Association of Southern India or Automobile Association of Upper India or Western India Automobile Association, can avail discount on the Own damage premium in package policies.

The discount is usually a maximum of 5% with a cap of max Rs. 200/- overall. If membership is obtained during the currency of the policy, pro-rata discount is allowed. Similarly if membership is cancelled during currency of policy pro-rata discount is recoverable. The discount is not allowed on Fire &/or Theft risks only policies as per IMT 8

- (b) **Vintage Cars (GR 6) & Classic Cars (GR 5) (IMT 9):** Vintage cars are those manufactured prior to 31-12-1940 and are classified as Vintage cars by the Vintage & Classic Cars Club of India. Vehicles manufactured after 31-12-1940 and before 31-12-1970 are termed as classic cars (GR.6) there is no discount available on classic cars.

Insurances of vintage cars are being arranged on An Agreed Value basis. In the event of Total Loss/CTL claims are settled without depreciation. A discount in premium is also permitted.

- (c) **Vintage cars** are covered as Valued Policies (GR 7 and IMT - 2), on 25% discount on OD premium (GR 29/ IMT - 9). Agreed value cover is permitted for Vintage Cars for a specified Sum Insured as compensation for TL/CTL without deduction of depreciation.

- (d) **Anti-Theft Devices (GR 30):** Vehicles fitted with anti-theft devices are approved by ARAI, Pune (Automobile Research Association of India) and installations certified by the approved Automobile Associations are eligible to a discount not exceeding 2.50% of OD premium subject to a maximum of Rs.500/- As per IMT 12.

- (e) **Vehicles Designed for Use by Physically challenged (GR 29):** A discount of 33% of premium is normally allowed for vehicles designed for the physically challenged.

- (f) **Concessions for Laid up Vehicles (GR 31):** Vehicles laid up in garage and not in use, for a period of not less than two consecutive months, will be entitled to concession for Laid-Up Vehicles:

- ✓ **For Liability only Policy:** A pro-rata return of premium will be credited to the insured in consideration of suspension of insurer's liability during period of lay-up as per IMT 11 A. The calculation is to be made on net premium on date of issue / or renewal of policy.

- ✓ **For Package Policy:** The liability of the policy will remain restricted for loss or damage of the insured vehicle by Fire & /or theft as applicable during the period of such lay-up.

At the option of the insured, either pro rata return of premium for layup period, may be credited, (after retention of pro rata premium for layup period for Fire &/or theft Risks as applicable for the class of vehicle concerned) is deducted from the next renewal premium or the expiry date of the current period, or the policy may be extended for the period equal to the laid up period while policy remained suspended on account of layup.

In either case Rs 15 /- is recoverable towards administrative costs for issuing IMT 11 B & C. No cash refund is permitted even if policy is not renewed. No refund for laid up of Trailers/ Vehicle used for Hire or reward. The return of premium or extension on account of layup is available only if a) Vehicle is not undergoing repairs as a result of an event giving rise to a claim b) Previous notice in writing has been given to the insurer by recorded delivery.

- (g) **Prohibitions of Mid Term Inclusion/ Cancellation of Extra Benefits (GR 32):** Prohibition of Mid Term inclusion/ cancellation of extra benefits are not to be permitted more than once during the currency of a policy.
- (h) **Use of Vehicles within Insured's Own Premises/Sites (GR 35):** A discount of 33 1/3% on the Tariff rate may be allowed where use of vehicle is confined to sites (applicable to goods carrying vehicles only). The Vehicle is not required to be registered under MV Act 1988 and vehicle is to be used only on site to which the public has no general right of access.

#### xviii. Extra benefits (add-ons)

- (a) **Electrical/Electronic Fittings (GR 41):** All electrical and/or electronic items fitted on the vehicle and not included in the manufacturers selling price can be included for insurance. Each of these items is to be specifically declared including value for insurance. An additional premium will be charged for the cover subject to IMT 24.
- (b) **Use of CNG/LPG Fuels (GR 42):** Vehicles fitted with bi-fuel system i.e. Petrol/diesel & CNG/LPG, permitted by the concerned Road Transport Authority (RTA) can be covered for the additional value of the fitted kit; and for the increased liability that could attach, if specifically mentioned. Additional premiums under OD and Liability sections of the policy will be payable subject to IMT 25 (Modified).



- (c) **Fiberglass Fuel Tanks (GR 43):** Vehicles fitted with fiber glass fuel tanks can include this additional fitting in the OD section of the policy. The item is to be specifically declared and additional premium is chargeable.
- (d) **Vehicles Driven by Non-Conventional Source of Power (GR 46):** The rating of vehicles driven solely by any non-conventional source of power like battery, electric etc. (e.g., battery operated taxis transporting visitors, Pvt. cars, taxis & 2 wheelers running on battery, as approved by RTA-.
- i. Pvt. Cars/Taxis are rated as Pvt. Cars/taxis up to 1000 cc;
  - ii. Motorised 2 wheelers are rated as motorised 2 wheelers with capacity exceeding 150cc but not exceeding 350cc.
  - iii. For vehicles driven solely by any other non-conventional source of power approved by RTA, reference is to be made to IRDA
- (e) **Vehicles imported without custom duty (GR 37):** Policies issued to cover imported vehicles belonging to Embassies, Consulates etc where the import duty element is not included in IDV; the premium chargeable under OD section is to be loaded by 30% as per IMT 19.
- (f) **Legal liability to Persons Employed in Connection with Operation of the Vehicle:** Liability to any paid driver or cleaner or conductor or persons employed in loading/unloading may be covered on payment of additional premium of Rs. 25/- per employee. The premium is to be charged on the total number of such employees registered to be carried on the vehicle. The coverage is in terms of the Employees Compensation Act 1923.
- (g) **Legal Liability for Accident to Non-Fare Paying Passengers including Non-Workmen Employees:** Additional premium is charged to cover such category of persons. For goods carrying vehicles the additional premium will be Rs. 50/- per person. For passenger carrying vehicles the premium is around Rs 100/- per person.
- (h) **Vehicles Used for Driving Tuitions (GR 44):** Vehicles used by driving schools recognized by RTA for giving tuition, having double clutches and double brakes with professional tutor accompanying the trainee can be covered by charging 60% over the OD premium. For three wheelers and two wheelers the 60% extra is to be charged on OD & Liability premium.

The ‘Limitations as to use clause’ must be modified in Certificate of Insurance and Policy to incorporate the words –other than for the purpose of driving tuitions after the words –hire or reward.



**xix. No claim bonus (GR 27)**

No Claim Bonus (NCB) is earned only on the Own damage section of the Package policy covering all classes of vehicle except Motor Trade Policies, Road Transit Risks; Road Risks: Internal Risks. For policies covering Liability including Fire &/or Theft risks the NCB will be applicable on the Fire and/or Theft premium only. An insured becomes entitled to NCB only at the renewal of the policy after the expiry of the full duration of twelve months.

No Claim Bonus is a discount on premium of the Own Damage (OD) portion of vehicle when a policy is renewed, provided insured has not made any claim during the last policy period of one year. The NCB can be accumulated up to a maximum limit of 50% on OD premium.

All types of vehicles	% of discount on od premium
No claim made or pending during the preceding full year of insurance	20%
No claim made or pending during the preceding 2 consecutive years of insurance	25%
No claim made or pending during the preceding 3 consecutive years of insurance	35%
No claim made or pending during the preceding 4 consecutive years of insurance	45%
No claim made or pending during the preceding 5 consecutive years of insurance	50%

Insured can transfer full benefits of NCB, even when he shifts his motor insurance to any other Insurance company. No Claim bonus is incorporated in the policy as per the following table:

Discount on premium is uniform for all types of vehicles, ranges from minimum 20% to maximum 50%, corresponding with 1 to 5 consecutive claim free years as per Table.

**Sunset Clause:** Sun set clause is amended to read —insured entitled to such % of NCB per pre revised tariff and the same shall stand protected at the renewal falling due any day after 01.07.2002. After 01.07.2003 the NCB will be as per the new tariff till a claim arises. (c) NCB is to be computed on OD premium after deducting rebate for Vehicle Laid Up. Failure to write to previous insurer within 21 days & failure to reply by previous insurer within 30 days amounts to breach of Tariff.

- (a) **No Claim Bonus (NCB) Transferability:** The percentage of applicable NCB is computed on the Own damage premium. The NCB follows the fortune of the original insured and not the vehicle or the policy. In case the customer is switching/changing to a company from any other insurance company, and have accrued some NCB from previous insurer, insured can get the same transferred in case the vehicle is insured within 90 days of renewal due date.

The same applies in case insured is shifting from current insurer to other insurance company. In the event of transfer, the new owner is not entitled to the NCB and hence the proportionate amount will be recovered; if the new owner is not presently entitled to NCB or not enjoying NCB.

- (b) **Evidence for NCB:** The NCB will be transferred at the same rate that insured is entitled to get from the previous insurance company on renewal of your policy. The NCB will be available; provided he can produce evidence that he was entitled to No Claim Bonus from his previous insurance company. Evidence can be in form of:

- ✓ A renewal notice or
- ✓ A letter confirming the NCB entitlement from the previous insurer or
- ✓ A written declaration (kindly note that in case of a false declaration, the policy will be subject to cancellation)

- (c) **NCB on Substituted Vehicle or on Death of the Insured:** NCB can be allowed on a substituted vehicle. However, the substituted vehicle must be of the same class as the vehicle on which the NCB has been earned. In the case of an individual owner, in the event of death of the individual, where the custody of the vehicle passes to the spouse and/or children and/or parents or others, the NCB entitlement can be transferred to the legal heir.

- (d) **NCB earned by an institution:** The percentage of NCB earned on a vehicle owned by an institution during the period when it was allotted to and exclusively operated by an employee can be passed on to the employee, if the ownership of the vehicle is transferred in the name of the employee. This will however require submission of a suitable letter from the employer confirming that prior to transfer of ownership of the vehicle to the employee, it was allotted to and exclusively operated by the employee during the period in which the NCB was earned.

- (e) **Allowing lesser NCB:** In practice a few insurers are allowing lesser NCB than entitled on transfer. e.g., 3 year old Private Car - Santro with 45% NCB entitlement is allowed only 25% NCB by the transferee insurer.

There is also a practice to allow lesser NCB on Substitute Vehicle belonging to different sub-classe.

### Example

A Maruti 800 Pvt. Car is substituted by a Mercedes Benz, though the NCB entitlement is 50% on substitution, the transferee insurer is allowing only 35%.

- (f) **NCB on Vehicle Sold but not Replaced:** If a vehicle is sold but not replaced immediately the NCB earned could be claimed within three years of cancellation of policy sold, for any fresh insurance. In practice insurer is now allowing lesser NCB than entitled, keeping in mind sub-classes involved? In the two-wheeler and commercial category the discount and entitlement period for such cases have also been curtailed in practice.

### xx. Compulsory Deductibles (GR 40)

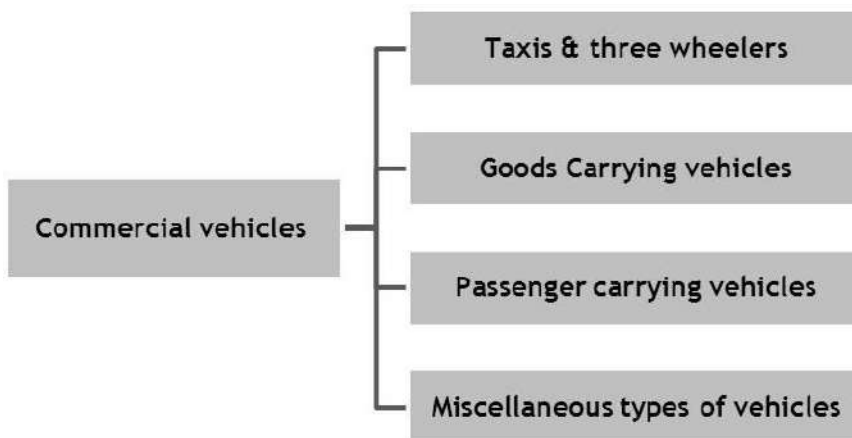
- (a) **Claims under Own Damage section** of policies covering all classes of vehicles viz. 2 wheelers, 3 wheelers, private cars, taxis, commercial vehicles of all classes, including where restricted covers as per GR 45 A/B granted (Fire &/or Theft Risks) are subject to a compulsory deductible as follows:

#### Private cars:

Not exceeding	1500 cc deductible Rs. 1000/-
Exceeding	i. deductible Rs. 2000/-

**Motorised two wheelers: Deductible Rs. 100/-**

Diagram 1: Commercial vehicles



## Commercial vehicles

The following deductibles are being charged in general practice but some insurers apply higher deductibles for specific categories of vehicles or usage e.g. Toyota Quails, Tata Sumo or Commercial vehicles.

	Capacity	Deductible Rs.
Taxis	Not exceeding 1500 cc	500
	Exceeding 1500 cc	1000
Goods Carrying vehicles	Not exceeding 7500kg GVW	500
	Between 7500kg GVW & 16500kg GVW	1000
	Exceeding 16500GVW	1500
Passenger carrying vehicles	Not exceeding 17 passengers	500
	Between 17 passengers & 36 passengers	1000
	Exceeding 36 passengers	1500
Miscellaneous types of vehicles		0.5% of IDV subject to min 2000

### (b) Endorsements

- ✓ For commercial vehicles, excluding taxis & 2 wheelers for carrying passengers IMT 21, 22
- ✓ For Pvt. Cars, 3 Wheelers - rated as Pvt. Cars, 2 wheelers & taxis IMT 23

(c) Exclusion under a. of Endorsement 21 can be reinstated at additional premium.

(d) **Voluntary Excess Discount:** Insured willing to bear a higher amount of loss for OD claims in addition to the compulsory excess under the policy will be entitled to a discount on the premium depending on the additional excess they are willing to accept. The discounts range from 2% to as high as 35% of OD premium, the cap on discount value being Rs. 3000/-.

**xxi. Vehicles subject to Hire Purchase GR. 19 (IMT - 5) / lease vehicles GR 20 (IMT - 6)**

All Policies and Certificates are issued in the name of Hirer/ Lessee. Policies are not issued in joint names. The owner's/lesser's interest is protected by issue of an endorsement.

**xxii. Vehicles subject to Hypothecation (GR 21) (IMT - 7)**

The policies are issued in the name of registered owner. The interest of the hypothecatee is protected by means of endorsement. In all the above cases the coverage of PA for owner-driver will be the insured named in the policy.

**xxiii. Transfers (GR 17) (IMT - 3)**

On transfer of ownership, the liability only cover either under a Liability only policy or under a Package policy is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of the transfer. This is in accordance with the requirement of the Motor Vehicles Act 1988 which requires that Third Party Liability insurance coverage should be subsisting to protect the rights of third parties.

The transferor must apply within 14 days from the date of transfer in writing under recorded delivery to the insurer, who has insured the vehicle with the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy, so that the insurer may incorporate necessary changes in their record and issue a fresh Certificate of Insurance under the provisions of MV Act 1988. The certificate issued to previous insured is to be surrendered.

In the case of Package policies, transfer of –own damage section of the policy in favour of the transferee is made only on receipt of specific request from the transferee with explicit consent of transferor. If the transferee is not entitled to NCB shown on the policy, or is entitled to lesser percentage of NCB, the insurer shall recover the proportionate amount at the time of transfer.

A fresh proposal form is to be obtained for all transfers. An administrative fee is charged to issue fresh Certificate of insurance.

In case of transfer of Package policies, evidence of sale and surrender of previous certificate of insurance is essential. If for any reason the old certificate of insurance cannot be surrendered, a proper declaration to that effect is to be taken from the transferee before a new certificate is issued.

**xxiv. Change of Vehicle (GR 18)**

An insured vehicle under a policy can be substituted by another vehicle of the same Class subject to evidence of continuation of cover and adjustment of premium if any, on pro-rata basis from the date of substitution (IMT-4), for the balance period of the policy.

**xxv. Towing Charges GR 47**

The insured can avail enhanced towing charges depending upon the category of the vehicle in addition to the limit already provided on payment of additional premium.

<b>Vehicles</b>	<b>Addl. Towing Amount</b>
Pvt. Car	up to Rs.1500
Two wheeler	up to Rs.300/-
<b>Commercial Vehicle</b>	
Two wheeler	up to Rs.300/-
Three wheeler	up to Rs.750/-
Three wheeler	Rs.751-Rs.1500 T.C.
Taxi	up to Rs.1500/-
Taxi	Rs.1501 - Rs.3000/- T.C.
Other Commercial Vehicle	Up to Rs.10000/- T.C.
Other Commercial Vehicle	Rs.10001/- to Rs.20k T.C.
Motor Trade Policy	Up to Rs.300/-
Motor Trade Policy	Rs.301/- to Rs.500 T.C.

**xxvi. Submission of Statistics (GR 48)****xxvii. Interpretation of India Motor Tariff (GR 49)**

(Reference TAC Circular No. MOT/08/2002 Dated 16-12-2002)

**d) Motor policy premium computation**

The tariff format for computation of Motor premium is still being followed as given below:

<b>Own Damage</b>			<b>Third Party</b>		
	<b>Description</b>	<b>Premium Rs.</b>		<b>Description</b>	<b>Premium Rs.</b>
1			1		
a	Basic OD		a	Basic TP	
b	Bi-fuel kit		b	Bi-fuel	
c	Electronic equipment		c	Passangers Liability	
d	Other add-ons		2	Other Liability	
	Total Premium		a	Driver, Conductor, coolies	

2	Discounts		b	Non-fare paying passengers	
a	Voluntary excess		3	P A	
b	Automobile Ass. Membership		a	Owner-driver	
c	Anti-theft device		b	Named passengers, Paid driver	
d	No Claim Bonus -- --- %		c	Un-named passengers,	
				<b>Total TP Premium (B)</b>	
	<b>Net OD Premium (A)</b>			<b>Total Premium (A+B)</b>	

The Premium computation chart in all policies is as above with minor variations. The premium rates were charged in the erstwhile tariff on the basis of various factors as follows:

i. **Private Car:** The Own damage premium was based on the:

✓ **Zone of registration of the vehicle**

- (a) Zone 1 Major cities;
- (b) Zone 2 Rest of India

✓ **Cubic capacity**

- (a) below 100cc
- (b) 100 to 1500cc
- (c) Over 1500cc.

✓ **Age of the vehicle**

- (a) Below 5 years
- (b) 5 to 10 years'
- (c) Over 10 years.

From the Table given above, the rate is ascertained and applied to the IDV. This becomes the Basic OD Premium. To this the add-on premium for additional items is included and shown separately. For example Bi-fuel kit @4% on the value is added, so also for electronic fittings a similar rate is added.

Thereafter, the discounts are allowed on reducing balance i.e., the Total Premium as above is discounted for each discount head individually. The last discount is always the NCB.



The TP premium is based on Zone and cubic capacity. In the case of private car no additional premium is charged for Passenger Liability, hence nothing under this head would be charged. All add-ons like Liability for driver, PA to owner-driver, PA to passengers would be charged. The total premium would comprise the TP premium. The Total of OD and TP would thus be the Final motor premium.

### Example

A two year old Maruti Omni registered at Ujjain (MP) is Bi-fuel (10000/-) car; having carrying capacity (4 + 1) and IDV 150000/-; An Air conditioner is installed for Rs 15000/- ; the Insured is a member of Automobile Association and has earned 35% NCB. He has employed a paid driver and wants to cover PA for passengers and driver for Rs. 50000/- each. Calculate Total premium payable.

### Premium Computation

	Rs.
Basic OD (Zone 2 , Age 2yrs, cc below 1000) @ 3.039% on 150000	4558.50
AC @4% on 15000	600.00
Bi-fuel 4% on 10000	400.00
<b>Total</b>	<b>5558.50</b>
Discount Automobile Association 5% (max) 200/-	200.00
NCB 35% of (5558.5-200) i.e. $5358.5 \times 35/100$	938.50
<b>NET OD (A)</b>	<b>3600.00</b>
Basic TP	500.00
Bifuel vehicle	60.00
PA owner driver	100.00
LL to driver 25*1	25.00
PA to driver 25*1	25.00
PA to unnamed passengers 25*4	100.00
<b>Total TP (B)</b>	<b>810.00</b>
<b>Total premium (A) +(B)</b>	<b>4410.00</b>

e) **Two-wheelers:** A similar practice would be adopted.

- f) **Commercial vehicles:** In the case of commercial vehicles the following variations would apply. There were three Zones 1) Metro cities 2) Other state capitals 3) Rest of India. Instead of cc the GVW- for goods carrying vehicles; and passenger capacity for passenger vehicles would apply.
- g) **Taxis** up to 6 passengers the Private Car system would be followed. However, for TP cover extra for passenger liability is to be charged. This would be on registered passenger carrying capacity.
- h) **For other passenger carrying vehicles**, the OD premium criterion is based on:
- Zone for plying vehicle
  - Passenger carrying capacity and
  - Age of vehicle.

For liability Section additional for liability to passengers is also charged compulsorily. Liability for driver and conductor is also to be charged. Other premium is as per the private car system.

i) **Goods carrying vehicles (GVW)**

It is replaced by carrying capacity. In the case of liability Section besides driver's liability, persons employed for loading and unloading are also required to be covered. The number is as permitted by the RTA (Regional Transport Authority). In the normal course permitted total employees including driver is six persons. In exceptional cases more may be permitted; to be verified from RC book. Cover for Owner of goods as non-fare paying passenger is also to be charged. Other covers are as per the Private car system.

### Test Yourself 2

No claim bonus is earned only on the Own damage section of the Package policy covering all classes of vehicle except Motor trade policies,\_\_\_\_\_.

- Road Transit Risks
  - Road Risks
  - Internal Risks
  - All of the above
-

## C. Amendments subsequent to discontinuance of tariff

### 1. Tariff system after detariffing

Subsequent to de-tariffing most insurers continue to follow the tariff system and rates as base premium. They are then working out discounts and loading on the basis of their perceptions of risk. These may be in the form of a matrix for different risk exposures, similar to the system introduced in the tariff for Third Party loading. Based on the points so obtained the premium may be loaded or discounted. (Refer Annexure F at the end of this Chapter)

The motor tariff was withdrawn with effect from 1<sup>st</sup> Jan 2007. Insurers are permitted to devise their own premium structure for Own damage coverage. The third party liability premiums continue to be under tariff and the rates are as advised by IRDAI.

Policy wordings as per the erstwhile tariff are to be continued, however, additional covers as add-ons to the main policy including any deviations from the erstwhile tariff rates for the standard products are permitted to be devised by the insurers and filed with IRDAI under File & Use guidelines before introduction into the market.

#### a) Understanding riders available in the market

Based on this leeway to insurers the following **extra Cover or Add-ons** are now being offered by insurers. These benefits are only available for owners of Private cars. In most of these add-on covers, the onus of proving the damage caused by exclusion does not apply on the insured, unlike the practice for the standard cover wherein proving exclusion is on insurer.

- i. **Depreciation reimbursement:** The depreciation under the standard policies for replacement of parts damaged in an accident covered under the policy is being waived under this add-on. The cover is, however, conditional to the age of vehicle being below 3 years and not more than two OD claim having been lodged during the policy period. The repair of the vehicle to be done at the insurers approved repairer. The deductibles under the policy will be applicable.

- (a) The variations among insurers may be on partial reimbursement, if repairs at insured's regular repairer.
- (b) A restriction on the maximum claims for this benefit in a policy year.
- (c) Tyres and batteries would be excluded.

**ii. Return to invoice**

In the event of the insured vehicle being a TL/CTL the insurer will pay the difference between the claim admissible and the sale invoice price of the vehicle or new replacement value of same make and model value, whichever is less. The policy will pay in addition the first registration fees and road tax incurred on the insured vehicle. The coverage is subject to the vehicle being not more than 3 years old and the insured being the first registered owner of the vehicle. The IDV of the policy will be as decided by the insurers and value as on the commencement date of the policy. The Sum insured will be the maximum liability under the policy. The policy will not pay if the TL/CTL or theft claim is not admissible.

**iii. No Claim Bonus Protection**

The NCB earned on the vehicle is 25% or more and no claims in the previous 2 years or a brand new vehicle entitled to 25% or more NCB can opt for this cover. This NCB will be protected if not more than 1 claim is made during the policy period provided that the renewal is affected on or before 90 days of expiry of the policy. The clause also provides that claims for damage to all glasses or partial theft of accessories only have occurred and no other damages to the insured vehicle have been claimed, the loss will not be treated as a claim by the insurer.

In the event of theft of vehicle, if insured purchases a new vehicle and insures with the insurer within 90 days of the theft, the existing NCB will be applicable. In effect the loss will not be treated as a TL/CTL. The insured is required to provide Renewal Notice or copy of previous policy with declaration of NCB along-with the proposal form to avail of this cover.

**iv. Repair of glass, rubber, fibre & plastic parts**

In the event of claim for damages only to glass, fibre, plastic or rubber parts the insured undertakes to repair these items instead of replacing them the NCB will not be affected. The repairs must be undertaken at the insurers approved repairers and no other claims for damage to the vehicle are involved.

**v. Emergency transport and hotel expenses**

In the event of the insured vehicle being damaged in an accident rendering it un-usable, the cost of hotel accommodation at nearest city and return to home including taxi fare will be allowed under this extension provided there is a valid claim under the policy for this accident.

The sum insured is to be decided in advance and will range between Rs. 10,000/- to Rs. 50,000/-. The per occurrence limit will not exceed 50% of Sum Insured. Variations of this cover are offered by most insurers.

Differences may be on Sum insured, time limitations, distance limitations, excluding perils like riot & strike flood earthquake.

#### **vi. Loss of personal belongings**

This covers loss of personal belonging lying in the insured vehicle due to perils covered under the Own Damage section of the policy, following an accident to the insured vehicle. Personal belongings do not include money, securities or valuable or goods of trade or samples and items of similar nature. The Sum Insured is to be decided at the time of taking insurance and cannot exceed Rs. 50,000/-. A deductible of Rs. 250/- applies. The policy will pay only if the claim for damage to the vehicle is admissible.

#### **vii. Key replacement**

Cost of replacement of locks and keys, if vehicle is broken into or cost of replacement of lost / stolen keys. The sum insured ranges between 10000/- & 35000/-. The per occurrence limit is 50% of Sum Insured. Own Damage Claim is not a condition precedent for this cover.

#### **viii. Daily allowance**

This cover is available in the event of damage to the vehicle by an insured peril wherein time taken to repair the damages or recovery will exceed 3 days. The policy will pay costs incurred for hired transport up to 10 days for normal damages and 15 days for TL/CTL losses during the policy period. The period starts from the following calendar day of the vehicle reaching the insurers authorized repairers and ends on the date of repairer's intimation to take delivery. Time taken for repair to items not related to accident will not be allowed. The allowance ranges from Rs. 600/- to Rs. 2000/- per day depending on the category of vehicles. Repairs to be undertaken at insurers authorized repairers. Claim solely for damage to windscreen or glass is not admissible for this cover.

#### **ix. Engine protector**

The coverage under this add-on is for accident to vehicle resulting in damage to internal parts of engine due to water ingress/leakage of lubricating oil and/or damage to gear box as a result. The extension will pay for repair/replacement of these parts including labour.

#### **x. Spot assistance**

The coverage under this extension provides for a number of emergency services that a vehicle owner could face in daily usage of the vehicle. Some of these emergencies may not involve accidental damage to the vehicle. The extension applies to the insured's city of residence and within a distance of

100 kms from city. Repairs/services of insurers authorized repairer to be availed.

- (a) Flat battery - providing alternative arrangements to make the vehicle mobile again
- (b) Spare keys - in event of loss arrange for pick-up and delivery of spare keys
- (c) Flat tyre - arrange for refill /replacement of flat tyre
- (d) Minor repairs following mechanical or electrical breakdown
- (e) Towing following accident or breakdown
- (f) Urgent message relays following accident or breakdown
- (g) Medical co-ordination- details of nearest medical facilities for emergency medical treatment
- (h) Fuel assistance-empty fuel tank or contaminated fuel immobilizing the vehicle, the policy to provide 3 litres of fuel at cost
- (i) Taxi service - from breakdown site to max distance of 50 kms. Extendable to 100kms
- (j) Accommodation for one day following immobilization of vehicle due to accident
- (k) Legal advice - telephonic legal advice for maximum 30 minutes.

The last 4 benefits may be restricted to once or twice during the policy period. The other benefits may be for 3- 4 times during the policy period as approved.

#### xi. Other riders

- (a) **Nil depreciation:** Depreciation will not be deducted for replacement of parts for partial loss claims (TL and CTL will be settled on the basis of IDV). The cover is provided for up to 3 years for private cars and two wheelers.
- (b) **Ambulance charges cover:** This provides for the charges towards transportation of insured persons in ambulance to the hospital.

- (c) **Daily Allowance cover:** Many insurers are also offering daily allowance cover in case the vehicle meets with an accident and is undergoing repair
- (d) **Personal belongings cover:** Under this cover, the insurer indemnifies the insured for the personal belongings.

## D. International practice in motor insurance rating

### a) Globalised motor insurance in India

Motor insurance in India has substantially followed the practice of the UK insurance market. In fact the policy terms and conditions are very similar. Subsequent to de-tariffing the new covers being offered by insurers are broadly similar to what is available across the world. It can thus be said that Motor insurance in India is now globalised.

### b) International motor insurance business

Internationally Motor is non tariff business except in some of the less developed countries of Asia and Africa. There are wide variations in the premium rates for the basic coverage and add-ons. Some of the variations relate to colour of the vehicle, persons driving the vehicle.

#### i. Role of Motor Insurance in road traffic regulations and motor vehicle manufacturing:

Motor insurers also play a major role in road traffic regulations and motor vehicle manufacturing. In USA most motor vehicle manufactures seek the star rating of insurers for the vehicles, as it results in lower premium rates for their customers. Traffic offences, non-adherence to regulations on road safety are immediately penalized resulting even in loss of insurance cover and driving licences.

Several insurers in the United Arab Emirates (UAE) have begun charging motor insurance premiums based on the drivers' traffic record, as they now have an electronic link to the traffic departments in the federation via a portal called **Markabty** launched by the Ministry of Interior.

#### ii. Use of variables in US markets:

The rating pattern for private cars in the U.S.A. involves the use of variables. The following notes are an outline of the rating pattern, with insurers making their own variations relating to Driver's age, gender and marital status.



- (a) **Young drivers:** Generally persons under 25 years are considered as young drivers. Although some insurers have made separate classes for each age band e.g., 17 to 20 and 21 to 24. Most insurers have a separate class for drivers over 65.
- (b) **Sex of driver:** Female drivers are considered better risk than male, thus entitling them to discounts on the standard premium. Female drivers below a certain age are safer drivers and attract lower rates.
- (c) **Marital status of the driver:** Married driver may attract lower rates than unmarried drivers.
- (d) **Use of Vehicle:** Car may be for personal or pleasure purpose or for business purpose, driver to and fro over or under a given number of miles. Annual driving mileage may also be taken into account. Use categories may vary between adult and young operators.
- (e) **Geographical Area of Use:** The place where the vehicle is driven, is a factor of rating as accidents are influenced, low lying areas and climate, urban areas usually have higher rates. Territories exposure remains the same for all age - gender, marital class and all use classes.
- (f) **Driving record of the driver:** Number of years of driving experience is also used as a criteria. Past accidents and tariff violations are also used as important criterion. Some insurers give good student and driver training discounts.
- (g) **Nature of the Vehicle:** Age of the vehicle, value of the vehicle, make and model of the vehicle are major factors to assess susceptibility to decedents, demography, protection provided to occupants of the vehicle in the event of accidents.

## E. Underwriting in motor insurance

Motor Insurance business is generally considered to be unprofitable class of business due to heavy third party out go. In recent years the claims experience has shown signs of deterioration due to cut throat competition in premium in own damage section as well, though not alarming.

### 1. Underwriting in Motor Insurance

With the increase in the number of vehicles and traffic density, higher costs of labour and spare parts and escalating awards for third party claims, control of claims cost is imperative. It is, therefore, most essential to adopt a sound underwriting policy which involves not only careful selection of risks and imposition of appropriate terms and conditions but also close monitoring of risks at renewal, in the light of claim experience.

### a) Underwriters' critical analysis

The first step in underwriting is a close scrutiny of the proposal form which must be completed by the owner of the vehicle. The proposal form reveals information which is used for underwriting the risk, i.e. deciding whether to accept the risk and if so the extent of cover to be offered and rating subject to the terms and conditions. It is aptly said that a concern that does not produce profit has no right to exist.

Prudent underwriting consists of two important assets, one is to acquire knowledge which is not difficult and the other is to relate it to experience in the field and then to utilize it for successful underwriting so as to ultimately earn profit. It relates to perusal of proposal form & supporting documents and people/insured,

- ✓ Their status;
- ✓ Subject matter of Insurance;
- ✓ Surroundings;
- ✓ Nature of Business,
- ✓ Factors influencing motor insurance;
- ✓ Premium potential;
- ✓ Vehicle population;
- ✓ Density of population;
- ✓ Conditions of roads;
- ✓ Use in terrain/infrastructure.

### b) Long term underwriting strategy

Long term strategy is to build up a credible database in order to determine rating factors and its effects based on actual Indian market experience. For renewals of existing business and for new business the insurance proposal form should be extended to include information regarding all of the desirable rating factors.

Ideally data should be available on all possible rating factors at the time of taking policy viz. age, sex of driver, geography, type of vehicle, source of business, ownership status, and presence of security devices. Once one or two year's complete data is available, detailed modeling of claims data can be undertaken by Generalized Linear Models. These techniques allow for proper measurement of the important rating factors. Opportunities do exist for astute insurers to enhance their profitability in open markets by differentiating the risks within their portfolios. Now is the time to commence this analysis. Insurers that are willing to accept whatever business comes their way will continue to suffer anti-selection and experience increasing difficulty in making profits.

The factors influencing motor risk management are potential hazards of vehicles; its uses, drivers ability, premium potential of the class, vehicle density, geographical impact, infrastructure condition viz. conditions of roads, availability of garages, safety regulations in place; uninsured population etc.

### c) Risk profiling

#### i. Vehicle Wise, Use Wise, Location Wise, Gender Wise, Age Wise:

The various factors, which affect the risk, are based on correlation of the factors with the risk proneness.

- ✓ US markets use 75+ risk factors,
- ✓ Japan market use 9+ risk factors,
- ✓ UK 20+
- ✓ Recently proposed tariff rates for Malaysia are based on nine rating factors viz. use of vehicle, number of drivers, age of vehicle, make of vehicle, geographical location, driver's sex, engine capacity, number of claim-free years, sum insured.

#### ii. Risk segmentation guidelines in Japan

Age of driver	not exceeding 300% differential
Gender	segmentation allowed, but differential not exceeding 150%
Driving History	driving records not available publicly, so insurers unable to introduce policy holders driving records as risk factor.
Auto Usage	commercial, personal, leisure, commuting
Pattern of Use	mileage per year, continuous use
Geography	max 7 Zones as per law, differentials between regions within 150% or less
Vehicle Type	any kind
Multi Car Ownership	discount on no. of automobiles insured
Vehicle Safety Features	air bags, anti- lock brake system

#### iii. Indian market rating

Indian market rating has been based on just 4 risk factors, which by and large are used in the current market as guide rates. The discounts are based on performance of motor portfolio and competition in the market to retain market share although the claims continue to be prejudiced by several factors [(Test Drive by Govind Johri, Associate Professor in Asia Insurance Post, January and February 2008 p. 48-49)]. The underwriter is required to collect relevant data on various factors which affect the claims taking into consideration following factors:

**(a) The Vehicle****(i) Registration details**

- ✓ Year of manufacture
- ✓ Age of vehicle

**(ii) Insured declared value****(iii) Model guidelines vis-a-vis age of vehicle**

- ✓ Auto crash test compliance
- ✓ Colour of the vehicle
- ✓ Military disposal vehicle
- ✓ imported cars
- ✓ Sports car
- ✓ Extra fittings
- ✓ Distance Travelled By The Vehicle

**(iv) Carrying capacity of the vehicle****(v) Seating capacity of the vehicle****(vi) Route Permit****(vii) Load Permit****(b) Usage of the vehicle****(i) Purpose for which the vehicle is used**

- ✓ Private or Commercial or Agricultural or special purpose
- ✓ Use for social, domestic and pleasure purposes

**(c) Geographical area of operation****(i) Parking location****(ii) Metropolitan areas, state capitals, major cities, Urban and Rural areas****(iii) Coastal, hilly, desert, plain, Highways, local traffic****(iv) Climate of the area (cold regions, arid, hot)****(v) Traffic density, variety of vehicle on the road****(vi) Road conditions**

**(d) Driver of the vehicle****(i) Age of driver**

- ✓ Driving experience of the person
- ✓ Driving history of the driver
- ✓ Driving violations
- ✓ Training and education of drivers

**(ii) Drivers health condition**

- ✓ Common defects of vision

**(iii) Drivers habits and attitude (conscientious or aggressive)****(iv) Gender of the driver****(v) Occupation of the proposer****(vi) Credit Rating****(e) Claim Experience**

- (i) Other vehicles owned
- (ii) Eligibility for no claim discount

**(f) Other factors in determining premiums****(i) Auto Insurance****(ii) Vehicle Safety Features****(iii) Multiple drivers and multiple vehicles****(iv) Sub classification****(v) Road Categories****(vi) Different settlement plans****(vii) Innovation Of Product****d) The Vehicle**

The underwriting approach differs according to the type of vehicle e.g., age of vehicle, value of vehicle, technology, use of IT, Colour etc. As seen earlier, vehicles are classified, according to their use into private cars, motor cycles, scooters and commercial vehicles.

### i. Year of manufacture & Insured's Declared Value (IDV)

The first important point to be considered is the **year of manufacture**, the purchase price and the insured's declared value. The insured's declared value in relation to the age of the vehicle is very important factor as the consumer courts come on insurers heavily, if the IDV is found lower than agreed formula, to protect the interest of Policy holder. It is especially because, there being no pro-rata condition of average in the policy and the sum insured is the limit of liability per accident and not for the period of insurance. The majority of motor claims are for partial damage and the absence of pro-rata condition of average adversely affects the insurers where the use of vehicle is considerably different affecting usual wear and tear.

### ii. Age of the vehicle

The age of the vehicle is important feature from the underwriting point of view. It is natural that, as a vehicle becomes older, defects appear more frequently and metal fatigue sets in. The underwriting guidelines adopted differ from insurer to insurer, but there is broad agreement in the approach adopted.

Private cars which are over 15 years old are not accepted on comprehensive terms but covered for third party risks only. Fire and Theft risks may however, be covered. Cars which are over 10 years and less than 15 years old are accepted for comprehensive risks subject to satisfactory inspection report by the insurer's automobile engineers or other officials or independent surveyors. The inspection report would cover the condition of the engine, body work, and the efficiency of the brakes, tyres, steering and general maintenance of the vehicle.

### iii. Model Guidelines for Age of Vehicle:

During the tariff regime, in the 1980's the insurers had evolved model guidelines for acceptance of other vehicles vis-a-vis their **age**, these were as follows;

#### **Taxies-Fresh Acceptances - Comprehensive Cover**

- (a) Up to 3 years for comprehensive cover.
- (b) Up to 5 years subject to inspection and satisfactory claims experience.
- (c) Over 5 years, up to 7 years on inspection with a further compulsory excess of Rs. 500/- (without any discount); over 7 years 'Act only' policy.
- (d) Renewal is on normal terms subject to satisfactory claims experience up to 10 years old vehicles; over 10 years renewals are offered on Act only.

## **Commercial vehicles - fresh proposals - comprehensive cover**

### **(a) Goods Carrying Vehicles (Own Goods)**

- (i) Up to 5 years package policy.
- (ii) Over 5 and up to 7 years subject to satisfactory inspection report package policy.
- (iii) Over 7 years and up to 10 years subject to satisfactory inspection report and a compulsory excess of Rs. 2,500/-; over 10 years 'Act only' policy.
- (iv) Disposal vehicles on inspection and subject to further compulsory excess of Rs. 500/- (without any discount).
- (v) Renewal is to be offered with normal terms subject to satisfactory claims experience up to a period of 12 years; over 12 years renewals will be on 'Act only' policy.

### **(b) Public Carriers**

- (i) Up to 5 years for package policy.
- (ii) Over 5 years and up to 6 years, subject to inspection report and satisfactory claims experience or additional compulsory excess without discount.
- (iii) Over 7 years 'Act only' policy.
- (iv) Renewals to be offered with normal terms subject to satisfactory claims experience up to a period of 10 years.
- (v) Over 10 years renewals will be on 'Act only' policy.

Most of these guidelines are still followed with minor adjustments keeping in mind individual companies risk acceptance philosophy and overall claims experience.



#### **iv. Auto Crash Test Compliance**

The compliance with safety standards in vehicles is a crucial factor for rating risk. Auto Crash tests are an important factor. It is based on UN Standards and individual country standards. These tests are conducted by global car safety watch dog, global New Car Assessment Programme (NCAP) in association with Institute of Road Traffic Education (IRTE) and the World Bank. The cars are driven at 56 kmph and 64 kmph (NCAP standard) against a static object and its impact is studied for safety of driver and occupants.

India is one of the signatories to the UN standard for safe vehicles (R94) which prescribes 56 kmph crash test although the government has not mandated the test so far. At present all cars in India are checked for front and rear impact when they are being driven at 48 kmph and the bar is being considered for raise to 56 km/ ph by 2015 when India proposes to have its own NCAP norms with full body test, instead of front and rear, at a facility coming up in Chennai.

Even the low standards are not met by popular cars like Volkswagen, Tata Nano, Alto 800 and Hyundai besides Polo without air bag, which have failed the UN Standard Tests, while the manufacturers maintain that they are complying with Indian Norms and are selling cars with airbags and additional safety variants'; the same manufacturers produce vehicles of very high standard complying rigorous UN norms, when they export vehicles to other countries, manufactured in India. The lack of compliance with global NCAP norms for crash test is contributing to increased liability to be borne by insurers for increased number of loss of life and increasing number of total loss claims.

#### **v. Colour of the vehicle**

The colour of the vehicle is also considered for rating purpose, as international studies have found that black, red, or yellow painted cars are more prone to accidents, while white cars are more prone to thefts.

#### **vi. Military Disposal Vehicles**

Inspection is also insisted on before acceptance of military disposal vehicles and where requests are received for conversion from 'third party risks' only policy to Package covers at renewal or during the currency of the policy.

**vii. Insurance on imported cars:**

It requires consideration of several other factors. There is a problem of obtaining spare parts. The costs of repair of an imported car are also high, not only because of the cost of materials but because of the intricate design which would mean more time spent on dismantling or reassembling. Such cars not older than 10 years are accepted on comprehensive terms subject to an 'excess'. Some insurers exclude damage to the windscreen.

The policy is invariably subject to the following endorsement:

"It is hereby understood and agreed notwithstanding anything to the contrary contained in this policy that in the event of loss or damage to the Motor Vehicle and/or its accessories necessitating the supply of a part not obtainable from stocks held in the country in which the Motor Vehicle is held for repair or in the event of the Company exercising the option under Condition No. .... to pay in cash the amount of the loss or damage the liability of the Company in respect of any such part shall be limited to:

- (a) The price quoted in the latest catalogue or price list issued by the Manufacturer or his Agents for the country in which the Motor vehicle is held for repair, or

If no such catalogue or price list exists, last price quoted by the Manufacturer's plus the reasonable cost of transportation otherwise than by air to the country in which motor vehicle is held for repair and the amount of the relative import duty.

- (b) The reasonable cost of fitting such parts is subject otherwise to the terms, exceptions conditions and limitations of this Policy. This means that for imported vehicles where parts are not available in the country, the cost for replacement will be the price listed by the manufacturers in their catalogue as the price for of sale to that country plus reasonable cost of transport charges and custom duties. Air freight is not covered.

**Example**

A Bentley car has a part to be replaced and the manufacturers catalogue lists the price of that part for India as Euro 7900/-. Thus the price allowed will be the equivalent rupee value for Euro 7900 + Shipping freight + Customs duty payable for importing the item. The labour cost for fitting will also be allowed.

Imported cars over 10 years and less than 15 years old are accepted on Package cover terms subject to higher excess. Such cars over 15 years old are accepted for 'Third Party liability cover only'. Cars imported by foreign embassies pose a special problem in as much as the embassies are exempt from paying customs duty on the imported cars and, as such will attract sum insured for less than their market price. To counteract the adverse effect of under-insurance, the Insurers load the Own Damage to vehicle premium on such cars by at least 15% to 30%.

#### **viii. Sports cars**

Sports cars are considered to be heavier risks than other cars of the normal type. The repair costs are likely to be higher. These cars which are specially designed for usage at high speed are usually driven by 'young drivers' from 'affluent families'. The loss severity will be high because of the high speed and carefree attitude. Each case is decided on the individual merits and acceptance is subject to an excess, exclusion of personal accident benefits and loading of premium. In some cases, driving may be restricted to named persons.

#### **ix. Extra fittings**

If the car is fitted with luxury items e.g. TV, DVD players, refrigerators etc. then there is the added risk of theft. Before acceptance, full details of the luxury fittings including the make, model and separate values for each item, are obtained. In the present day motor vehicles come with these fitting with standard models. The values are included in the manufacturers selling price. In such cases the value is part of IDV. There is no need to declare these items under extra fittings for insuring them separately.

#### **x. Distance travelled**

The distance travelled by the vehicle is also a factor of underwriting importance. A disproportionately higher average run (for example tourist taxis logging higher run compared to private cars) would signify greater wear and tear. It will also mean more extensive damages in the event of a claim. This would require putting higher depreciation for partial replacements. The IDV in current scenario being based on manufacturers selling price subject to pre decided depreciation percentage cannot be adjusted unless agreed to accordingly.

### e) The Use of the Vehicle

- i. The risk exposure due to the purpose for which the vehicle is used e.g., vehicles used in shifts, vehicle used for sports purpose are taken care of in the rating systems. The use to which vehicles are to be put, even those of the same class, is a deciding factor in the relative degree of risk involved.
- ii. Private Cars represent a lighter risk than Taxies which are subject to optimum utilisation. Owner-driven taxies are a better risk than those which are driven by paid drivers on salary or commission. The latter may not have any interest in the maintenance of the vehicle or in its safe operation.
- iii. Private carriers are considered a better risk than public carriers. The use of the former is limited to carriage of own goods, whereas public carriers like the taxies, are subject to optimum utilisation including driving during night hours, thus are exposed to higher incidence of accidents and wear and tear.
- iv. Private carriers are also better maintained. Even in same class of vehicles, the exposure to similar risk may differ with another. Goods carrying vehicle used for delivery of aerated water bottles from door to door in a city will not be such a heavy risk, as a lorry engaged in inter-state transportation of goods.
- v. The general nature of the goods carried is important for underwriting purposes, especially if they are flammable or likely to explode. The fire hazard is common with, for example, vehicles used for bulk conveyance of petroleum (Tanker vehicles).

If a vehicle is maintained periodically it is bound to be a better risk compared to when needed which is a bad risk. Similarly if a vehicle is repaired with authorised or genuine spare parts it is bound to improve risk. This also gives rise to a question whether cheapest claims settlement is good for vehicle safety or the vehicle is safe on the point of subsequent claim and extent of loss.

## **f) The Area of Operation**

### **i. Parking Location**

The normal parking location of the vehicle is also an important consideration. Even daily car parking spot (whether closed, open or road side parking) may have a bearing on the premium. The vehicle is exposed to vagaries of nature like sun, rain and winds which results in extra wear and tear. In addition if the vehicle is parked in public areas and not within residential or business premises, the risk of theft of the vehicle or partial damages by passing vehicles or public is increased.

### **ii. Zones**

Different geographical area, long distance driving etc., are prone to different level of exposure. Where one lives matters? Living in rural area is far less likely to have a collision but more of cars are stolen from such rural areas. Moving across the street can change the rate depending upon probability of accident.

Therefore, segmentation of risk zone is an important underwriting factor. Probability & Severity Analysis can be measured for different geographical segment. The area in which the vehicle is used has a direct bearing upon the risk under all sections of cover of the package policies. This aspect of physical hazard is also taken care of in the rating system.

The Rating would differ according to the zones for use of vehicle, e.g. metropolitan areas, state capitals, major cities, and Urban and Rural areas. Similarly rating must take in account:

- (a) Climate of the area (cold regions, arid, hot) Rural Area theft prone; Urban Area more WEAR & tear)
- (b) Hill Area (Heavy Recovery cost & inevitable towage)
- (c) Coastal Area (Maintenance), Hill, Desert, Plain, High
- (d) High way usage (prone to higher accidents)
- (e) Metro Area, Local movement
- (f) Theft prone areas

This differential rating should also takes into account density of population, density of road traffic, type and quality of roads over which the vehicles would normally ply etc.

## **g) The Driver of the Vehicle**

Apart from the physical aspect of the vehicle and its usage, the driving element is a dominating feature in relation to motor insurance which has an important bearing upon the loss ratio.

**i. Personal hazard of the driver:**

Although physical aspect is taken care of in the rating system but the personal hazard of the driver should also be taken into consideration to ensure lesser accidents and consequent lower liabilities.

The proposal form can never indicate the temperament of an individual or his driving habits. This can be ascertained from the claims experience; history of meeting with accidents and conviction for traffic offences. Minor conviction for speeding or parking may be ignored but a number of such convictions may indicate both recklessness and indifference to the law on the part of the proposer. In such cases, restrictive cover may be granted.

It is essentially the driver who is responsible for good or bad claims in motor insurance. By careful driving and by taking a pride in his vehicle, an insured can substantially reduce loss possibilities. Neglect, carelessness and risk aversion index of driver/owner are major factors which are responsible for bad claims experience. Insurers can charge motor insurance premiums based on the drivers' traffic record, through electronic link to the traffic departments via a portal.

**ii. Common defects of vision**

All proposal forms incorporate a question to elicit whether, to the best of the proposer's knowledge and belief, he or any other person who to his knowledge will drive, suffers from defective vision or hearing or from any physical defect. Common defects of vision which can be corrected by spectacles or contact lens are ignored. The loss of sight in one eye is much more serious as it impairs the field of vision and judgement of distances. Deafness which can be overcome by the use of hearing aids is ignored by the underwriter.

Loss of limb introduces considerable hazards. Such physically challenged drivers are able to drive cars which are specially adapted for their use. Insurance is granted in such cases including the type of cover depending upon several factors such as the gadgets fixed in such cars, age of the car, nature and locality of use, etc. Therefore, the concerns of underwriter are:

- (a) How to deal with a young driver?
- (b) How to deal with a new driver?
- (c) How to deal with female driver?
- (d) How to deal with careless driver?
- (e) What should be done with the insured that pays scant attention to the upkeep of the vehicle so long as it is reasonably fit for his purposes?



It may be mentioned that these factors could be regarded as moral hazards in the wider sense of carelessness and can be dealt with by the underwriter. The hazard arising from the driver could be assessed from the point of view of his gender, age, physical condition, occupation, driving experience/and history of meeting with accidents.

### **iii. Age of driver**

Age has a material bearing on the risk of driver. Oldest octogenarian and the youngest drivers are far more likely to have accidents compared to mature looking teens. The young drivers due to their love for speed and dare devil approach present an unfavorable hazard because speed has a special attraction for youth.

Similarly, an elderly driver involves increased physical hazard, because of advancing age, the faculties are less keen resulting in slower reactions which may have serious consequences in the event of an emergency. It has been found that the claim costs for drivers under 25 are approximately 1.5 to 2.5 times the costs for drivers over 35.

### **iv. Driving experience**

The driving experience may indicate accident-proneness. It is found that numerous claims occur with new drivers because of their limited driving experience. Another great menace on the road is not the new driver but the experienced driver who is reckless and foolhardy and will take risks which the new motorist would never do.

### **v. Driving History**

The number of years of driving experience, miles driven per year affects the accident proneness of a driver. It is important to know accidents History of the driver, whether driver is holding a fresh or old license, whether the license is appropriate for the vehicle driven, and the verification of drivers address and if the vehicle is Owner driven or his family members also drive. It must also be noted if night driving is involved or 24 hrs driving in case of taxi or private cars. Vehicles used in shift have to be taken in account while underwriting the risk.

### **vi. Driving Violations**

Like convictions, speeding youngsters, running over red lights, failure to yield to traffic rules, etc. are also important for prudent underwriting.



### **vii. Training of drivers**

The education level of the driver is a new factor incorporated by insurers as a potential risk factor. Proposal forms are now eliciting such information. The technological advances in vehicle manufacture have resulted in installation of computerized systems for operation of vehicles. Drivers are required to have knowledge about the operating systems especially of Commercial vehicles. In order to improve the driving on roads, drivers who have undergone training through recognised –Motor Training Schoolll may be given discount in premium.

### **viii. Gender of the driver**

The gender of the driver has also a bearing on underwriting. Internationally, female drivers are considered better risks than male drivers and premium rates are discounted for such drivers. This practice has now been adopted by a few insurers in India. Women statistically make safer drivers which could be mothering instinct or indulging in lesser fantasies.

Claim costs for males are 5% to 10% higher than females, with sex and age factors tending to interact together. However, there are no reports of people marrying simply to lower their insurance rates or vice versa. Marital status hardly affects driving habits and there are hardly any statistics about increased number of accidents while returning home.

### **ix. Occupation of the proposer**

The occupation of the proposer has also a material bearing on the risk. For example, Pizza delivery guy could be a higher risk; person engaged in the entertainment professions represent a hazardous class of risk. They use their cars for long and hurried journeys; their hours of work are irregular; and they may be required to drive at night or in the early hours of the morning. More accidents occur while returning from job and continuous driving for weeks by commercial vehicle drivers under National Permits due to stress and fatigue.

### **x. Credit Rating**

Poor credit position relates to higher risk. If there is no credit history, it is suggestive of single vehicle owner, who is financially incapable to get repairs, may try for Total Loss or Constructive Total Loss. The Fleet owners having high credit rating cross subsidise among vehicles and are entitled to reduction in premium.

## **h) The claims experience**

The history of past losses reveals the nature of losses e.g., if the vehicle is stolen frequently, it would be an indicator of poor security arrangements or susceptibility of the place or of the vehicle being prone to thefts due to available alternate use of some machinery parts. Similarly, in case of frequent accidents, details of the parts of the vehicle affected would give a clue as to whether the vehicle is in a good state of repairs and running condition or there is an element of moral hazard of the insured in claiming losses.

The past losses, therefore, permit the insurer to decide the scope of cover to be granted or to impose certain conditions or additional deductibles; so that the exposure to the risk is reasonably measurable and preventive steps are taken at the time of acceptance of the proposal.

The data will have to be analysed with a sense of right perspective. A single serious and major claim need not be a matter of concern, but a string of minor accidents over a period of five years is definitely unsatisfactory experience. Such proposals may be accepted with a higher 'excess'. Claims experience is also to be considered at the time of renewal.

The approach adopted for acceptance of new proposal is equally applicable for renewal business. If the loss experience of 'own damage' claims is bad, then renewal will have to be offered on the basis of 'excess' or restricted cover. All proposal forms elicit full particulars of settled and outstanding claims in connection with any motor vehicle owned or driven by the proposer during the last preceding 3 to 5 years.

Information is required to be submitted separately for 'own damage' claims, third party claims and other claims. Insurers are in the process of setting up a common database of all vehicles insured by them to ensure that record of claims experience for OD can be verified and insured appropriately.

## **i) No claim discount**

Insurers have found that granting of no claim discount is a powerful strategy to improve underwriting experience. Today it forms an integral part of rating systems. The no claim discount is usually opposed by insurance underwriters brought up in the traditions of other departments where scientific tariffs have been developed.

They find it difficult to reconcile their approach with a system of rating which allow discount off the premium in the event of no claim having been made upon the policy. Their argument is that this discount is a negation of an inherent principle of insurance viz. the premiums are paid by the many into a pool from which the claims of few are paid.

It is not fair that though for over several years the insured has had the protection for which he has paid the premium, is being rewarded because the peril against which he has been covered, has not arisen. The other arguments advanced are:

- i. It creates extra clerical work for insurers in calculation of premiums and preparation of renewal notices - work which is out of all proportion to its value.
- ii. It leads to many disputes between the insured and insurers, e.g. claims settled under knock-for-knock agreement. The insured who considers himself blameless would resent the forfeiture of his discount.
- iii. At any rate the policy contains a condition that the insured shall take all reasonable steps to safeguard the vehicle from loss or damage and maintain it in efficient condition. He has also to act, under Common Law, as if he is uninsured; it is therefore, inconsistent to offer a further incentive to care.

The arguments favouring no claim discounts are:

- i. As mentioned earlier, while physical hazard is of importance in motor insurance, the personal hazard of the driver is just equally important. The no claim discount goes a little, if not a long way, in recognising this factor. There have been innumerable instances of insured bearing the cost of a small accident in preference of forfeiting his discount, either because the amount of the prospective discount or because he was desirous of maintaining a good record. Thus the discount acts as an effective incentive to the insured to exercise care.
- ii. Indirectly, the discount helps towards contribution to the object of road safety.
- iii. The disputes between the insured and the insurer are not common as is thought of. At any rate, the tariffs permit discretion to the insurers to allow no claim discount, when they are satisfied that the claim is being solely by virtue of the knock-for-knock agreement and that the insured was free of blame for the accident.

#### **j) Moral Hazard**

Moral hazard is, perhaps, more important in underwriting motor insurance than in any other class of insurance. As mentioned earlier, the owner or driver of a motor vehicle is more responsible for bad claims experience, than the physical condition of the vehicle or the use to which it is put or the area in which it is used.

It is in rare cases that mechanical breakdown causes road accidents. It is the attitude, the temperament and the personality of the driver that is responsible for accidents. While considering acceptance of new business proposals, it may not be easy to ascertain all aspects of moral hazard. But his behaviour and attitudes during the currency of the policy and when a claim arises, will be indicative of bad moral hazard. And this aspect will have to be borne in mind at the time of renewal.

### Example

The insured may not co-operate with the insurer in respect of a third party claim. He may not appear in the Tribunal or may not insist on his driver to do so. In the event of 'own damage' he may insist on replacements and repairs not strictly connected with the accident and may be unwilling to contribute towards the cost of such replacement and repairs. He may be careless in reporting accidents hoping that no claim will materialise from the third party. With such insured renewal will have to be invited subject to underwriting safeguards, e.g. restriction of cover, imposition of compulsory excess, etc.

#### k) Other factors in determining premiums

- i. **Auto Insurance:** Whether or not you currently have coverage for named drivers or unnamed, excess imposed if any, NCD earned.
- ii. **Vehicle Safety Features:** Theft Protection Devices; Alarm immobilizer; Night parking in closed Garage/ or road side.
- iii. **Multiple Cars and Drivers** is another opportunity for Discounts/ Loadings depending upon the increased exposure due to multiple drivers using same cars.
- iv. **Sub Classification-** helps at time of claim.
  - (a) Purpose of Registration - Sumo Qualis, Mahindra Zeep mostly for commercial purpose.
  - (b) Commercial private use - vehicles having yellow plates, but solely used for private purpose i.e., to carry its own employees/ staff ( not for hire or reward ).
  - (c) Having private permit
  - (d) It is wrong to issue Commercial/Passenger / Tourist Taxi Policies
  - (e) Vehicle registered in the name of institution/Firm but used for carrying employees/Directors / Executives

- v. **Road Categories:** Poorly maintained roads and malfunctioning traffic control signals, failure of duty of municipal department, their negligence, improper design, maintenance, construction, signage, lighting or other highway defects, including poorly placed trees and utility poles.
- vi. **Different Settlement Plans** With depreciation; without depreciation; without bills; on site OD /TP settlements also incur cost, therefore, are important factors in underwriting.
- vii. **Innovation of Product** like per KM basis of insurance; repair options;, Courtesy Car, Enhanced Courtesy Car, Total Loss /Constructive Total Loss on 60% or 75 % repair estimate basis; repairs in Authorised Garage or Road side or Middle Level Garage and any other car driven by owner to have Legal liability or Own Damage & Third Party both.
- viii. **Real skill of the Underwriter:** The real skill of underwriter is tested in the following areas:
  - (a) Creating wording of the endorsement and rating.
  - (b) Acceptance of high end vehicles;
  - (c) Ascertaining use of special purpose vehicles,
  - (d) Break-in-insurance -inspection of vehicles
  - (e) Updated data of secondary market of vehicles
  - (f) Cost at the time risk proposed.

#### l) Accident repairing cost

Factors are to be assessed for Post Automotive Repair:

- (a) Labour charges/Time schedule & Rate
- (b) Painting component/ technology
- (c) Spare part pricing

Manufacturers/Dealers' current strategy is to earn profits through accident repair jobs at the insured's cost. Over charging to insurers need to be eliminated by replacing the current 'Live and Let Die' policy by 'Live and Let Live' approach. We need to identify accident prone parts, claim prone parts and spare part price revision pattern, including PML concept.

Insurers must initiate:

- (a) Dialogue with manufacturer on all above mentioned factors
- (b) Study model design; positional structure of accident prone parts, electronic parts, turbo etc.
- (c) Identify standard of accident repairing facilities and
- (d) Evaluate competence of the dealers e.g. Body parts, frames, axles etc.
- (e) Liaison with Police and Telecommunication network
- (f) Coordination with judicial Agencies
- (g) Coordination with research and approval Agencies and Automobile Associations

Since these are the real consideration factors to price the individual product methodically for viability, better understanding will prevail. Each model wise risk assessment is a must. Broadly speaking there is a scope for reduction of present rating while liability premium needs to be loaded. This is only possible for insurers who have a desire to manage the portfolio scientifically; to find out general accident rate and claim reporting rate and control & eliminate the leakage resulting in excess outgo.

- i. **Motor Insurance Statistics:** As rates of premium are based on past loss experience, it is most essential to maintain a detailed statistical structure for Motor insurance. This is of great importance in a detariffed regime. It is therefore, being dealt with in a separate chapter.
- ii. **Data Collection:** The data has to be collected for future use for class of vehicle, retaining same classification; same zones; age of vehicle, type of body; Carrying Capacity, and new band width that have been introduced.

The data is also to be collected relating to vehicle on specific types fuels, PAN number, colour of the vehicle; owner details on occupation, age of the owner, address, gender; driver related data on age, education, experience, place of issue of driving licence; commercial vehicles (both types of vehicle) related data for type of permit viz. national, stage, contract, any other; use of vehicle viz private service, public service, educational institution, goods carriage, all vehicles data about copy of Registration certificate / Sale certificate, driving licence, personal accident cover to owner driver, driving licence, nominee of owner driver and for commercial vehicles (PSV) carrying capacity as per permit.



The data about liability section in Commercial vehicles for Conductor/ Ticket examiner, Passenger in Public Service Vehicle (as per carrying capacity in Permit), Persons carried in goods vehicle (as per Permit); Third Party Property Damage as per Act liability Limit to be taken maximum up to Rs. 2.5 / 7.50 Lacs.

#### m) Competitive premium -setting model

The competitive premium-setting model is expected to ensure neither excessive pricing nor non-viable premium through undercutting. There is also a need for restructured policy Terms / Conditions besides emphasis on language and fine print are to be made simpler to be understood by all stake holders.

- i. **New add-On Covers** for Loss of keys and loss of transport e.g. Loss of use, Substitute vehicle with similar or lower model of car or without car, Conveyance expenses, Loss of income/profit through business interruption etc. is need of the time.
- ii. **Repair time schedule data** is to be built up vis-à-vis assessment of the repair time. For Competitive viable pricing for all this to stay ahead in the market companies will have to develop specialisation either in-house or by outsourcing. Competition will be fierce in free market and only those underwriters will emerge winners who will adopt 'Scientific Control Methods' both in damage to vehicle and Third Party segments & ensure that they meet their corporate governance norms.

The existing leakages will have to be eliminated. Companies will have to be aggressive in their marketing strategies. This will pose a real challenge to each company. Those who do not adopt such governance will be fighting for survival.

- iii. **Scientific Control:** The challenge for insurers is to keep stricter scientific control over following three areas.

- ✓ Intermediaries performance
- ✓ In-house claim handlers attitude
- ✓ Surveyors' performance
- ✓ Advocates' performance

Challenge ahead is to have professional motor managers, without any compromise. In the free market era, there is no scope for casual inefficient approach. The management of motor portfolio may follow any pattern, but for the effective management scientific risk management will have to be enforced strictly with precision. Therefore, only option is to evolve specialised scientific methods for damage to vehicle & Third party claims liability management and ensure its enforcement.



**Test Yourself 3**

All proposal forms elicit full particulars of settled and outstanding claims in connection with any motor vehicle owned or driven by the proposer during the last preceding\_\_\_\_\_.

- I. 4 to 6 years
  - II. 2 to 4 years
  - III. 3 to 5 years
  - IV. 1 to 3 years
- 

**F. Principles and practice of premium computation****1. Introduction**

The policy holders & businesses are complaining steep hikes. Transporters are facing difficulties for compulsory third party coverage. Insurers are still finding premiums inadequate. The Market is highly Competitive, tending towards aggressive marketing, with innovative products, and intervention of IT governance in customer services. Stringent Regulatory Norms ( Solvency norms, Protection of Policy Holders' Interest & Shareholders' Interests), end of Soft Market Regime and restrictions from Reinsurance Market, Change in Legal Environment, Rising Customers Expectations and Increasing Consumerism are taking its toll.

**2. Indian Motor Insurance market**

The Indian motor insurance market is ridden with lack of sound underwriting policy, lack of IT compatibility of data extraction & analysis and to convert the data into usable electronic form to analyse true cost of motor risk.

Lack of experience in free pricing regime relates to factors associated with policy holder, associated with the vehicle, relating to coverage aggravating risk including factors that can't be measured like risk aversion and repeated traffic violations for want of any mechanism and factors which can be measured in theory but are impractical to find correlation.

Current market constitutes high value cars which do not increase in risk exposure on a linear scale, but tend to flatten out after a certain point. While the relativity of 40% may be reasonable for the larger cities, we would expect a similar pattern in other heavily populated areas such as Chennai and Bangalore, which currently charge lower rates.

Basis of rates in India is engine capacity and carrying capacity of the vehicle, Sum insured; and Geographical location. India after deregulation of market is geared to adopt a selective pricing and marketing approach, targeting profitable segments and avoiding loss-making ones.

The claim costs for some suburban areas are 20% to 40% higher than for others, under a possible strategy in the short term. The need of the hour is be quick in claims settlement and be aggressive in pricing aspect. The premium-setting model is expected to ensure neither excessive pricing nor non-viable premium through undercutting. The Pricing mechanism should encourage reduction of losses.

#### **a) Rating factors**

Rating factor are those factors which have direct impact on out go of insurers. These include variables which can be measured vis-a-vis variables which cannot be measured but have substantial contributory impact on vehicle damage or even third party liability and its extent or those which cannot be measured at all.

#### **b) Pricing methodology**

Fundamental principle of insurance pricing is to receive sufficient premiums to fund the expected claim costs, administrative costs, acquisition cost, catastrophic cost, Deviation in cost if any say Floods/ Earthquake; provide an expected profit to compensate cost of obtaining the capital to support sale of coverage.

Premium consists of a pure premium to cover expected losses and Loss adjustment expenses. The premium is to be loaded by operating expenses depend on the extent & variety of Policy holder services insurer agrees to provide e.g. Sales, Commission; advertising expenses & Taxes; Cost of handling claims, allowances for contingencies covering margin & interest incomes including underwriting gain or profit needed to offer incentives in competitive environment.

#### **c) The pricing objectives**

The three most important objectives of pricing relate to Premium adequacy, Fairness, Simplicity, Consistency & Flexibility.

- i. Premium adequacy is to generate needed premium to pay for claims and management expenses. Assure fair rate of return to the investor of the fund sufficient to finance continuing growth and expansion by ensuring reasonableness or just rate in competitive market.
- ii. Fairness must discriminate among the buyers fairly; rates should not be same for hetro-groups like Saloon cars and SUV's and must not differ for homogeneous groups like Maruti cars of different models.
- iii. Simplicity, Consistency & Flexibility: Simple to understand & inexpensive to use, rate must not change frequently under daily changing circumstances (with claims reported within certain period).

#### d) Type of rating in motor insurance

- i. In motor insurance the risk exposure is very rare so each risk is individually evaluated and rated accordingly as per the underwriter's perception of the risk, termed as **judgement rating**.
- ii. Motor risks are classified on the basis of some features (Class rating) and are rated subjectively according to the exposures dividing amount of incurred losses and loss adjustment expenses by the number of exposure units.
- iii. When specific risk differs within the same class, Merit Rating is carried out which modifies class rate based on individual loss experience. In motor the impact of age, gender leads to **Schedule Rating or individual rating**. The accrual of NCB gives experience rating. It is different from **retrospective rating** that modifies the insurance cost on the basis of the current experience allowing refund or additional premium e.g. adjustment of premium after the expiry of the policy.
- iv. **Differential Rating:** Under differential rating the pricing is left to each Company with freedom for including add-on covers. Differential rating is the rating based on scientific method of pricing the product on Make and Model basis. The most crucial aspect of rating in motor insurance is claims cost. Therefore, every factor which adds to claims cost is of utmost importance.
- v. **New Features:** If we peruse rating factors of high tech vehicles, vehicle geometry and the relative situation of the parts, sophistication in make and new features are also important while determining motor insurance rates. Market for new vehicles tends to be replacement oriented due to the monopoly of dealers and lack of skilled labour in outside garages.

Replacement items in each vehicle are dependent on parts availability; spares cost valuation; obligatory repairs and replacement to do committed repairs. Imported vehicles repairs are difficult due to non-availability of spares in local markets.

#### e) Motor premium rating

The overall premium is equal to expected cost of all claims + Expenses + required profit margin for all risks underwritten.

While ultimate claims cost is equal to paid losses + reported outstanding losses + estimated IBNR costs.

The Motor premium rating is based on two principles. One is determination of differential rating and other is pricing different risk groups. The estimated ultimate cost of claims is determined by examining past 2 to 3 accident Yrs.

As the insurer has to apply rates for future time, adjustment in actual cost is done for:

- ✓ Expected future claims inflation by examining past date of payment till claims are paid under newly rated policies.
- ✓ Expected future claims inflation by taking into consideration changes in Policy Conditions between the past coverage & new policies based on more scientific approach.
- ✓ Expected future claims inflation for gap in receipt of premium & claims payment for expected investment earnings besides an allowance for direct & indirect administrative costs. This is more pronounced in third party claims which take several years in final settlements.

Finally the maturity, deep experience, ability to lead the team, resist pressures, possesses combination of experience, judgment and flair, acquiring knowledge is not difficult, but to relate it to experience in the field and then to utilize it for successful risk management is the effort worth putting. Following 36 factors need close attention in Motor Premium rating :

- i. **Vehicles:** 1. Make & Model, 2. Age of vehicle, 3. Year of manufacture 4. Insured's declared value, 5. Crash test compliance norms for each model, 6. Colour of the vehicle,
- ii. **Use of vehicle:** 7. Military disposal vehicles 8. Imported cars 9. Sports cars 10. Extra fittings 12. Distance travelled by the vehicle 13. Use as taxi/goods carrying, passenger or miscellaneous vehicles.
- iii. **Geographical area:** 14. Topography of Area e.g. hills, coastal region etc 15. Parking location 16. Density of population 17. Density of road traffic 18. Quality and construction type of roads.
- iv. **Driver:** 19. Gender 20. Driving experience 21. Age 22. Health, Common defects of vision 23. Personal hazard of the driver and habits 24. Traffic violations by drivers 25. Accident proneness of driver.
- v. **Proposer** 26. Occupation 27. Claims experience 28. Using multiple drivers and multiple vehicles 29. Credit rating of the insured 30. Moral hazard.

**vi. Accident repairing facilities:** 31. Garage facilities 32. Manufacturer's spare parts availability and pricing policy 33. Repair/ Replacement philosophy, 34. labour cost, 35. Repair time schedule data, painting component).

**vii. Safety features:** 36. GPRS tracking facility for stolen vehicles

**f) Model wise Risk assessment**

Risk Assessment of each model is to be assessed in arriving at premium rate model wise. The underwriter has to take in account replacement items in each vehicle, obligatory repairs and replacement required for committed repairs; labour for work carried at road side garages, spares cost valuation; availability of parts, etc.

Therefore, all above mentioned factors are very import. The, Insurers must initiate dialogue with manufacturer's as parts are allowed at Manufacturer's List Price only if they are purchased from the Authorised Dealers.

- i. Study model design; positional structure of accident prone parts, electronic parts, turbo etc.
- ii. Identify standard of accident repairing facilities at various Dealers' / other Govt. approved or composite garages and
- iii. Evaluate competence of the dealers handling repairs e.g. Body parts, frames, axles etc.
- iv. Liaison with Police and Telecommunication network
- v. Coordination with judicial Agencies
- vi. Coordination with research and approval Agencies and Automobile Associations

Since these are the real consideration factors to price the individual product methodically for viability, better understanding will prevail. Each model wise risk assessment is a must. Broadly speaking in general there is definite scope for reduction of present rating while liability premium needs to be loaded This is only possible for those insurers who have a desire to manage the portfolio scientifically; to find out general accident rate and claim reporting rate in India and control & eliminate the leakage resulting in excess outgo.

### Test Yourself 4

Differential rating is the rating based on scientific method of pricing the product on\_\_\_\_\_.

- I. Incremental basis
- II. Make and Model basis
- III. Piecemeal basis
- IV. Claim formula

### G. Motor Underwriting

Few years back the insurance regulator has to permit reduction in Solvency ratio of the General Insurers who were asked to absorb additional revised amounts for ensuring adequate provisioning.

The lack of compliance with global NCAP norms for Auto Crash Test is contributing to loss of life and increasing number of total loss claims to be borne by insurers. This information about compliance with safety standards is crucial factor for rating the risk.

Motor is the largest portfolio of General Insurance segment and the profitability of the entire insurance portfolio depends on how best motor insurance is managed in de-tariff era for a vibrant insurance market to emerge.

#### 1. The name of the game - Data collection

Proposal form is the backbone which caters to data requirements, client contact, details of Up sell / Cross sell, coverage's desired, underwriting information; Business description.

##### a) Tick box information"s like

i. **Security arrangement** Closed garage/ Open garage/ Road side parking

##### ii. **Segmentation variables** in the

- (a) Class and sub class e.g. Private car/ Commercial Vehicles/ Miscellaneous
- (b) Geographical variables like Rural / Urban/ Metro/ Hill Area / Coastal Zone;
- (c) Age / Sex;
- (d) Distance to work/ Distance driven;
- (e) Driving violations/Convictions/History

- iii. **Good features** of the risk e.g. claims history; Accounting v/s Inception date;
- iv. **Type of transaction** like New Business/ Existing/Current/ Renewal;
- v. **Insured information:** client name/Occupation / Address/ Phone/ client code/ special client code/ Policy address, Product detailing, Standalone / Package.
- vi. **Policy information:** Start date / Expiry date / Proposal date/ Time
- vii. **Producer information:** Name / City / Sub producer / Commission
- viii. **Previous policy information:** Claims number / (Coverage claims) Amount
- ix. **Underwriter database**
  - (a) Bonus/Malus
  - (b) Location / Distance covered/ Repairs/Replacement
  - (c) Coverage detailing
  - (d) SI / Deductible / Terms
- x. **Legal checks:** Sec 64VB, Service tax, Stamp duty, Fees and charges, Collection details

We need to know New Vs Renewal... Monthly Frequency & Large Risk Trends...; Monthly Severity Trends ...Pure Premium vs. Average Premium; Earned Exposures Vs. Claims

**b) Risk Selection, Underwriting...Key Criteria:**

The following points should be looked into risk selection, underwriting:

- i. Insured/Driver Age;
- ii. Health
- iii. Sex of Drivers;
- iv. Education of Driver; Convictions of Drivers
- v. Occupation of Owner
- vi. Usage of vehicle - Frequency of use;
- vii. New/Old vehicle;



### viii. Credit History of Owner

**Key Criteria:** Following are key criterion in Motor vehicle Insurance:

- i. Location / Zone / Catastrophe; Area (Notified or riot etc.);
- ii. Good features about regular maintenance / use of Original Spare parts/ Claims history of said vehicle/ of driver;
- iii. Bad features e.g. Accidental Vehicle; Security arrangements; Maintenance practices; repair practices
- iv. Past Insurer and conditions regarding age of Vehicle - new or obsolete; Freq. of losses; Low lying area; Credit History; Credit Standing & Driving Record;
- v. Segmentation Adequate pricing; Benefits to good segments; Low LR segments by age; Vehicles driven by Males / Females; Age of driver; Financial standing

### c) Bottom-line Underwriting Indicators

- i. The bottom line indicators are Pure Premium; Average Premium; Frequency; Severity; Loss Ratio; IBNR; IBNER (Not enough reported); Expenses; Pure & Average Premium... Calculation on earned exposures; Importance of data size; Impact of large losses.
- ii. **Pricing:** How is pricing of an insurance product different? The main reason is that the underlying costs are not known before the sale. The Law of Large Numbers; The importance of large numbers, Homogeneity; Independence; Randomness need to be considered while pricing a product.
- iii. **Rate:** The rate should be adequate. The main challenges for rating are Averages; Competition; Regulations and not being unfairly discriminatory. The Challenges of regulations should not be excessive but simple to administer.
- iv. **Segmented Rating:** this is done to manage exposures... viz Risk Accumulation / Aggregation; Catastrophe; Frequency; Severity; Risk Selection; Reinsurance - Liability Exposures.

Pure premium = Frequency x Severity

$$\text{Frequency} = \frac{\# \text{ of claims}}{\text{ECY or EUY}}$$

$$\text{Severity} = \frac{\text{Amount incurred}}{\# \text{ of claims}}$$

$$\text{Average premium} = \frac{\text{Written premium}}{\text{WCYOR WUY}}$$

Frequency... The probability of a loss occurring

**d) Indicator for segment behavior:**

Severity... The 'average' incurred loss is an indicator for 'Pure' premium which involves complex factor like business mix, market/claim practices, inflation etc.

**e) Incurred But Not Reported:**

Incurred but not reported claims (IBNR) is an important additive to Loss Ratio indicative of market practices crucial to account for liability claims;

## 2. Underwriting scores methodology and its impact

While underwriting, various factors are identified and a score is provided for each factor on a predetermined scale. Each factor is analysed separately and its impact is converted into a score. The favourable and adverse factor scores are added and a net score is found out.

The net score will allow the underwriter to decide whether to grant cover, the type of cover and terms and conditions on which he is ready to accept the business. Various score are in vogue which is provided by insurance Marketing firms to enable insurers to arrive at a decision.

**a) Insurance Risk Score**

When an insured applies for a car insurance policy or submit a claim, he is probably unaware of the streams of his personal information that flows between an Insurance Company and Insurance Marketing Firms. Today, the true power lies in the hands of the database companies that sell information about you.

The "credit scores" used by the auto insurance industries are actually "Insurance Risk Scores." Both scores are based on information contained in insured's full credit report, but they put weight on different factors in order to calculate a final score. Thus, even if a person purchases his credit score from one of the major credit-reporting agencies, he still doesn't know his "insurance risk score."

A 'credit score' weighs data to determine, how one will become seriously late in repaying to a lender. But 'insurance scores' are used to evaluate one's past use of credit to predict how likely he is to make claims in the future. If one has managed his credit well, he is likely to manage his house and car well, resulting in fewer expensive claims. 'Insurance scores' do not factor in race or income.

'Credit scores' and 'insurance scores' generally move in the same direction as one's credit history changes (meaning improving or worsening), but there could be cases where one has credit activity that impacts one type of score more than the other.

Generally the insurance score calculation puts weight on data this way:

Payment history, collections, bankruptcy	40 percent
Amounts owed	30 percent
Length of credit history	15 percent
New credit applications	10 percent
Type of credit used	5 percent

Most Auto insurers use 'insurance scores' to place the insured in a rate class (like preferred, standard or high-risk) and set a price for him within that class. There is a direct correlation between one's score and the likelihood that he'll make a claim, at the same time it permits insurers to charge higher premiums to lower income households.

Most countries have laws that restrict the use of credit scores and insurers can't use the scores as the sole basis for setting rates or for refusing to issue you a policy or renew your policy.

If a person has some unusual activity within the month before he buys car insurance, his insurance score could drop. Insurers may then consider him as a bad risk (where allowed by law) and refuse to sell him a policy, or charge him a higher car insurance rates for it. There are many factors that auto insurers use when evaluating their customer, including his driving record, his claims history, where he lives and vehicle model etc. 'Insurance Scores' are based on credit reports.

They are used by insurers to help decide whether to sell a policy and if so what rate is to be set. An Insured can know his score for a nominal cost and check his insurance score and how it compares to other consumers and his "risk category."

### **b) Claims Score, Automobile Loss Underwriting Reports**

'Claims score' are also sold to insurance companies which combines credit information of insured and his previous claims history to predict future claims level.

'Automobile Loss Underwriting reports' can be provided to insurers containing up to a seven-year history of claims associated with his auto insurance, including loss types, dates of loss, amounts paid, and his past and present policy numbers, claim numbers and auto insurers. An insured can receive this –Automobile Loss underwriting Report" free once a year which he can dispute for inaccurate information in it, much like a credit report.

Other services to insurers may include 'motor vehicle reports' and a –Current Carrier" database that lists your current insurers, coverage's and limits. Insurance Marketing firms can sell insurers access to its 'Automobile Loss Underwriting database', which may contain three to five years worth of claims information on specific types of automobile losses.

### **c) Motor vehicle record**

Motor vehicle record will include Motor vehicle-registration details such as car's Registration number, engine and chassis number, seating capacity/load carrying capacity, whether owner have regular, dealer or vanity plates, whether the vehicle has been titled as flood damaged, salvage, total loss etc., and other vehicle data. "Undisclosed-driver reports" meaning "hidden drivers" that are likely drivers of the insured car but not listed on policy applications.

### **d) Insurers Own Model Of Scoring**

Auto insurance companies can have their own "scores" like –prior loss history and certain credit characteristics" to create its own model that will help it in determining an underwriting score for a policyholder applying for a auto policy. Insurance companies can combine credit characteristics and prior claims history in these models using their own book of business.

These models are not designed to assess wealth, income or creditworthiness, but focus on the prediction of future insurance losses." The "use of this model will lessen the extent to which those who represent higher potential risk are subsidized by those who represent lower potential risk."

### e) Claim Search system

Similarly a ‘Claim Search system’ can also be made to detect fraud and to help insurers identify policyholder claims histories. It is not used by insurers in deciding whether to sell a policy or set rate, but it's used when claims are made.

The Claim Search system searches the database for other claims made by the same person or business. If a series of claims look suspicious – for example, the same name appears on all the claims with a different Aadhar Card number – the system alerts the insurer to investigate further.

### Test Yourself 5

Which of the following best describes the purpose of a ‘Claim Search system’?

- I. Used by insurers in deciding whether to sell a policy
- II. Used by insurers in setting rates
- III. Used to detect fraud and to help insurers identify policyholder claims histories.
- IV. All of the above.

## Summary

- a) Motor Vehicle insurance in India was governed by India Motor Tariffs effective from 01-08-1989 till December 2006.
- b) Further rationalization has been done vide IRDA/NL/ORD/MPL/077/03/2012 dated 29<sup>th</sup> March, 2012.
- c) The Third Party Liability premium is still being regulated by the IRDA. All other terms conditions and rules of the erstwhile India Motor Tariff are still in use.
- d) Although the insurers have been freed from the tyranny of tariff norms for Motor OD rating, they continue to follow the erstwhile Tariff guidelines including wordings.
- e) All terms conditions and rules of the erstwhile India Motor Tariff 2002 are still in force.
- f) The standard documentation and General Regulations include:
  - ✓ Proposal form GR2
  - ✓ Proposal form GR3
  - ✓ Cover Note (GR 22)
  - ✓ Certificate of insurance (GR 23)
  - ✓ Cancellation of insurance and double insurance (GR 24)
  - ✓ Cancellation and issuance of fresh certificate of insurance (GR 25)
  - ✓ Certificate or cover note destroyed, torn, soiled, defaced or mutilated (GR 26)
  - ✓ Extension of geographical area (GR4): (IMT 1)
  - ✓ Geographical zones (GR 10)
  - ✓ Insured's declared value (GR 8)
  - ✓ Schedule of depreciation for arriving at IDV
  - ✓ Depreciation on parts for partial loss claims (GR 9)
  - ✓ Period of insurance (GR 11)
  - ✓ Premium rates for short period cover (GR 12)
  - ✓ Short period scale
  - ✓ Rating
  - ✓ Discounts
  - ✓ Extra benefits (add-ons)
  - ✓ No claim bonus (GR 27)
  - ✓ Compulsory deductibles (GR 40)
  - ✓ Vehicles subject to hire purchase gr 19 (IMT - 5) / lease vehicles GR 20 (IMT - 6)
  - ✓ Vehicles subject to hypothecation (GR 21) (IMT - 7)
  - ✓ Transfers (GR 17) (IMT - 3)
  - ✓ Change of vehicle (GR 18)
  - ✓ Towing charges GR 47

- ✓ Submission of Statistics (GR 48)
  - ✓ Interpretation of India Motor Tariff (GR 49)
- g) Subsequent to de-tariffing most insurer continued to follow the tariff system and rates as base premium. They are then working out discounts and loading on the basis of their perceptions of risk.
- h) The motor tariff was withdrawn with effect from 1<sup>st</sup> Jan 2007. Insurers are permitted to devise their own premium structure for Own damage coverage.
- i) Based on this leeway to insurers the **extra** Cover or **Add-ons** are now being offered by insurers.
- j) Motor insurance in India has substantially followed the practice of the UK insurance market. Internationally Motor is non tariff business except in some of the less developed countries of Asia and Africa.
- k) Underwriting in motor insurance involves:
- ✓ Underwriters' critical analysis
  - ✓ Long term underwriting strategy
  - ✓ Risk profiling
  - ✓ The Vehicle
  - ✓ The Use of the Vehicle
  - ✓ The Area of Operation
  - ✓ The Driver of the Vehicle
  - ✓ The claims experience
  - ✓ No claim discount
  - ✓ Moral Hazard
  - ✓ Other factors in determining premiums
  - ✓ Accident repairing cost
  - ✓ Competitive premium model
- l) The Indian motor insurance market is ridden with lack of sound underwriting policy, lack of IT compatibility of data extraction & analysis and to convert the data into usable electronic form, to analyse true cost of motor risk.
- m) Basis of rates in India is engine capacity and carrying capacity of the vehicle, sum insured; and geographical location.
- n) Rating factor are those factors which have direct impact on out go of insurers.
- o) The three most important objectives of pricing relate to Premium adequacy, Fairness & Simplicity; Consistency & Flexibility.



- p) The lack of compliance with global NCAP norms for Auto Crash Test is contributing to loss of life and increasing number of total loss claims to be borne by insurers.
  - q) The "credit scores" used by the auto insurance industries are actually "insurance risk scores." Both scores are based on information contained in insured's full credit report, but they put weight on different factors in order to calculate a final score.
  - r) Most Auto insurers use 'insurance scores' to place the insured in a rate class (like preferred, standard or high-risk) and set a price for him within that class.
- 



**Answers to Test Yourself****Answer 1**

The correct answer is II.

Motor Vehicle insurance in India was governed by India Motor Tariffs effective from 01-08-1989 till December 2006.

**Answer 2**

The correct answer is IV.

No claim bonus is earned only on the Own damage section of the Package policy covering all classes of vehicle except Motor trade policies, Road Transit Risks; Road Risks: Internal Risks.

**Answer 3**

The correct answer is III.

All proposal forms elicit full particulars of settled and outstanding claims in connection with any motor vehicle owned or driven by the proposer during the last preceding 3 to 5 years.

**Answer 4**

The correct answer is II.

Differential rating is the rating based on scientific method of pricing the product on Make and Model basis.

**Answer 5**

The correct answer is III.

A 'Claim Search system' is used to detect fraud and to help insurers identify policyholder claims histories.

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**Self-Examination Questions****Question 1**

Under the OD section of the policy, the sum insured for 'loss of personal belongings' cannot exceed\_\_\_\_\_.

- I. Rs. 12,500
- II. Rs. 25,000
- III. Rs. 50,000
- IV. Rs. 1,00,000

**Question 2**

Which of the following proposal form is required to be submitted by the insured before the commencement of cover, and at renewal in case of material alternation or in case of change of insurer?

- I. GR 2
- II. GR 3
- III. GR 22
- IV. GR 23

**Question 3**

According to GT 40, the compulsory deductible for Motorised two wheelers is:

- I. Rs. 200
  - II. Rs. 100
  - III. Rs. 50
  - IV. Rs. 500
-

**Answers to Self-Examination Questions****Answer 1**

The correct option is III.

Under the OD section of the policy, the sum insured for ‘loss of personal belongings’ cannot exceed Rs. 50,000.

**Answer 2**

The correct option is I.

GR 2 proposal form is required to be submitted by the insured before the commencement of cover, and at renewal in case of material alternation or in case of change of insurer.

**Answer 3**

The correct option is II.

According to GR 40, the compulsory deductible for Motorised two wheelers is Rs. 100.

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# CHAPTER 5

## MOTOR INSURANCE CLAIMS

### Chapter Introduction

In this chapter you will learn about the concept of motor insurance claims, motor claims work-flow procedures and type of losses. You will also learn about the role of the Surveyor in general and his role in loss minimisation in motor insurance. Towards the end of the chapter we will focus on the role of road safety in insurance by insurance industry and frauds in motor own damage claims and ways to mitigate frauds.

### Learning Outcomes

- A. Motor Insurance Claims
- B. Types of Losses
- C. Surveyor and his role in Loss Minimisation
- D. Role of Road Safety in Insurance
- E. Frauds in Motor OD Claims



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## A. Motor Insurance Claims

### 1. Doctrine of cause of Accident

The cause of accident and probable damage caused due to a particular reason is the most important aspect to be taken into consideration in all motor claims. There is always a direct relationship between the cause of accident and damages to the vehicle out of a particular reason and depends on the transmission of the impact load; jerk load and absorption of these load waves at different points by the chassis of impact cling upon the circumstances of accident, intensity and structure of the vehicle.

#### Example

A head on collision damage to damper pulley confirms the damages to crank shaft. Similarly club housing cannot be damaged unless there is positive displacement of the engine backwardly.

A Motor Surveyor can prepare the list of effected parts / assemblies if he knows the correct cause of accident. At times actual cause of accident is little different than that recorded in the claim form by the insured while the estimate gives some other description.

Generally shearing forces do not apply in the accident and most of the time they are bending forces. It can be ascertained only on the spot, whether the particular part has suffered a direct impact or indirect impact. An analytical study of such claim reveals that the cause of accident is mechanical breakdown in the vehicle due to sudden shearing off a particular part, which caused the vehicle to go out of control resulting in damages to vehicle going off the road.

As a matter of fact Motor Insurance Policy does not cover break down of a part which was the material cause of accident. The insured fabricate the cause of accident with an intention to cover such part.

Similarly there are cases where shearing off front axle is claimed in commercial vehicles which took place due to structural failure of the metal and will be termed as Mechanical Breakdown which is not covered in the Motor Insurance Policy.

### Example

A car dashed with the rear end of a truck but the damages claimed were very different than what could have been actually caused. The damages will be horizontal line damages but during inspection it was revealed that the damages were caused due to shearing forces applied to the vehicle along vertical line.

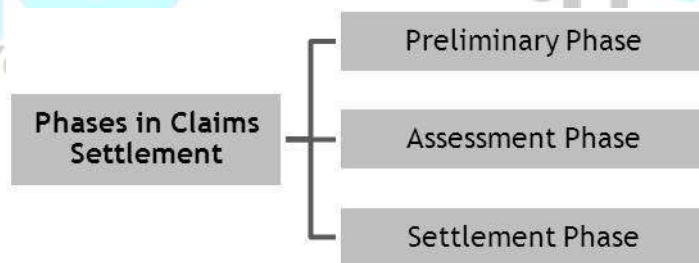
The surveyor was at loss to justify the claim due to the cause of accident given in the claim form. During discussions insured finally agreed that in fact the accident took place with an electric pole but with a fear of police case by the electricity board, insured had not mentioned the actual cause.

## 2. Motor Insurance Claims Procedures

Motor insurance claims due to use of vehicle in public place involve property damage and bodily injury &/or death caused to third party including passengers travelling in the vehicle and the employees engaged in driving, loading and unloading of vehicle as envisaged in MV Act, 1988 besides damages caused to vehicle resulting in total and partial loss due to accident or fire and/or theft of the vehicle.

### a) Own Damage Claims

Diagram 1: Own damage claims



From the procedural viewpoint claim settlement involves three phases - preliminary scrutiny, assessment of the loss and settlement.

#### i. Preliminary Scrutiny Phase

On receipt of notice of loss, the policy records are checked to verify that the policy is in force and that it covers the said vehicle involved in the accident. The loss is entered in the **"Claims Register"** and a **"Claim Form"** is issued to the insured for completion and return. In case of commercial vehicles, it is the practice of insurers to arrange for a survey of the vehicle at the spot of the accident.



This establishes genuineness of the accident and prevents probability of unwarranted damages and as a consequence excessive claim amounts. The surveyor usually checks the vehicle, driver's documents, as also load, carried, if any.

The insured is required to submit a detailed estimate of repairs from any repairer of his choice. Generally, these repairs are acceptable to the insurer, but at times they may ask the insured to obtain repair estimate from another repairer, if they have reason to believe that the competence, moral hazard or business integrity of the repairer first chosen is not satisfactory.

## ii. Assessment Phase

Independent automobile surveyors are assigned the task of assessing the cause and extent of loss where the loss is more than Rs. 20,000/- (as per insurance Act 1938). They are provided with a copy of the policy, the claim form and the repairer's estimate. They inspect the damaged vehicle, discuss the cost of repair or replacement with the repairer and submit their survey report.

In respect of minor damage claims, where the loss is less than Rs. 20,000/- independent surveyors are not necessarily appointed. The insurers' in house officials or their own automobile engineers inspect the vehicle and submit an assessment report.

## iii. Settlement Phase

The survey report is examined and settlement is effected in accordance with the recommendations contained therein. The usual practice is to authorise repairs directly with the repairer to whom a letter is issued to the effect. In this letter of authorization the repairers are also instructed to collect directly from the insured the amount of deductible, if applicable to the claim, and also the amount of depreciation to be borne by the insured, before delivering the repaired vehicle to him.

The repairers are also instructed to keep aside the **salvage** of damaged parts, if there are any, for being collected by the salvage buyer nominated by the insurers. Or else, if the repairer/insured were willing to retain the salvage, its value, as indicated by the surveyor, is deducted from the claim bill. On receipt of final bill after completion of repairs and a **satisfaction note or discharge voucher** from the insured that the vehicle has been repaired to his satisfaction, payment to the repairer is made.

Sometimes, the repairer is paid directly by the insured, in which case the insured is reimbursed on submission of a receipted bill from the repairers. In either case, discharge voucher or receipt is obtained. The Claims Register, the Policy and renewal records are marked that the claim is paid indicating the amount of claim and the amount of salvage recovered, if any.

Information Technology (IT) has helped improvement in claim management. Most private insurers have centralised their claim settlement process with a dedicated call centre team on 24 hours basis.

In the event of a loss the insured is required to telephonically contact the call centre on the number provided in the policy, and provide the policy particulars. The details are immediately verified and a claim number is allotted.

The insured is also queried on the details of the accident and the location of the vehicle at the time of accident. If towing assistance is required, this is arranged through the approved towing service provider or repairer.

### 3. Claim Documents

**Claim Form:** The format and the contents of the claim form differ from insurer to insurer but the claim form contains questions relating to the following particulars:

#### a) The Insured

The name of the insured, address, occupation, policy number, date of payment of last premium to identify the policy in the insurers' records, and to supplement the preliminary scrutiny. All the answers on the claim form are verified with the policy records and discrepancy if any is cleared up as soon as possible.

#### b) The Vehicle

The details required in an accident in respect of the vehicle concerned are,

- i. Make and year,
- i . Horse power or cubic capacity,
- i i. Registered letters and number,
- iv. Whether the claimant is the owner of the vehicle or is it hired to him under a hire purchase agreement, and is it registered in his name? If not, the full name and address of the owner has to be given.

It is necessary to make sure that the claimant is registered owner of the vehicle. In India, motor policies are not allowed to be issued in any other name except that of a registered owner. If the answer to the above question is in the negative, it will be necessary to scrutinise the original proposal form to find out who had proposed for this insurance.

If the claimant himself was the proposer, even though he was not the registered owner, it will be obvious that the relevant question in the proposal form was wrongly answered, in which event the contract will be treated as void and the claim will not be payable.

The information whether any hire purchase company is involved becomes necessary with a view to ascertaining, whether the claim proceeds in the event of Total Loss or a loss not reimbursed by payment to the repairers has to be paid to the hire purchase party, whose name is recorded in the policy by virtue of Standard endorsement.

It may so happen that the registered owner in whose name the policy has been issued was driving another car not belonging to him at the time of the accident and the claim has been lodged for damage to this car or for personal injuries to a Third Party under the "Driving Other Car" Clause. In India the owner of the car remains liable for the own damage and third party claim, if the person driving the accidented vehicle, was doing so with due permission of the registered owner.

In some countries it is necessary to point out to the claimant that 'driving others car clause' does not apply to Section I (Damage to Vehicle) of the Policy but to Section II - (Third Party Section) only. He will, therefore, have to be advised to ask the registered owner to approach his own insurer for reimbursement of own damage loss, while the third party claim will be borne by 'drivers clause' in his Motor Insurance.

### Author Note

In India we do not have any provision of insurance for 'driving other's car' liability Insurance. It may cause a peculiar situation where an uninsured vehicle is driven by a non registered owner in contravention of the Third party mandatory insurance resulting in criminal liability on person driving other car for accidental death, while authorizing to drive an uninsured car remains a civil liability under MV Act 1988.

Even in the Third Party Claims, the Motor Accident Claims Tribunals in India hold the owner of the car involved in the accident to be responsible to pay compensation to the injured Third Parties. Thus, even for a personal injury claim the insurer of the car will have to be notified and not the insurer of the person who was driving the car at the material time.

It is for this reason that the "Driver Clause" omits any mention that "the insured may also drive a motor car not belonging to him and not hired to him under a Hire Purchase Agreement", as was formerly the case.

For a Commercial vehicle, these additional questions are asked:

- i. Registered laden weight .... unladen weight ....
- ii. Nature of goods carried.
- iii. Was the vehicle loaded to capacity?
- iv. What was the weight of goods carried?

### c) The Use of the Vehicle

There is need to ascertain use of vehicle by posing the following questions:

- i. Please state the exact purpose for which the vehicle was being used at the time of the accident:
  - ii. Was it being used solely for social, domestic and pleasure purposes?
    - iii. If the vehicle was being used for business purposes, please state
      - (a) Upon whose business was it being used?
      - (b) Were goods being carried? If so, state their nature.
      - (c) Was the vehicle being used for hire or reward?
      - (d) Were passengers being carried? If so, please state how many and their relationship to the insured.

The purpose of these questions is to ascertain whether the condition relating to –Limitation as to Use" was complied with or not.

### d) The Driver

- i. Name of the Driver; Age .....; Address of the driver.....
- ii. Is driver (a) Owner (b) Owner's Paid Driver or (c) Owner's relative or friend?
- iii. Was he sober and fully competent to drive?
- iv. No. of driving license. .... Is it temporary or permanent?

- v. Date of Expiry.....
- vi. Has it been endorsed, If so, particulars..... ?
- vi . Was it being used within the terms of the "limitations as to use?
- vi i. Has Driver previously been involved in an accident?
- ix. If paid Driver, how long has been in the employment of the claimant?
- x. Have the Police charged the Driver, and if so, why?

All these questions have to be answered. Very few of them are inapplicable, even if the insured was driving. For example, it is curious how often the details given in the notice of accident form, about the duration for which the insured has held a license and the number of endorsements, differ from the information supplied in the proposal form. It is important to ascertain the relationship between the driver and the insured.

If the driver happens to be paid driver and if he is himself injured as result of the accident, it will be necessary to examine the liability towards him under the Employee's Compensation Act 1923, as provided by the policy. It is also essential that he was sober and not under the influence of liquor or drugs at the material time. Otherwise, the own damage claim will not be payable. However, any third party claim for death / personal injuries only will not be affected in terms of the clause contained in "General Exceptions" of the policy.

The information in regard to the type of the driving license and its expiry date will have to tally with the requirements of the "Drivers Clause" printed on the schedule of the policy. According to this clause, the person driving must hold a valid and effective driving license. It must be valid for the particular type of vehicle which met with an accident.

### Example

For example, if the license is restricted to drive a Light Motor Vehicle (L.M.V) the driver is prohibited from driving a Heavy Motor Vehicle (H.M.V.).

Similarly, if the license issued only to drive motor cycle, it is not valid to for driving a private car.

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The **"Expiry Date"** of license will disclose whether the license was current at the time of the accident. If the license has already expired, the Driver Clause provides that the person driving must have held a license in the past and is not disqualified from obtaining such license. The important point to be borne in mind in such cases is that the driver must have had a permanent license in the past and which had expired. If he had held only a learner's license in the past and which was not followed by a Permanent License, the claim will not be payable. Even when the permanent license had expired prior to the date of accident, the claim will not be settled until the driver applies for and produces a fresh license.

### Definition

The Motor Vehicles Act, 1988 defines **"driving license"** as license issued by a competent authority authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle of any specified class or description.

Therefore, under the new Motor Vehicles Act, 1988, a "Learners License" is not considered to be a "Driving License".

The information regarding the name of the driver assumes importance when a policy contains a 'Driver Clause' which is amended to exclude a particular person from driving by adding the words "other than Mr. / Mrs. " after the words "Any Person". This practice is usually followed whenever a proposal for Private Car is received from an aged person who is not in a position to drive safely, or from a handicapped person who is unable to drive a car.

"Is there any other Policy indemnifying you or the Driver in respect of this accident?" This is to ensure that contribution, if applicable, is enforced.

i. Date , Time, Place

i . Estimated speed of the vehicle ..... km per hour. A short description of the Accident, Loss or Break-down.

If accident was caused by the fault of any Third Party, the name and address of such person(s):

i. Date, Time, Place

i . What has been stolen? Estimated cost of replacement

i . If theft occurred while vehicle was standing in street, was it unattended? If so, how long? If car was in garage, was forcible entry made? When was the theft reported to the insured? By whom discovered and when?

- iv. Have Police been notified? If so, when and with what result? Name of Police Station and Station Diary Number.
- v. Is paid Driver kept? If so, how long has he been in the service of the insured?
- vi. Is any person suspected?

**e) Witnesses**

- i. Names and addresses of all witnesses of Accident
- i . Passengers in Car, Independent Witnesses, If Witnesses' names were not taken, reason therefore.
- i . Did a Police Constable witness Accident or take particulars? If so, the Constable's Number.
- iv. Was Accident reported to Police? If so, the name of the Police Station and Station Diary Number (SDN).
- v. Was any statement, as to fault, made by witnesses or drivers at any time? If so, a copy has to be attached.
- vi. Name, Address, Full extent of personal injuries or Damage to property
- vi . Has notice of any Claim been given to the Insured?
- vii. . The Insured is advised to "dispatch to the Company forthwith and unanswered any written Communication which may have been received".

**f) Injury to Driver / Occupants**

The question reads:

"Was any injury sustained by your Driver or Occupants of your Motor Vehicle or by any third party? If so, state fully extent thereof.

If any injured person has been removed to a Hospital or Medically attended to, give name and address of the Hospital or Doctor."

**g) Damage to the Vehicle**

- i. Full particulars of the Damage.
- i . Estimated cost of repairs.
- ii. . Address where damaged vehicle may be inspected at ... on...



### h) Sketch

The claim form provides space for a rough sketch of the scene of accident.

The claim form concludes with a declaration which reads as follows:

"I / We the above named, do hereby, to the best of my / our knowledge and belief, warrant the truth of the foregoing statements in every respect; and I / We agree that if I / We have made, or in any further declaration the Company may require in respect of the said accident shall make any false or fraudulent statement, or any suppression or concealment, the Policy shall be void and all rights to recover there under in respect of past or future accidents shall be forfeited."

### The Survey Report

The survey report would amplify the information obtained in the claim form and also incorporate additional information. There is no standardised form for survey report, but the following information is expected in a survey report.

#### a) The Accident

i. Date of Occurrence, Time,

ii. Place (Street, Road, Town) under Police Station

iii. Cause of Accident:

iv. Any Special features:

v. No. of Photographs attached:

#### b) The Assessment of loss

Sr. No.		Repairer's Estimate	Surveyor's Assessment
1	Labour		
2			
a)	Parts		
b)	Less Depreciation at %		
3	Excess, if any		
4	Salvage		

### c) Net Liability of Insurer

Labour + Parts (Less Depreciation) - Excess - Salvage = Rs.....

### d) General Observations

These would relate to compliance with policy conditions, warranties, etc., and would be followed by surveyor's recommendations regarding the payment of the claim. If adverse features are involved, the surveyor would leave the settlement question to the insurers, giving his reason.

### Other Documents

The other documents required for processing the claim are:

i. Driving License

ii. Registration Certificate Book

iii. Fitness Certificate: This applies to Commercial Vehicles. Section 56 of the MV Act 1988 specifically states that the Vehicle registration is invalid without the 'Fitness certificate'.

iv. Permit

v. Police Report

vi. Final Bill from repairers

vii. Satisfaction Note from the insured

viii. Receipted bill from the repairer, if paid by insured

### Technical aspects of, problems involved in assessment and settlement

The exclusions under Section I of the operative clause of the comprehensive policy lead to several disagreements between the insured and insurers.

- a) Own damage claims are far more than the third party claims. These claims may be of minor nature (e.g., mere scratching), or of major nature (e.g. head-on collision or total loss by fire or theft).
- b) The motor insurance policy is not a maintenance contract; it is a contract of indemnity. Many a time, repair or replacement will result in improvement in the vehicle.

### Example

For example, the liability under the policy is restricted to paint of the portion affected by the accident, but the insured would naturally expect the entire car to be painted to avoid a "patchy appearance". In such cases, the insured is expected to contribute towards the additional cost of repainting the entire car.

- c) Sometimes with older vehicles particularly - dismantling of a vehicle reveals certain defects which are not directly connected with the accident but still will have to be made good for a satisfactory repair of the whole vehicle.

### Example

For example, the effect of rust is revealed only after dismantling and will have to be rectified before a new part is fitted. These costs are in the nature of maintenance expenses and the insured will have to bear the costs of these incidental repairs which are not directly related to the accident.

- d) Another area of misunderstanding between the insured and insurers is that of depreciation charged when old parts are replaced by new ones. Here again, the insured is expected to bear a certain part of the cost. This is based on the principle of indemnity whereby the insured must neither benefit by the accident nor be left to suffer.

This is implied not by any specific condition in the policy but by the operative clause itself which reads **"The Company will indemnify the insured against loss etc."**

The rate of depreciation varies according to the type of part replaced, the age of the vehicle and its general maintenance. The rate of depreciation is highest for rubber parts, whereas no depreciation is applied when windscreen glass is replaced. Depreciation ranging from 25% to 30% is charged on replacement of 'cabin and body' of a public carrier, because wood is subject to weather conditions and fatigue and the joints of cabin would be loosened due to operating conditions such as uneven loading, bad road conditions, high speed, overloading, etc.

Therefore, insurers endeavor to ensure, especially with older vehicles, that damage caused by general deterioration of body work is not claimed for as accidental damage. The edges of body panels become rusted or corroded in the course of time.

**Example**

For example, sea water has a highly corroding effect upon metal. When accidental damage repairs are carried out, some wear and tear too will have to be made good. The principle of indemnity demands that the insured must contribute to the cost. When damaged parts are replaced by new, an allowance is sought from the repairers towards the value of salvage. Alternatively, old parts are recovered and sold as scrap or if of no economic value salvage is destroyed.

The standard Package Policy makes express provision concerning deduction for depreciation at the rates, mentioned in the policy, in respect of parts replaced.

As depreciation applicable is now expressly spelt out in the Policy Form, this area of misunderstanding is removed for all Vehicles.

- e) Differences also arise on the question of repair or replacement and it may be more profitable for the repairer to replace a new part than to repair an old one. If the part is repairable and the safety of the vehicle is not impaired, then the repair is insisted upon. The work is entrusted to competent repairer or to makers or to a firm of specialists. A good deal of specialisation has crept in motor repair work. There are specialist firms for welding, repair or replacement of chassis frames, radiators, coach work, painting etc.

**Test Yourself 1**

Which of the following statement is correct?

- I. In every case, independent automobile surveyors are assigned the task of assessing the cause and extent of loss irrespective of the amount of loss.
- II. Independent automobile surveyors are assigned the task of assessing the cause and extent of loss where the loss is more than Rs. 20,000/-.
- III. The insurer, insured and the agent mutually decide to appoint an independent automobile surveyor to assess the cause and extent of loss where the loss is more than Rs. 20,000/-.
- IV. The insurer and insured independently appoint their own automobile surveyor to assess the cause and extent of loss where the loss is more than Rs. 20,000/-. The insurer and the insured jointly study the two reports and mutually agree to the loss amount to be paid

## B. Types of Losses

### 1. Types of Losses

The different types of losses include the following:

#### a) Total Loss or Constructive Total Loss

A vehicle is treated as total loss mainly when it is considered that economical repairs are not possible. Whenever a surveyor finds that a vehicle is either beyond repairs or the cost of repair exceeds 75% of the IDV; he assesses the claim on a Constructive Total Loss basis (CTL). However, before releasing the actual payment to the insured, the insurers collect

- i. Registration book and Taxation receipt,
- ii. Ignition keys in duplicate and
- iii. Blank TO and T.T.O. forms duly signed by the insured

The above documents are collected so that salvage can be transferred in the name of the salvage buyer. If the vehicle is beyond repairs and has to be scrapped the R.C. Book and the keys will have to be returned to the Registering Authority for cancellation.

For computing Total loss value of a vehicle on the date of loss, we need to work out:

- i. Depreciated cost of chassis (X) by deducting cost of all five new tyres (including stepny) from replacement value of the vehicle having same specification and make as on date of loss by applying depreciation on chassis as applicable and adding back 50% cost of tyres.
- ii. Thereafter depreciated value of Body (Y) is worked out on applicable higher deprecation due to wood work / upholstery etc. on the cost of body fabrication.

Total loss without salvage =  $[X+Y - \text{Excess clause}]$

The salvage is collected by insurer and disposed off later to reduce their claims out go.

The fair value of salvage on —as is where is basis is the difference of expected value of the damaged vehicle after necessary repairs and replacement [X] (this value is the fair market resale price after arranging necessary repairs and replacements) from the estimated value of parts and labour for replacement, to bring the vehicle in roadworthy condition [Y] (after considering depreciated values)

Fair value of salvage [S] =  $[X] - [Y]$

## b) Total Loss due to Theft

Total loss can also arise due to theft of the vehicle remaining untraced by the police authorities. This loss due to theft will have to be supported by a copy of the First Information Report (FIR) lodged with the Police authorities immediately after the theft has been detected. The Police authorities register complaint allotting it a number of the entry made in the Station Diary. This number, which is usually known as SDE (Station Diary entry) No. or C.R. No. (Crime Register) has to be quoted by the insured in the claim intimation to the insurers.

An assessor may be called to investigate the theft of a vehicle and to negotiate a settlement (where IDV is not applicable) with the insured in the event of the vehicle not being recovered. It is necessary to ascertain following information from the insured:

- i. Detailed circumstances surrounding the event
- i . Time & place of leaving the vehicle and time of discovering loss
- i i. When Police was informed?
- iv. Details given in FIR lodged with Police
- v. Full details of vehicle and log book if any maintained
- vi. Date of purchase of vehicle
- vi . Price originally paid
- vii. . Any major items of expenditure which might have brought the condition of the vehicle above average
- ix. Manufacturers price list on the date of loss

It is usual for insurers to wait for at least a month after the vehicle was stolen. The police keep the investigations on until the vehicle is traced and delivered to its owner. However, if they do not succeed in recovering the vehicle after a period of 90 days, they file away the claim, certifying that the theft of vehicle is classified as true but untraceable. This untraced Certificate is essential before a Total loss claim following theft of vehicle is settled by the insurers.

The documents to be submitted by the insured will be the same as those described above. If the R.C. book and Taxation Certificate are also stolen along with the vehicle, it will be necessary for the insured to obtain duplicate ones from the Registering Transport Authority and thereafter to be deposited with the insurers.

The only additional documents will be a letter addressed by the insured to the R.T.A. informing about the loss of the vehicle due to theft and filling of a Non-Use Form so that he is not made liable to pay the taxes.

Some insurers also obtain from the insured an 'indemnity bond' which is special type of discharge on a stamped paper, whereby the insured undertakes to refund the claim amount, if the vehicle is subsequently traced and delivered to him by the police. He also undertakes in the Discharge Form to pay any taxes which may be outstanding against the stolen vehicle. The ignition keys, R.C. Book etc. are kept in safe custody by the insurer so that these are made readily available if the vehicle is traced at a later date.

It is always prudent to inform the concerned Registering transport Authority by a Registered A/D post, that a Total loss claim is being processed for payment in respect of the stolen vehicle and to request them not to transfer the ownership of the vehicle to anyone. This will prevent a thief from disposing off the stolen vehicle.

Again, there have been occasions, when the Registering Authorities have informed the insurers in reply that the vehicle has not been registered by them or that the vehicle is already plying in someone else's name. This has exposed the frauds perpetrated by certain gangs insuring non-existing vehicles.

The IDV is the liability payable in the event of a Total Loss, whether due to a Theft or Total Loss. It is defined in the Policy and this is the ultimate liability payable by the insurers in such circumstances.

### Example

A scooter insured for Rs. 15,000/- met with a serious accident. The net repair liability is Rs. 12,000/-. The salvage value of the damaged scooter is Rs. 5,000/-. Calculate the net liability of the Insurance Company.

### Answer

Since repairing liability is more than 75%, the claim is to be treated as Constructive Total Loss and liability of the Insurance Company would be:

IDV	Rs. 15,000
Less Salvage	Rs. 5,000
Less Excess	Rs. 50
Net liability	Rs. 9,950 - subject to cancellation of policy



### c) Recovery of Stolen Vehicles

Claims on repair basis also arise when the stolen vehicles are recovered in damaged condition and / or stripped of some parts. In such cases, the procedure followed is the same as in the case of accidental repairs, except that spot survey is always essential as soon as the vehicle is brought in the police premises. If this is not done and if the insured is allowed to remove it directly to the repairer's garage for final survey, it is most likely that some more items will be found missing at the time of final survey.

#### Example

A private Maruti Swift 2005 model insured for Rs. 3 lacs from 1.4.2009 to 31.3.2010 met with an accident on 15.1.2010. The surveyor has assessed the loss as under:

Labour charges	Rs. 15,000
Painting charges	Rs. 10,000
Cost of Radiator	Rs. 7,000 less Salvage
Cost of Head Lights	Rs. 3,000
Cost of Wind Screen	Rs. 4,000
Cost of Grill	Rs. 2,000
Cost of Bumper	Rs. 6,000
Salvage value of parts	Rs. 100

Calculate the net liability

**Answer**

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Labour + Painting	Rs. 25,000	
Cost of Head Lights	Rs. 3,000	Nil Depreciation
Cost of Radiator	Rs. 7,000	Less Depreciation 35% (parts 4 years to 5 years) = Rs. 4,875
Cost of Wind Screen	Rs. 4,000	Nil Depreciation
Cost of Grill / Bumper	Rs. 8,000	Less 50% Depreciation being plastic parts = Rs. 4,000
Less Salvage	Rs. 100	
Less Claim Excess	Rs. 500	
Claim Payable	Rs. 40,274	

### Assessment on Repair Basis

While calculating the loss on repair basis, the estimates submitted by the insured consists of three heads:

- i. List of parts claimed for replacement.
- i . General repairs and labour charges
- ii. . Cabin / Body / Show repairing and labour charges

Insured is allowed to opt for his repairer so that vehicle is repaired to his entire satisfaction and repairer is required to attend repairs properly as recommended by Surveyor. The settlement on repair basis is subject to suitable depreciation on mechanical parts on the basis of year of manufacture and on rubber / plastic and fiber parts.

Similarly labour charges include charges for dismantling of various assemblies, replacing new parts and for repairing of mechanical assemblies which includes refitting / repairing / reconditioning e.g., realigning of Front axle, Chassis, Wheel repairing, Suspension leaves re-cambering /resetting, Seats repairing etc. Finally the repair charges for dent removal and painting are also taken into consideration. The principle of contribution is applicable while finalising assessment to comply the requirement of indemnity.

All the damaged parts (salvage items) for which replacements are allowed becomes the property of insurer. The settlement on repair basis is subject to suitable depreciation and principle of contribution to applicable for the requirement of indemnity.

In the case of Commercial Vehicles, particularly when Goods carrying vehicles meet with serious accident in remote parts on the highway; it is usual practice for insurers to arrange for what is known as a "Spot Survey". This consists of inspecting the vehicle at the site of the accident in „as is, where is" condition and noting down the damages sustained by it. The final survey is carried out when the vehicle is brought to the repairer's garage. The spot surveys help to establish the extent of damage caused by the accident, so that it is not exaggerated by the claimant after the vehicle reaches the place of repair.

#### d) Cash loss (Net of salvage or cash less) Settlement

When a claim is settled on repair basis, the payment is made either direct to the repairers against his bills / cash memos or to the insured on production of receipted bill of the repairer. Wherever a claim is settled on Total Loss basis, the salvage becomes the property of the insurer.

However, under certain circumstances, insurers settle Total Loss claims without claiming the salvage (Net of salvage basis) or reimburse the insured with his repairs bills without submission of repairs bill or without even verifying whether the vehicle is or will be repaired or not (cash Loss basis). These types of settlements are in the nature of compromise mode of settlements and are known as "**Cash Loss**" settlements, which are usually resorted to in the case of Commercial Vehicle claims payable on 'repairs' basis.

#### e) Cash loss settlement

By their very nature, repairs to a vehicle have to be carried out by different workshops depending on whether it is tin-work, body-work or mechanical work, etc. The owner of a vehicle is in no position to finance the entire job himself, especially when the outlay is large and has to wait for reimbursement from the insurers, after the complete job has been carried out and verified by the surveyor.

In such a situation, both the parties to the insurance contract come to an arrangement, whereby the insured agrees to accept a sum which is lower than the assessed amount by, say 25% to 30% and the insurer agrees to pay it in cash without insisting that the repairs will be carried out. In fact, the insured is free to do what he wishes with the vehicle, e.g. he can even sell the vehicle in "**as is, where is**" condition. The cut in the assessed amount is supposed to take care of this possibility and / or to represent the expenses such as sales tax, excise etc., which the insured may not have to incur if he chooses to repair the vehicle by fixing up second-hand spare parts.

This mode of settlement is also adopted when the claim is assessed for Total loss. But difficulties are encountered in disposing of the salvage or when a reasonable amount is not forthcoming as value of the salvage. In such cases, the value of the salvage is mutually agreed upon, as recommended by the surveyor, and this is deducted from the amount of Total Loss as assessed by the insured. In other words, the insured is reimbursed on Net of salvage on Total Loss basis and allowed to retain the salvage.

- i. When the insured insists on repairs even though Total Loss settlement adjusting the salvage value available is more economical to the insurer. In such circumstances, a 'Cash Loss' amount representing the 'Net Total Loss' is reimbursed to the insured, allowing him to get repairs at his own cost.
- i . When the insured purchases spare parts but he is not in a position to hand over purchase bills, these losses are settled as –Cash Losses" without insisting on bills for an amount which is suitably scaled down.

### **f) Cash less settlement**

Most insurers have entered into agreement with a host of repairers including authorised repairers of the manufacturers to repair the insured vehicles claim by charging inadmissible costs only and the admissible claim costs are directly paid by Insurance Company directly to the repairer. These are termed as Preferred Garages. This facility is offered to private car insured's only.

Customers opting for repairs at these preferred garages are required to drive or tow the vehicle to the garage. All claim formalities like completion of claim form, submission of vehicle documents are immediately completed by garages. The surveyor is sent by the insurer to the garage for assessment of the loss.

Once the vehicle is repaired the insured is informed to collect the vehicle and pay the difference in charges i.e., the inadmissible cost of repairs like depreciation, deductible and other unrelated charges. The rest of the payment is made directly by the insurers to the garage.

## **2. Various Causes of Accident**

### **a) Fire Damage to Vehicle**

Damage to vehicle due to fire needs a good deal of care in investigation to ascertain, if possible, the origin of fire. The most usual cause of motor vehicle fires is the failure of electrical system and these most frequently follows repairs which have involved removal of the engine at some point of time. This usually causes the wiring to be disturbed which breaks down the insulation and results in a fire perhaps months later.

The reconstruction and repair of vehicles seriously damaged by fire is an extremely difficult proposition and unless there is a very big margin between the cost of repairs and writing off the vehicle, it frequently proves more economical to deal with the claim on a Total loss or Cash in lieu of loss.

### **b) Loss caused by Mechanical / Electrical Break Down**

Loss caused by Mechanical / Electrical Break Down are excluded from the policy cover, but any damage consequent thereon would normally be the subject of indemnity. Generally mechanical breakdown will be deemed to be confined to actual unit in which the initial failure took place thus, if a connecting rod big end bolt fractured with the result that the connecting rod came out through the side of the crank case, this would be regarded as a mechanical breakdown of the engine and the whole of the damage be excluded.

On the other hand if a fan blade broke and went through the radiator the fan blade would be excluded as mechanical breakdown but consequential damage caused to the radiator would be subject of indemnity under the policy.

#### **c) Loss caused by Frost**

Most insurance policies cover frost subject to suitable precaution having been taken as specifically laid down by underwriters' and include either:

- i. The correct quantity of anti-freezing mixtures to be added to the water in the cooling system and regularly maintained at correct proportion or
- ii. The cooling system is to be entirely drained.

The surveyor is required to differentiate between frost damage and crack near the top face of the block which can be productively repaired by electrode deposition without any dismantling of the engine unit as the process is cold one. If it is necessary to fit a new cylinder block the question of depreciation has to be considered.

#### **d) Loss of Use of Vehicle**

Where the claim is made for hiring similar replacement vehicle we must take into account an allowance to be deducted from the normal hiring charges to represent the saving of running costs which would have been incurred had the owners own vehicle would have been used.

#### **e) Manhole Cover Stolen**

This is a menace which results in damage to vehicle and at time even bodily injury or loss of life in some circumstances. Such motor accidents are covered by the Motor Insurance Policy. However, the right of recovery is subrogated to insurance company from the person liable to maintain. Municipal Authorities who are liable for upkeep and maintenance of such property are legally liable under Common Law for loss or damage caused to any person using the road in public place.

#### **f) Auto Crashes - Multiple Cars Crash**

The high speeds in Automobiles being current craze have brought in the probability of multiple car crashes due to one vehicle meeting with an accident either due to collision or overturning or a policeman stopping a vehicle for check all of a sudden or fog obscuring the visibility of driver in winter season. Such accidents may increase the liabilities many folds and are fit to be reinsured.

### g) Vehicle Lying in Garage or Valet Parking

Fire or accident to a vehicle during repairs at garage: It has been noted that the vehicles lying with dealers or repairers garages at time meet with accident either by the repairers' mechanics driving the vehicle, even when the mechanic is just dropping the owner after the vehicle has been handed over for repairs. The garage owner becomes legally liable due to the fact that he has taken vehicle as, goods in trust, for repair work. Even a vehicle parked in a garage overnight will also cause the liability to be on garage owner. The Motor Insurance Policy does not cover liability of garage owner and the owner of the vehicle has a right to recover damages if any contributed by garage owners or his employees whilst the vehicle is lying in garage or used, tested by garage workers.

### 3. Salvage / Scrap Disposal

The word salvage means the things that are saved from a disaster or accident. However, in insurance claims salvage is used to denote damaged parts for which replacements have been allowed as the damaged part cannot be repaired i.e., cannot be salvaged. This is an anomaly. Salvage should be appropriately referred to as SCRAP.

### 4. Accident Repairing Cost

Although third party losses are less controllable, but motor damage losses may be contained to a large extent, if leakage during vehicle repairs in regard to over-pricing of spare parts, inclusion of obligatory parts, over-charging of labour cost or replacement of repairable parts are closely monitored.

Further at times, repairs lead to lesser efficiency of the vehicle and greater proneness to serious accidents due to inappropriate facilities available with garages undertaking repairs as compared to manufacturers. The following factors are assessed for Post Automotive Repair:

- i. Labour charges /Time schedule & Rate
- i . Painting component / Technology used in painting
- i i. Spare parts pricing

Manufacturer's / Dealers' current strategy is to earn profits through accident repair jobs at the insured's cost. Over charging to insurers need to be eliminated by replacing the current *'live and let die'* policy of manufacturers and Dealers by *'live and let live'* approach. We need to identify accident prone parts, claim prone parts and spare parts price revision pattern, repair cost basis, including PML concept to keep a check on claim cost.



The Insurance Companies or General Insurance Council of India the representative body of Insurers must initiate

- i. Dialogue with manufacturers on all above mentioned factors
- i . Under take Studies for various models design; positional structure of accident prone parts, electronic parts, turbo etc.
- i . Identify standard of accident repairing facilities at various garages and
- iv. Evaluate competence of the dealers handling repairs of body parts, frames, axles etc.

#### a) Repair techniques

There are various steps in repairing automobiles:

- i. Welding: Welding is of two types a. Hot welding and b. Cold welding
- i . Glass and plastic repairs; Glass cracks and plastic cracks can now be removed by various technologies thus reducing the cost of replacement.
- i . Denting is possible for fiber parts as well.
- iv. Denting / body works: These are generally out sourced to small roadside denters or generally unqualified persons. Denting is also slowly moving towards technology driven affair, where the dents are removed by creating vacuum to keep the tensile strength of body parts intact.
- v. Painting: Painting is by various methods which have different costs involved
  - (a) Brush painting
  - (b) Hot painting
  - (c) Dip painting
- vi. Windshield repair loss minimisation in motor is also common now. In India according to a survey, glass damages, specifically windshields, contribute to over 200-300 Crores (approximately) every year to the insurance industry as a whole. Almost all damaged windshields are replaced; even the ones with small or minor damages like Bull's eye at the cost of insurance companies, simply because of ignorance of possibility of repairs, thereby, rendering glass manufacturers as ultimate beneficiary.



The advance repair facilities for glass repairs are available in India but the same is being discouraged by the vested interest, leaving insurance industry to withstand losses to the tune of several crores. Damages even the ones running up to 3 feet cracks though repairable are being recommended to be replaced.

The industry can save several hundred crores, if only replaceable windshields and fixed glasses are replaced and not the repairable ones. It is heartening to note that damages ranging from small dings, bull's eye, star breaks, combination breaks and even the long and multiple cracks can be repaired at a cost as low as 8 to 10 % cost of new or replacement that too in merely 20-30 minutes at the door step of the customer.

### **b) Importance of Windscreen Repairs and its Benefits**

The (laminated) windscreen of the vehicles once damaged, had to be replaced. At times the vehicle is being driven in the damaged state to avoid going for claim by the consumer, endangering the lives of the occupants, general public, as the vehicle with the damaged windscreen interferes in the vision of the driver, and also compromises on the strength of the vehicle.

The prevalent practice of Windscreen replacement proves to be expensive and time-consuming option. The cost of windscreen repairs is less than 10% of the cost of new windscreen or windscreen replacement.

The damages to the windscreen in more than 85% cases are small dings or cracks, when left unattended these escalate into large and multiple cracks. Without protection these damages tend to increase as they get infected with dirt, mud and dust particles along with water. Though water evaporates, the foreign material settles down in the damage, making the damage un-repairable. Hence it is important to secure the damage at the time of impact itself, through tapes stickers provided by glass repairers.

It is studied that the original Factory fitted windscreen provides 22% strength to the car, when it is replaced it loses the company seal carried out through machines by applying pressure from all sides of the vehicle at the time of manufacturing making it an integral part of the car. The obvious inference is that the windscreen replacement outside manufacturing facilities compromises the safety of the car and its occupants and the general public at large who might be exposed to any untoward mishap. The Factory fitted windscreen provides strength to the vehicle in case of an accident and rollover, when it helps in preventing the roof of the car to cave in / crush. The replaced screen tends to pop out in case of an accident defeating one of the main purposes of windscreen installation at manufacturers end.

Further windscreen forms an integral part in the operation of passenger side Air Bag in the cars. In case of an accident the passenger side air bag exerts pressure on the windscreen to operate and come out towards the passenger. If the windscreen is a replaced one, the air bag fails to operate, as the windscreen tends to pop out of the car leaving the passenger to greater risk.

In several countries windscreen repairs are qualified for no claim bonus to give boost to safety of the car and passengers in case of later accidents.

## 5. Compensation for Third Party Injury or Property Damage

Compensation for third party injury or property damage is decided by Compromise through Mediation, Conciliation through Lok-adalats and MACT Awards.

## 6. The Consensus vs. Scientific Approach

The claims are settled by a team work of the insured, the repairer, surveyour and duly accepted by the insurer. A scientific approach to the art of assessment is in the offing and will ensure proper settlement and pave way to a healthy relationship amongst all the stake holders.

## 7. Science of Damage Estimation and the Technology Support

Insurance claims estimating system are available for vehicle damage estimation which can be used by Surveyors and Repair garages to obtain information about spare parts, labour charges and repair operations for automobile repairs that enables an insurance surveyour to quickly and accurately estimate damage to various parts of a vehicle.

Computerised insurance estimating systems are known which provide access to large amounts of parts information such as:

- i. Parts prices,
- i . Availability of parts,
- i i. Labour estimates and
- iv. Replacement operations

Furthermore various systems for storing and retrieving texts and associated data and graphics are also known.

### Example

The text menus and graphics have been stored in computer memory and displayed in separate windows on screen. Controls have also been provided to scroll windows up and down, left and right to thereby display different portions of texts menus and graphics.

The insurance claims estimation methods allow the Surveyor to analyse damage to various ‘layers’ of a vehicle. If damage to an ‘outer layer’ of a vehicle is visible, the insurance estimator will quickly perform a damage estimate using the catastrophe or drill in and drill out features. Nevertheless, the estimator will be reminded to also look for damage in ‘lower layers’ of the vehicle that are not readily visible. Conversely, a Surveyor may begin estimating damage to a vehicle by focusing on the interior of a vehicle which has significant interior damage. The method then reminds the Surveyor not to overlook slight damage to outer layers of the vehicle.

The catastrophe feature of the method permits insurance Surveyors to quickly and accurately perform a large number of damage estimates, when damage is primarily to outer layer of the vehicle, such as damage resulting from hail, sand, or wood. The invention allows an insurance Surveyor to select a desired vehicle part for repair, replacement, or other operations, in a number of quick and convenient ways, and gives the Surveyor a number of options. The invention also prevents “**double charging**” when there is a possibility that a vehicle part may be selected more than once.

### Test Yourself 2

The surveyor will assess the claim on a Constructive Total Loss (CTL) basis under which of the circumstance/s?

- I. Whenever a surveyor finds that a vehicle is beyond repairs
- II. Whenever a surveyor finds that the cost of loss repair exceeds 75% of the IDV
- III. Both of the above
- IV. None of the above

### C. Surveyor and His role in Loss Minimisation

#### 1. Role of Surveyor

It is regrettable that it has become tedious for getting claims settled by insurance companies for accidents covered under the Motor Insurance policy. The most plausible reason is the dependence of insurance companies on Surveyors. The Surveyors are independent licensed professionals, but they have to depend on insurance companies for allocation of survey work and are paid their survey fees by insurers. This has rendered them predisposed in fulfilling insurance company’s objectives of paying genuine claims and in this process have developed a distrusting approach towards claimants. They feel that they are doing a favour to the assured in recommending settlement of their claims. This approach needs to be altered. The insurance contract is a contract of utmost good faith on the part of both insured and insurer including the agencies supporting it. The very purpose of insurance company’s service is to –pay claims, if any, and repudiate, only if it is a must.

Therefore, reliability, dependability and courtesy of the Surveyor along with his knowledge, expertise of the subject should be the main criteria for enrolling a surveyor in a company's panel. Insurance Surveyors and Loss assessors (Licencing, Professional Requirements and Code of Conduct Regulations) 2000 Chapter VI gives code of conduct viz.

- i. To behave ethically and with integrity implying fairness and truthfulness,
- i . Strive for objectivity,
- ii. . Carry out his work with due diligence, care and skill,
- iv. Keep him up dated, and
- v. Provide free professional training

These statutory obligations render Surveyors accountable for their professional work and cannot afford to make a mistake and go with impunity.

Approach of the insurers' on survey / Surveyors is that of trust and their expectation from Surveyor can be summarised as - —allow repairs, replacement as if the vehicle is yours; assess the claim as if money is yours. This requirement from a Surveyor expects immediate Survey, dedication to the profession, reporting without delay and fair deal with all concerned. Surveyor's work is, therefore, directly affected by IRDA's regulations and the approach of the insurers on survey / Surveyors and finally their personal qualities and technical qualifications.

## 2. Steps in Motor Survey

Two important steps in motor survey are a) human relationship and b) surveying ability.

### a) Human Relationship

Human relationship is the most overlooked factor. Although the field of work covered is automobile assessing, it comprises basic principles of engineering. Technical ability is of prime importance, besides natural flair for work and experience. The automobile assessor is normally holding the scales between the interest of his principals, the insured and the repairer.

The qualities of a Surveyor which go to make a first class professional are especially his attitude and relationship with the insured, insurer and repairer. Some of the qualities are as hereunder:

Absolute integrity which will need the Surveyors to have his Do's and Don'ts in tune with accepted norms:

- i. Attitude of positivity - to be careful but should not appear to be so.
- i . Fair mindedness - in assessing the loss
- ii. . Tact and ability - in handling relations

### **b) Surveying Ability**

The surveying relates to thorough practical engineering training with a high standard of technical knowledge, knowledge of cost of repairs, extreme thoroughness and capacity for hard work. Surveying is required for

- ✓ Valuation of vehicle,
- ✓ Spot Survey,
- ✓ Preliminary Survey
- ✓ Final Survey and
- ✓ Re-inspection Surveys

#### **i. Technical Knowledge**

The assessment is not an accounting activity but the result of a technical knowhow ensuring that the repair charges assessed by the Surveyor will be sufficient to bring back the vehicle to pre-accident condition. He must check all the suspected parts, authorise necessary dismantling and clearly explain the difference between dismounting and dismantling. A careless assessment combined with an inexperienced repairer may culminate into a major accident due to un-rectified defects.

#### **ii. Cost of repairs**

The other aspect of assessment is determining cost of repairs which are based on following two systems:

- (a) **Time Basis or man hour basis** more suited to manufacturers though some manufacturers of motor vehicle give a schedule of man hours required for each job and within certain limits the correct man hours can be fixed in advance. But this basis of assessment is most abused.
- (b) **Job basis or contract basis** is based on piece rates are fixed on the basis on past experience of the time and material taken in completing similar jobs.

### iii. Extreme thoroughness

The thoroughness is mainly required in checking internal parts to avoid a supplementary estimate with a list of internal parts due to an array of broken parts being exhibited by repairer in the next visit. The Surveyor must permit an opportunity to repairers to dismantle assemblies in his presence to rule out unnecessary liabilities and avoid dissatisfaction of insured.

### iv. Capacity for hard work

The Surveyor's work has no time schedule, and the assessor is required to travel and work according to the availability. He is required to spend long hours on site of repairs which have a telling effect on his health.

## 3. Guidelines on Automobile Survey

Motor surveyor requires good technical knowledge about repairability, prevailing market conditions, availability of spares, cost of repairs, and an ability to convince repairer and insured and take spot decisions.

Wherever, a surveyor has to be appointed for assessing a loss / claim, it shall be so done within 72 hours of the receipt of intimation from the insured. A surveyor is requested orally or through mail which he is required to acknowledge and confirm his acceptance and inform the insured when he shall conduct the survey. At the time of accepting a survey, unless it is a spot survey, the surveyor is to be provided a copy of Claim Form to ascertain date of registration and Cause of accident and Estimate of repairs to decide mode of settlement. *#You dream, we care. A new way of learning...*

The survey report is to be submitted promptly, even subject to verification of RC / DL / Permit / load Challan etc., by the insurer if not available at the time of survey. Verification / attestation by the surveyor or insurer have to be done on production of original documents without believing photo copies which can be easily manipulated. This will save the complaints of non-performing survey or submission of manipulated photos made available by insured. Other details to be noted / recorded are:

- i. Identity of the subject matter
- i . Cause of accident
- ii. . Nature and extent of damage
- iv. Third party damage - persons & property
- v. Photos
- vi. Identity of the subject matter



- vi . Registration number
- vii . Engine Chassis Number and all major assemblies
- ix. Make & Model,
- x. Type of Body, Colour of the vehicle
- xi. Class of vehicle,
- xi . Type of goods carried/ weight of goods , Weighment slip, Trip sheet
- xi i. Odometer reading

#### **a) Pre-accident Condition of the Vehicle**

In Motor Insurance there is no pre-insurance inspection, except when fixing IDV for vehicles more than five year old or if a total loss vehicle is to be insured, or if there is a break in insurance before successive renewal. This is mainly for valuation of the vehicle for TL / CTL and theft risk or for establishing state of repairs.

Generally when a claim is preferred by the insured, insurer gets a chance to inspect the vehicle. Therefore, Surveyor is required to give a detailed report of pre-accident condition of the vehicle. This will enable insurer to form an accurate impression about the condition, value and road worthiness of the vehicle insured by them. It is sometimes revealed that the vehicle was not maintained in an „efficient condition“ i.e., vehicle was not found road worthy. Since this is a breach of a condition of the policy, the claim may not be admitted. The loss or damage to a vehicle may be caused due to wear and tear e.g., loose steering wheel, shoeless brakes, bald tyres‘ or tyres devoid of tread.

#### **b) Cause of Accident**

The cause of accident is determined by obtaining drivers/ occupants, statement giving cause and nature of accident along with the address and phone numbers. Surveyor should form his opinion befitting of the circumstances and concurrent with driver and occupants‘ version.

#### **c) Nature and Extent of Damage**

All vehicular damages, marks on the vehicle, reporting available oil in various assemblies in case of Fire accident, type of failure / breakage if any; list of missing parts, hanging parts or parts removed and list of parts which could not be examined due to their peculiar location must be given. The surveyor need not list suspected parts or parts to be checked.



**d) Third Party Damage**

Surveyor must obtain:

- i. Details of persons involved in the accident,
- i . Property damaged and third party vehicle involved if any;
- i i. Total number of occupants with available details;
- iv. Nearby hospitals where accident victims were admitted /discharged;
- v. Sketch of accident site with reference to accident site identification like mile stone, culverts, bridges etc., covering from the point of view of impact to its final position showing tyre or any other marks;
- vi. Copy of FIR

**e) Photos**

The photos must be by a digital camera imprinting date and time of survey and signed on the back, duly highlighting with necessary description. Similarly pencil traces of engine chassis number must be verified with plate affixed on the vehicle and Registration book, permit (if commercial vehicle), explosive licence (if hazardous goods carrying vehicle) etc., especially mentioning the fact in the report.

The surveyor is required to instruct the insured to remove the vehicle to a place of safety without delay to avoid theft of parts. The surveyor shall be subjected to the code of conduct laid down by the authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than 6 months from the date of his appointment to finish his report.

If an insurer finds it incomplete in any respect, or wants any clarification he shall require the surveyor under intimation to the insured, to furnish an additional report on those specific issues. This facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim. Such a request may be made by the insurer within 15 days of the receipt of original survey report. The surveyor on receipt of this communication shall furnish an additional report within 3 weeks of the date of receipt of communication from the insurer.

**f) Spot Survey**

The main purpose is to

- i. Reduce opportunity of moral hazard
- ii. Establish actual cause and nature of accident,
- iii. Register actual damage to the vehicle without allowing room for tempering,
- iv. Take spot decision on major damages,
- v. Facilitate removal to workshop, dismounting / dismantling needed and repairs at the spot
- vi. Check substitution of parts like radiator, stub axles, steering assembly, batteries and sometimes even front axle, I Beam etc.,
- vii. Verify third party involvement in respect of bodily injury or property damage or other vehicles involvement.

**g) Final Survey**

Final survey is accepted on receipt of Claim form and Estimate of repairs and insurers are to be informed if the spot survey has been conducted. The surveyor while inspecting the vehicle has to study the nature and extent of impact step by step to form an opinion as to probable cause and nature of accident. This is cross checked with the statement given in claim form and any radical difference need be investigated.

If investigation is required the surveyor may carry out certain tests to determine whether parts have sustained accidental damage. The extents of damage, bent distortion sustained have to be verified. Serial numbers of assemblies have to be physically checked.

In case surveyor feels that the claims may have to be treated on salvage loss / cash loss. Total loss basis, the serial number of tyres should also be noted during the first inspection. The final surveyor should make him comfortable in using all common workshop equipment and machinery e.g. checking chassis frame alignment commonly claims to save tyre wear out.

### h) Re-Inspection

Re-inspection is a loss control measure carried out on receipt of Final Survey report as well as photographs. It is resorted to verify whether the insured has repaired the vehicle as assessed and whether all replacements allowed have been actually replaced and the salvage of parts is also inspected to determine appropriate economic value.

Further the re-inspection would require noting down serial number of assemblies replaced / repaired. Re-inspection is neither resurvey nor investigation. If any internal parts replacement is doubtful say for want of salvage, re inspection surveyor is merely required to report to insurer and should not go for dismantling of parts.

## 4. Role of Motor Surveyor in Loss Minimisation

Surveyors are expected to play a crucial role in loss minimisation as far as motor claims are concerned. Besides inspection of the vehicle for valuation, spot survey, final survey and re-inspection; loss minimisation is achieved in following manner:

- i. Ascertaining actual cause of accident and establishing a relation between –cause of accident and damages caused there from. Studying the damages to the vehicle and scrutinising estimates keeping in view the cause of accident and probable damages
- ii. By preparing an outer periphery of the damages at the spot and furnishing identification marks and their correct position.
- iii. Assessment of genuine losses by segregating wear and tear and losses caused due to poor upkeep.
- iv. By ascertaining intrinsic value of salvage and some time helping in disposal of salvage to contribute to reduction of losses.
- v. Apprising insurers about the impact of new technology used in cars and its implications on claims out go to help rate the risk adequately.

### Test Yourself 3

Wherever, a surveyor has to be appointed for assessing a loss / claim, it shall be so done within \_\_\_\_\_ of the receipt of intimation from the insured.

- I. 72 hours
- II. 48 hours
- III. 36 hours
- IV. 24 hours

## D. Role of Road Safety in Insurance

### 1. Concerns of Community

Traffic accidents comprising Road accidents, Rail-Road accidents and Other Railway accidents were the major contributors of accidental deaths by un-natural causes. 'Road accidents' cases in the country have marginally decreased by 0.02% during 2012 compared to 2011 [check below Table] while the casualties in road accidents in the country have increased by 1.6% during 2012 as compared to 2011. Their proportion of deaths due to road accidents to total deaths due to un-natural causes has slightly increased from 37.3% in 2011 to 37.4% in 2012.

**Table - 1**

Share of 'Road accident deaths' in total 'Accidental deaths' by un-natural causes during 2008 to 2012

Sl. No.	Year	Number of accidental deaths		Percentage share of „Road accident“ deaths in un-natural total deaths
		Road accidents	Total un-natural	
(1)	(2)	(3)	(4)	(5)
1	2008	1,18,239	3,18,316	37.1
2	2009	1,26,896	3,34,766	37.9
3	2010	1,33,938	3,59,583	37.2
4	2011	1,36,834	3,67,194	37.3
5	2012	1,39,091	3,72,022	37.4

The above data clearly establishes that there is ample need to be alarmed with rate of death being 31.6 per 100 accident cases at the National level.

Road safety has become one of the greatest social problems of our time. On an average each year there are over 1,20,000 road accidents with number of persons killed and injured exceeding 21,000 and 1,10,000, respectively.

The technical requirements applicable to systems, components, separate technical units and vehicles should be harmonised and specified in regulatory acts. Those regulatory acts should primarily seek to ensure a high level of road safety, health protection, environmental protection, energy efficiency and protection against unauthorised use.

This is a problem which concerns the entire community and can be dealt with only by a multi-pronged action in which multiple government departments such as Police, Public Works Department, Transport Registration Authorities, Road Research Laboratories, Organisations such as All India Motor Congress, Road Transport Operators' Associations, Automobile Manufacturers etc., Vehicle Owners, Users and pedestrians have to participate.

## 2. Road Safety Promotion by Insurance

The General Insurance Industry plays a fairly significant role in promoting road safety and preventing road accidents, although its contribution can, at best, be of an indirect nature. The premium rating is so structured as to encourage loss prevention on the part of the motoring public. Substantial incentives in the premium are offered if the insured establishes an accident free record. Again, premium discounts are offered if the insured is willing to bear a portion of the loss himself. These incentives not only result in reduced cost of insurance but also encourage careful driving.

Insurer's indirect contribution to road accidents prevention is also exemplified in their system of the underwriting which involves careful '**risks selection**' and '**risk improvement**'. The bad driver or the accident prone driver is penalised by compulsory excess; older vehicles are accepted only after satisfactory inspection or subject to restricted coverage. These measures have the effect of giving the insured a personal stake in preventing accidents.

## 3. Causes of Accident

The multiple losses which occur in road transportation can be traced to three types of causes

- i. '**Human Cause**' (e.g. drunken driving, over-speeding and other violations of traffic law etc.),
- ii. '**Physical Cause**' (e.g. poor maintenance, overloading, untrained drivers etc.) and
- iii. '**Environmental Cause**' (e.g. bad road conditions, inadequate lighting, insufficient traffic signs and signals, loitering animals, multiple type of transport on roads, poor traffic sense etc.).

In other words, there are four primary factors responsible for road accidents:

- i. The driver
- i . The vehicle
- ii. . The road users
- iv. The road

The largest numbers of accidents are attributable to driver's fault.

#### i. Driver education

The critical area of remedial action for the reduction of road accidents would be the elimination or at least minimisation of **driver error**. Thus driver education and training assumes crucial importance. The training imparted by the motor training schools must be intensive and adequate to provide the skills needed in complex and varied traffic situations. Driver training ought to be designed not only to provide the necessary driving skills but also to develop in the driver a strong sense of „**personal and social responsibility**“ for safe operation of motor vehicle. It is also essential that testing standards of Road Transport Authorities must be stringent and not available for a dime.

In advanced countries, numerous analysis pertaining to traffic accidents indicate that ‘human factors’ such as bad habits, ignorance, lack of skill, psychophysical disabilities, wrong driving attitudes and other personal limitations account for the majority of accidents.

#### ii. Pedestrian behaviour

These negative factors also influence *pedestrian behaviour*, especially in the major cities and towns, where there is heavy concentration of population. Improving pedestrian behaviour is a long term process. It is essentially a matter of self-discipline. Safety consciousness and civic sense will have to be fostered right from the elementary school level. Secondly, enforcement of traffic laws by the police and the law courts will bring about more responsible pedestrian behaviour.

#### iii. Compulsory vehicle Maintenance

Defective vehicle ranks second among the causes contributing to road accidents. The issue has three dimensions:

- (a) Regular maintenance of the vehicle on a voluntary basis,
- (b) Compulsory maintenance through periodical inspection of vehicles by Road Transport Authorities and
- (c) Post-accident repair inspection by both the Insurance Surveyors and the Road Transport Authorities in case of major damage.

#### 4. Role of Fleet Operators

Stick to high standards of maintenance, but the majority of truck operators in the country are single operators who neither have money nor the capacity to manage regular upkeep and maintenance of their vehicle. Therefore, the role of the inspection wing of the Road Transport Authority becomes all the more significant. Large fleet operators (both in the private and public sectors) have shown concern for fuel conservation and accident prevention.

#### Example

Several private operators, State Road Transport Corporations and public owned corporations have installed tachographs in their vehicles which is a precision instrument which records a vehicle's driving pattern along the route for a period of 24 hours. It gives an accurate record of the distance travelled, stoppages en-route (authorised or unauthorised), braking pattern, various speed levels etc. The Tachograph provides irrefutable evidence in case of accidents by giving relevant information about the speed, time and place of accident. For the driver, it is also an assurance of safety as he will be warned when he is over-speeding. The Tachograph promotes good driving habits and these results in saving of fuel and maintenance costs and reduction of road accidents.

A number of countries in the world notably, Japan, Germany, France, Switzerland, Sweden, Brazil and Australia have made it mandatory equipment in public transport vehicles.

#### 5. Transport Development Council

The increasing importance of road transport in the national economy has been recognised and the Transport Development Council of the Ministry of Shipping and Transport is actively engaged, inter alia, in suggesting to the State Governments various measures for expansion and modernisation of road transport. Some of the recommendations of this Council, having a bearing on road safety, relate to:

- i. Strengthening or creating facilities for highway testing, control and research for consideration of State Governments who is vested the bulk of road construction. For example, a model scheme for organising State Testing and Control Laboratories prepared by the Central Road Research Institute has been circulated to the States for their implementation.
- i . Planning, design and construction of road facilities.
- i . Adequate, proper and systematic maintenance of the National Highways and other roads in the country, through regular re-surfacing, routine maintenance operations and "Special Repairs" and "Flood Damage" repairs.



- iv. Creation of separate Traffic Engineering cells in the Public Works Department to serve as a focal agency to analyse all the traffic and accident data on a continuing basis, enabling identification of the vulnerable accident-prone spots and the remedial measures to be adopted.

Studies by various agencies show that quite a number of road accidents occurred at junctions and at check-barriers. The Transport Development Council has made recommendations for improving barrier design and construction of lay-byes. It is also found that a large number of side road intersections are poorly designed which contribute to high rate of accidents at these locations. The Transport Development Council's recommendations relate to installation of road sign markings, channelisation, etc. The Transport Development Council is regularly monitoring the progress made by the State Governments in all these areas. The other agencies engaged in Road Research are:

- i. The Central Road Research Institute, New Delhi, set up in 1952, conducts research on road engineering under the administrative control of the Ministry of Shipping and Transport.
- i . Highway Research Board set up in 1973, under the auspices of the Indian Roads Congress for the promotion and coordination of road research at the national level.
- i . The Road Wing of the Union Ministry of Shipping and Transport is also engaged in road research and promotion of application of new techniques in the safe construction of roads and bridges.

## 6. Roadside Assistance

### a) Roadside Assistance

Roadside assistance is a service that provides necessary help in case an insured is stranded on the road when his car breaks down. For Example - Breakdown cover may include jump starting an automobile, towing a vehicle, helping to change a flat tire, providing a small amount of fuel when a vehicle runs out of it, pulling out a vehicle that is stuck in snow or helping people who are locked out of their cars etc.

### b) Service under Road Side Assistance

The representative services provided under Roadside Assistance are:

- i. Breakdown support over phone
- i . Minor Repairs

- ii. . Flat Tyre
- iv. Battery jump start
- v. Arrangement of keys
- vi. Towing on breakdown/accident
- vi . Arrangement of rental vehicle
- vi i. Arrangement/ Supply of fuel
- ix. Arrangement of Accommodation
- x. Message Relay

A maximum four times related to any of the services opted by the insured would be allowed under this add-on. The insured would be able to claim only for the services opted for by him at the time of policy issuance. The insured may choose to opt for any one or more of these at the time of policy issuance. To get roadside assistance, insured can call on Toll-Free no. & follow the IVR instructions.

## 7. Exclusions in Road Side Assistance

Services for Road Side Assistance will not be provided under below mentioned scenarios:

- i. Providing the above mentioned services under conditions of earthquake, war, invasion, rebellion, revolt, riot, civil commotion, civil war, exceptional adverse weather conditions, acts of terrorism, nuclear fission, strike, act(s) of government(s), government; agencies; judicial; quasi-judicial authorities.
- i . Any claims where the insured's vehicle is being used for the purpose of racing, rallying, motor-sports, or is not being used / driven in accordance with applicable laws and regulations.
- i . Any claim where the insured's vehicle can be safely transferred on its own power to the nearest garage / workshop.
- iv. Any claims triggered by theft; any kind of consequential losses.
- v. Any loss which is covered under any other insurance policy or manufacturer's warranty or recall campaign or under any other such packages at the same time.

- vi. Any expenses for supply or replacement of parts / consumables.
- vi. Any loss / damage caused to the insured's vehicle when it is being used / driven against the recommendations of the owner's / manufacturer's manual.
- vi. Any claims where services have been availed of without the prior consent of the Company.

Insurance Company generally provides assistance. Additional costs incurred for purchase of car parts, fuel, taxi fare etc. are to be borne by the customer. Roadside Assistance service is available 24 x7

### Test Yourself 4

'Violations of traffic laws' leading to accidents on the road will be classified under which of the below causes of accidents?

- I. Human Cause
- II. Physical Cause
- III. Environmental Cause
- IV. None of the above

### E. Frauds in Motor OD Claims

#### 1. Seamless Claims Management

There is a saying **"Insurance fraud is a bigger industry than insurance business"**. A major problem in the non-life insurance space is the endemic nature of fraud, waste and revenue leakage. Internationally motor fraud range is in between 10% to 15% of the insurance claim payout.

#### Example

In the United Kingdom, for instance, undetected general insurance claims total £2.1 billion a year, adding an average £50 to the annual costs individual policyholders face each year.

It is therefore likely that in India too this may be substantial. Motor insurance is the largest single portfolio that impacts the lives of all sectors of society in India. A study carried out by India forensic stated that insurance companies have collectively lost a whopping Rs. 304.01 billion, or about 9 percent of the total estimated size of the industry into Motor Claims, due to various frauds in 2011.

## 2. Frauds in motor insurance

### a) Frauds from external and internal sources

Fraud can be from:

- i. **External sources** i.e. the insuring public or
- ii. **Internal** i.e. insurers, agents and intermediaries

More often it is a nexus between both groups that perpetrate fraud. The fraud can range from misrepresentation at the time of taking insurance, e.g., renewal of a policy much after its expiry date. It has often been observed that the vehicle is already damaged or stolen when the proposer seeks insurance. Insurers have tried to counteract such cases treating 'break-in-insurance' as a rigorous methodology insisting on physical inspection of the vehicle, tracing its chassis number, before acceptance for insurance.

### b) Multiple insurance cover on same Vehicle

Another type of fraud results after the insurance has been taken. The same vehicle may be insured with two or more insurers and claims are reported with all. This is due to a nexus between repairers and claimants. This type of fraud is much more difficult to detect, in the absence of a Central Repository for reporting all accidents.

The recent trend to earmark authorised repairers by insurers has helped in some small way. However, the commercial vehicle field is still open to such frauds. The black-listing of such repairers is one of the ways of reducing such attempts. Regular visit and appraisal of such shoddy repairers and disseminating such information to other insurers, may help in preventing such frauds.

### c) Inflated Bills of Repairs

Frauds may also occur when **inflated bills of repairs** are produced. The insured takes recourse to claiming in excess of the damages sustained or including earlier minor damage repairs in the claimed amount. There may also be forged bills to explain some major damage cost.

### d) Faked Accidents or Burglaries

These are other types of fraud that can occur. Rotation of insurance personnel and intermediaries, regular visits to repairers and if necessary investigations of frequent claims or from specific regions or intermediaries could be followed to keep a check on such frauds.

In accident-related claims, frauds are difficult to identify and / or locate because the validation mechanism to detect fraudulent claims depends on verification by a Surveyor. Insurers have limited ability to detect if the Surveyor is complicit in making a fraudulent claim or has been duped by the claimant.

#### **e) Staged Collisions**

A new phenomenon is emerging in stage collisions which are mainly managed in the manner of a scripted film where vehicles, drivers are rented and asked to drive on a specific road at specific time in the garb of making a film and later the claims are put in.

### **Example**

An actual film maker first arranged a collision and later preferred a claim. However, forensic help and telecommunication satellite came to rescue of insurer in bursting the fraud.

### **3. Way to Mitigate Frauds**

#### **a) Context-Specific Data**

A way to mitigate fraud risk is to ensure that the insurer gets highly context-specific data regarding the claim. This can include having the claimant or the agent identify the exact location immediately after the accident and capturing images related to damages to property or injuries to people.

Having this context-rich data availability enables insurers to process the claim rapidly while also building an evidence repository, should the claim need to be investigated later. A mobile-based digital assessor that guides an agent or a customer through the process of gathering claims related data can speed up the claims process and insurer's response time to customers, which are the primary complaints by Indian customers regarding customer service from insurers.

#### **b) Digital Claims Assessor**

Digital Claims Assessor enables Surveyors and customers to gather all pertinent data relevant to filing a claim after an accident and also provides additional information such as location of nearby hospitals and repair centers for their make of the vehicle. The data collected is customised based on the make and model of the vehicle, the location of the damaged and the geo-location information of the accident.

### c) Leverage Technology Solutions

The insurance industry in India is unable to fully exploit newer technologies to lower costs and reach out to more technology-friendly and connected customers. Agents and intermediaries still remain key to the sales and education process, but are becoming less effective.

The discontent with intermediaries and insurers, being very high among customers, insurers need to leverage technology solutions such as ‘mobile business intelligence’ to make agents more effective by adopting a more personalised approach to customers.

At the same time, channels such as social media and the Web need to be exploited as much as possible to engage customers. The contacts initiated through these channels can be further exploited effectively by a customer support desk, which uses ‘business intelligence solutions’, to personalise interactions with customers. This multi-channel approach that leverages business intelligence and mobile technology offers insurers an effective way to succeed in a highly competitive and fast-changing Indian insurance market.

#### Test Yourself 5

An insurance fraud happening due to the involvement of an insurance agent will be classified as a fraud due to\_\_\_\_\_.

- I. External source
  - II. Internal source
  - III. Both of the above
  - IV. None of the above
-

## Summary

- a) Doctrine of cause of accident: The cause of accident and probable damage caused due to a particular reason is the most important aspect to be taken into consideration in all motor claims.
- b) Own damage claims: From the procedural viewpoint, claims settlement involves three phases: preliminary scrutiny, assessment of the loss and settlement.
- c) Claim Form: The format and the contents of the claim form differ from Company to Company but the Claim form contains questions relating to the following particulars:
  - i. Insured
  - i . Vehicle
  - ii. . Use of the vehicle
  - iv. Driver
  - v. Witnesses
  - vi. Injury to driver / occupant
  - vi . Damage to the vehicle
  - vii. . Sketch
- d) The survey report would amplify the information obtained in the claim form and also incorporate additional information. There is no standardised form for survey report, but the following information is expected in a survey report
  - i. Accident
  - i . Assessment of loss
  - i . Net liability of insurer
  - iv. General observations
- e) Whenever a surveyor finds that a vehicle is either beyond repairs or the cost of loss repair exceeds 75% of the IDV; he assesses the claim on a Constructive Total Loss basis (CTL).
- f) Total loss can also arise due to the theft of the vehicle remaining untraced by the police authorities.
- g) Claims on repair basis also arise when the stolen vehicles are recovered in damaged condition and / or stripped of some parts.



- h) Under certain circumstances, insurers settle Total Loss claims without claiming the salvage (Net of salvage basis) or reimburse the insured with his repairs bills without submission of repairs bill or without even verifying whether the vehicle is or will be repaired or not (cash Loss basis). These types of settlements are in the nature of compromise mode of settlements and are known as "Cash Loss" settlements.
- i) Fire Damage to Vehicle: The most usual cause of motor vehicle fires is the failure of electrical system and this most frequently follows repairs which have involved removal of the engine. This usually causes the wiring to be disturbed which breaks down the insulation and results in a fire perhaps months later.
- j) Loss caused by Mechanical / Electrical Break Down are excluded from the policy cover but any damage consequent thereon would normally be the subject of indemnity.
- k) The following factors are assessed for Post Automotive Repair:
  - i. Labour charges /Time schedule & Rate
  - i . Painting component / technology
  - ii. . Spare parts pricing
- l) Compensation for third party injury or property damage is decided by Compromise through Mediation, Conciliation through Lok-adalats and MACT Awards.
- m) Insurance Surveyors and Loss assessors (Licencing, Professional Requirements and Code of Conduct Regulations) 2000 Chapter VI gives code of conduct viz.
  - i. To behave ethically and with integrity implying fairness and truthfulness,
  - i . Strive for objectivity,
  - ii. . Carry out his work with due diligence, care and skill,
  - iv. Keep him up dated, and
  - v. Provide free professional training
- n) Two important steps in motor survey are human relationship and surveying ability.
- o) Motor survey requires good technical knowledge about repairability, prevailing market conditions, availability of spares, cost of repairs, and an ability to convince repairer and insured and take on the spot decisions.
- p) Insurer's indirect contribution to road accidents prevention is also exemplified in their system of the underwriting which involves careful 'risks selection' and 'risk improvement'.

- q) The multiple losses which occur in road transportation can be traced to three types of causes:
- i. Human cause
  - i . Physical cause
  - ii. . Environmental cause
- r) Fraud can be from:
- i. External sources i.e. the insuring public or
  - i . Internal i.e. insurers, agents and intermediaries
- s) Frauds in motor insurance include:
- i. Frauds from external and internal sources
  - i . Multiple insurance cover on same Vehicle
  - i i. Inflated Bills of Repairs
  - iv. Faked Accidents or Burglaries
  - v. Staged Collisions
- t) Ways to mitigate frauds include:
- i. Context-Specific Data
  - i . Digital Claims Assessor
  - ii. . Leverage Technology Solutions

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**Answers to Test Yourself****Answer 1**

The correct answer is II.

Independent automobile surveyors are assigned the task of assessing the cause and extent of loss where the loss is more than Rs. 20,000/-.

**Answer 2**

The correct option is III.

Whenever a surveyor finds that a vehicle is either beyond repairs or the cost of loss repair exceeds 75% of the IDV; he assesses the claim on a Constructive Total Loss basis (CTL).

**Answer 3**

The correct option is I.

Wherever, a surveyor has to be appointed for assessing a loss / claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

**Answer 4**

The correct option is I.

'Violations of traffic laws' leading to accidents on the road will be classified as 'Human Cause' of accidents.

**Answer 5**

The correct option is II.

An insurance fraud happening due to the involvement of an insurance agent will be classified as a fraud due to internal source.

---

**Self-Examination Questions****Question 1**

'Loitering animals' leading to accidents on the road will be classified under which of the below causes of accidents?

- I. Human Cause
- II. Physical Cause
- III. Environmental Cause
- IV. None of the above

**Question 2**

In case of a stolen vehicle, the police keep the investigations going until the vehicle is traced and delivered to its owner. However, if they do not succeed in recovering the vehicle after a period of \_\_\_\_\_, they file away the claim, certifying that the case is classified as true but undetected.

- I. 45 days
- II. 60 days
- III. 75 days
- IV. 90 days

**Question 3**

An insurance fraud happening due to the involvement of the insured person will be classified as a fraud due to \_\_\_\_\_.

- I. External source
  - II. Internal source
  - III. Both of the above
  - IV. None of the above
-

**Answers to Self-Examination Questions****Answer 1**

The correct option is III.

'Loitering animals' leading to accidents on the road will be classified under environmental cause of accidents.

**Answer 2**

The correct option is IV.

In case of a stolen vehicle, the police keep the investigations going until the vehicle is traced and delivered to its owner. However, if they do not succeed in recovering the vehicle after a period of 90 days, they file away the claim, certifying that the case is classified as true but undetected.

**Answer 3**

The correct option is I.

An insurance fraud happening due to the involvement of the insured person will be classified as a fraud due to external source.

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# CHAPTER 6

## IT APPLICATIONS IN MOTOR INSURANCE

### Chapter Introduction

In this chapter you will learn about the importance of analytics and IT intervention, including predictive analytics in claims. The chapter also covers need for and importance of statistics, TAC as data depository, TAC as National Repository for statistical data and future of auto insurance.

### Learning Outcomes

- A. Importance of Analytics and IT intervention
- B. Need for and Importance of Statistics
- C. TAC as Data Depository and TAC as National Repository



## A. Importance of Analytics and IT Intervention

### 1. IT Intervention and Competition

IT is playing an ever greater role in insurance companies' growth, with the help of specific technologies. There is bound to be more pressure on the industry over the coming years from greater competition, ever-more-fickle consumers and increased regulation. Success in the insurance industry is expected to come from two areas viz.

- i. Cloud and
- i . Analytics

#### a) Cloud-based systems and solutions

A rare opportunity exists to broadly transform technology, replacing core engines with fully integrated, cost-effective cloud-based systems for distribution, underwriting, product development and claims. Investing in cloud-based approaches to core insurance systems is bound to help reduce operating costs, increase data access and improve speed to market.

The availability of cloud-based solutions both from third-party sites, as well as internal private cloud initiatives are going to help a great deal in reducing development time and the need for upgrades. It will also provide access to best practices that cloud providers have gradually baked into their solutions.

But many companies running their own data centers need to approach this opportunity in a gradual, deliberate fashion. Switching over to cloud for cloud's sake from a well-functioning, on-premises system just wouldn't make sense, and is a path fraught with issues.

### 2. Importance of Analytics and IT Intervention

#### a) Analytics vs. Analysis

Analytics is the discovery and communication of meaningful patterns in data, especially valuable in areas rich with recorded information. Analytics relies on the simultaneous application of statistics, computer programming and operations research to quantify performance and often favors data visualisation to communicate insight.

Business firms commonly apply analytics to business data to describe, predict and improve business performance. Specifically, arenas within analytics include:

- i. Enterprise decision management,
- i . Retail analytics,



- ii. . Marketing optimisation and marketing mix analytics,
- iv. Web analytics,
- v. Wales force sizing and optimisation,
- vi. Price and promotion modeling,
- vi . Predictive science,
- vii. . Credit risk analysis, and
- ix. Fraud analytics

Since analytics can require extensive computation, the algorithms and software used for analytics harness the most current methods in computer science, statistics, and mathematics.

Analytics is a two-sided coin:

- i. On one side, it uses descriptive and predictive models to gain valuable knowledge from data - data analysis.
- i . On the other, analytics uses this insight to recommend action or to guide decision making - communication.

Thus, analytics is not so much concerned with individual analyses or analysis steps, but with the entire methodology.

With the increased use of mobile communications, the stage is set for insurers to develop more meaningful and mutually beneficial relationships with policyholders. In auto / motor insurance, where advances in machine-to-machine (M2M) communication, or telematics are spreading across the marketplace, generating data to more precisely assess risk and reward for policyholders who adhere to safe driving practices needs utmost attention.

The auto manufacturers are providing connected vehicle services to discerning customers like

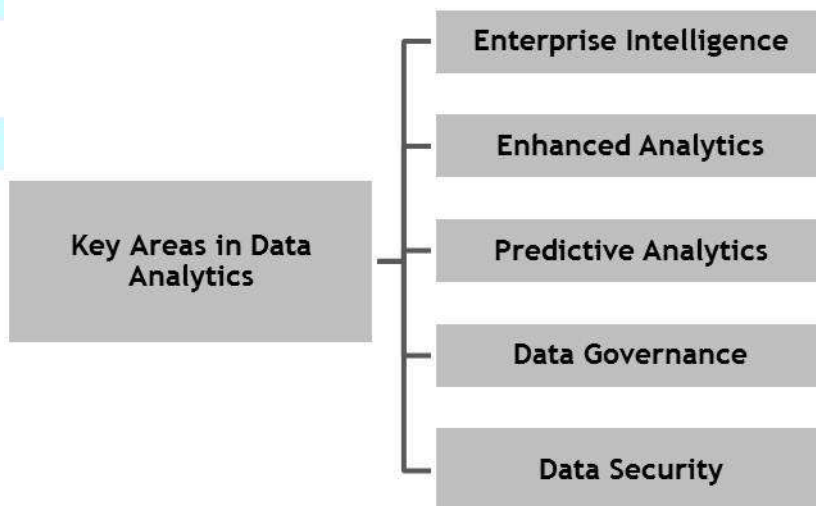
- i. GPS,
- i . Emergency notification,
- i i. Roadside assistance,
- iv. Concierge services and
- v. Other offerings

Today, devices self-installed or plugged into a vehicle's onboard diagnostics (OBD) port, or professionally-installed black boxes, transmit driving behavior and mileage data directly to insurers' back offices. As a result, many insurers' and brokers worldwide are leveraging telematics data to create more precise rating variables that underpin new usage-based insurance (UBI) products. This represents a sea change in policy underwriting, where models have traditionally assessed risk and determined premiums based on group behavior (typically demographics-based) and proxy variables such as credit scores.

As insurers' risk models become more sophisticated through the use of analytics applied to usage-based insurance UBI-generated data, a more precise driver profile will emerge. Analytics will also streamline and automate claims processes with real-time alerts and triggers, further reducing expenses for the insurer and validating a better segmented book of business.

#### b) IT Intervention and Data Analytics

Diagram 1: Key Areas in data analytics



On the data analytics side insurers must take good care of their data assets, and establish a strategy and architecture that will enable faster and more-relevant analysis. The key areas are enterprise intelligence, enhanced analytics, predictive analytics, data governance and data security. Each of these are discussed below:

### **i. Enterprise Intelligence**

Insurer is required to establish enterprise intelligence through common standards and policies under a common architecture. Important data no longer just comes out of the central relational database; it will come from many sources, such as sensors and social media.

### **ii. Enhanced Analytics**

Enhanced analytics can capture data from all sources and turn it into information that's relevant to the business.

### **iii. Predictive Analytics**

Predictive analytics from this data will serve many parts of the organisation, from fraud detection to underwriting to product development including claims processing.

### **iv. Data Governance**

Data only can be turned into something of value if the business has full faith and trust in it. Cross-enterprise committees, centers of excellence or the appointment of data stewards will help make sure everyone understands and can benefit from the data that is available.

### **v. Data Security**

Data is the most critical asset any organisation can have, and it is the very foundation of anything insurance companies have to offer to the market. Insurers must invest in best practices and technology to protect it.

### **c) The new Data-Driven Insurer**

Data accumulation has never been a challenge for the insurance industry, but spurred by a more intensely competitive market and better, affordable technology, insurers are embracing data-driven decision-making for more effective marketing, pricing and loss reduction. Insurers are yet to realise shifting from cost cutting measures, to more ambitious technology interventions intended to assist competitive initiatives and drive efficiencies.

The emphasis has to be decidedly on projects intended to confer strategic advantages and differentiation, as most insurers are heading for transformation and growth. The insurers will have to leverage the assets they are flooded with i.e., –data – to take better decisions in marketing, pricing and claim settlement besides fraud management.

Insurers have so far identified:

- i. Analytics,
- i . Business intelligence,
- i i. Data warehousing and
- iv. Big data

All of the above intend to help insurers make better use of the data they have, access newly available data and make better, more informed decisions to find opportunities, price them more effectively and reduce losses.

Analytics can be used to target the right people with the right message at the right time. Computer processing power, third-party data and analytics are maturing and becoming less expensive. "All of that is making analytics truly worthwhile." The rise of digital media, in addition to offering new channels to reach consumers, enables insurers to collect customer-response data almost instantly, measure and understand the effectiveness of marketing efforts, and quickly adjust them to increase their effectiveness.

**Role of Insurance Information Bureau (IIB):** IRDA is laying special emphasis on the use of analytics in the industry for better structuring and pricing of policies. "IRDA has backed up a Insurance Information Bureau of India (IIB) for collating data from the industry and then analysing them". IIB would become self-reliant after a certain time once it started to sell analysed information to the insurance companies both in India and abroad. The sale of some bad policies had resulted in negative growth in the industry in the last few years forcing the regulator to intervene to bring back confidence to the market.

#### **d) Predictive Analytics in Claims**

Predictive analytics is not just for fraud management in insurance industry anymore, but the same can extend into other areas of Claims Management such as

- i. Surveyors and Loss Adjusters assignment,
- i . Loss-adjustment expense and
- ii. . Decision-support

However, there are several challenges to overcome.

Predictive analytics has been proven to improve claims-fraud management, and over past several years it has played an important role in evolving pricing by insurers. Besides fraud claims and pricing, insurance experts are now identifying newer opportunities to apply predictive analytics in the claims process which could trigger big changes in the industry.

There are indications that disruption may be starting to build from a claims standpoint in insurance industry. The claims themselves are becoming both more complex and better adapted to increased automation. More complexities mean a claim, when it's for an automobile that's been designed either not to be repaired for partial losses or not to have an accident at all, the pricing is bound to become more rigorous.

- i. How will insurers tend to adjust for such non repairable accident claims?
- i . How insurers are going to handle such no accident vehicles on road?

Applying predictive analytics in claims especially with Surveyors and Loss adjuster assignments, insurers can control staffing in Motor Verticals and over all claims costs. Insurers have to ensure that they have placed right people focused on the right decisions. This is where predictive analytics is being used to support decision-making, and not to replace it. Providing automated information and decision support to become productive, is increasingly becoming key driver in the insurance market.

**Predictive analytics in text mining, and drunken driving / drug-impaired driving in automobile accidents:** Drug-impaired driving is an increasingly difficult problem for insurers, law enforcement officers, prosecutors, judges, and policy makers. There are three reasons for identifying drug-impaired driving for drivers involved in an automobile accident in the interest of motor insurance stakeholders.

- i. **First reason** relates to ‘claim recovery’. It is necessary to know that the driver might have been under the influence of a  
  - (a) Medication,
  - (b) Prescription,
  - (c) Drug, or
  - (d) Has consumed illegal narcotics

This will help the insurer assign a specialist who is able to efficiently determine whether a drug-impaired condition existed at the time of the accident. Generally determining whether a driver was driving under the influence of a drug is much more complicated than determining whether a driver was under the influence of alcohol. Furthermore, it is also necessary to know whether the driver had been taking a medication such as an over-the-counter product, prescription, drug, or illegal narcotic.

- ii. **Second reason** relates to „assignment of liability“, and especially subrogation opportunities. Finding that the other driver was under the influence of a medication may be a cause for a subrogation recovery against that driver / owner, or provide enough additional evidence to increase the likelihood or size of the recovery in case individual liability is awarded.

- iii. **Third reason** relates to „non-renewal“. If an insurer knows that the driver had been involved in an accident while on a medication, prescription, drug, or illegal narcotic, it may be a reason to not renew the cover or to renew the cover at a higher rate.

Information not typically captured in insurer data systems is to be captured whether one of the drivers in the accident was on a medication, prescription, drug, or an illegal narcotic is extracted from the accident description. This will improve the ability to predict the severity of an accident. Narrative data can feed predictive analytics, improve claim-triage and subrogation recovery opportunities, and empower a more intelligent approach to renewals and rate-classification.

With driving under the influence of a drug representing a measurable though largely unrecognised source of increased accident severity, automobile insurers have an opportunity to extract value from text mining and better manage the risk posed by driving under the influence of drugs.

- i. **Detection of driver under the influence of drug; driving while intoxicated**

Detecting drivers are under the influence of a drug is much more complicated than detecting drivers who are driving under the influence of alcohol i.e., driving while intoxicated. Alcohol passes through the body in a reasonably predictable manner and has an impact on a driver's ability to operate a vehicle safely. Field tests can be performed efficiently for driving while intoxicated with acceptable accuracy. Furthermore, it does not matter whether the blood alcohol content was due to the intake of beer, wine, or hard alcohol; the sex, age, or body mass of the individual; or the length of time since consumption. A blood alcohol content of 0.08 grams per deciliter or higher is considered a per se case of driving while intoxicated.

- ii. **Drug-impaired Driving**

By contrast, tests for medications and prescriptions are more difficult to perform. It may take days, weeks, or months to obtain results. For the impairment-impact of drugs on an individual's ability to operate a motor vehicle, there is no corollary to a blood alcohol content standard.

Detecting drug-impaired driving is a complex problem due to the large number of substances with the potential to impair driving and impose the risk of an accident, the variations in the ways that different drugs can impair driving, the lack of basic information concerning the drugs that impair driving, and the differences in the ways that the drugs can affect the body and behavior.

### iii. Identifying the presence of drugs in auto accidents

We need to increase the efforts to train law enforcement machinery to recognise drivers that may be driving under the influence of drug. The typical case is for an officer to perform “**standardised field sobriety test**” for a driver’s blood alcohol content. If the Blood Alcohol Content is found to exceed the statutory limit, the officer is unlikely to test for drugs, and consequently the incidence of driver under the influence of drug may be understated.

If the Blood Alcohol Content does not exceed the statutory limit, the officer may seek evidence for a driver under the influence of drug charge. Identifying drivers under the influence of a drug is much more complicated than the testing for alcohol with a “**breathalyzer or urine test**”.

For drug impairment, the tests may require a broader range of specimens (e.g., blood, urine, oral fluid, sweat, and hair) and the present technology often requires lab tests that may take longer time. This built-in delay and the variety of potential results are bound to pose a challenge when it comes to accurately tracking driver under the influence of drug instances, since the pertinent information may not be available at the time of the accident or when the police reports are prepared.

### iv. Presence of drugs in automobile accidents

Insurers need to develop methods to efficiently read, organise, and analyse large volumes of narrative data captured in accident descriptions, survey reports, and other reports and documents where narrative information is recorded in an unstructured text format. Within a single narrative report and across reports, the same concept (*such as taking his medications*) can be expressed in numerous ways.

The software has to be built developing methods to organise different-but-similar expressions into a format that can be categorised and then included in statistical analyses. A database on automobile accidents will have to compile information on broad representative third party vehicular accidents. The accidents will include:

- (a) Single and multiple vehicle incidents,
- (b) Drivers of various ages,
- (c) Accidents occurring in a variety of environmental conditions
- (d) Compile a narrative description of each accident, as well as the usual information on number of vehicles, road conditions, weather conditions, and time of day



- (e) Describe the environmental conditions, vehicular movements, and driver behaviour at the time of the accident
- (f) Processing the accident descriptions: Narrative descriptions for the accidents may be broken into phrases, and similar phrases can be grouped together using analytical models. After removing prepositions and uninformative prepositional phrases, the result is a data file with few million phrases

#### **e) Identification of the Surprise Claim**

Insurers are also giving importance to claims after the **first-notice-of-loss**. There is greater emphasis for early identification of the surprise-claims. Nobody seems to understand reasons for a claim that looks like it's going to be Rs. 30,000 or Rs. 40,000 and becomes a Rs. 2,00,000 or Rs. 3,00,000 claim. Predictive models are applied not just at first-notice-of-loss or preliminary report of injury, but during the claims process, to enable them to much more rapidly identify and deal with them, because those are the claims that need immediate attention to avoid unpleasantness later.

#### **f) Predictive Analytics for Commercial Lines of Business**

Commercial insurance lines have lagged behind personal lines in adopting predictive analytics because commercial lines tend more toward an underwriting approach to pricing and risk management, assuming that the computer can never replace the underwriter. But some commercial insurance companies have begun to see that better science—the type of science that modern predictive analytics can provide—can help underwriters do their jobs more effectively.

The underwriter's skill comes from centuries of the industry's collective experience and years of the underwriter's personal experience. Much of that skill derives from the underwriter's intuitive feel for the task. Underwriters have formed a kind of knowledge center for the insurance industry, but their skills and intuition can't always be applied perfectly as markets change and more data becomes available through third-party sources and other forms of data, such as telematics.

Given better information and allowing underwriters to focus on the important risks, they will make better decisions. Just as many personal line carriers have discovered, a number of small and midsize commercial line insurers have adopted predictive analytics for scoring and pricing a tool that extends underwriters' capabilities and improves the accuracy of their predictions.

The same benefits are available to all commercial carriers. Commercial lines data offers a tremendous predictive signal, therefore companies are free to mine, if they are willing to embrace state-of-the-art technology.

**Example**

A large global carrier increased its commercial lines business profitably by implementing a predictive analytics solution that provided actionable insight based on a relatively low volume of commercial lines data. Segmentation models showed that, of nearly \$800 million in total premium, 19 percent of the exposures were significantly underpriced and 34 percent significantly overpriced.

Lowering the rates on its overpriced business had a positive effect on the company's customer retention, and raising the rates on its underpriced accounts quickly improved its bottom line. The newly identified variables were introduced into the rating algorithm for faster, more accurate rating going forward.

**g) Pricing and Underwriting for Predictive Analytics**

Most companies adopting predictive analytics think of it exclusively as a tool to help them with their pricing and underwriting. That's an excellent application, but it is only one of many possible ones.

Predictive analytics is also useful in the following, among other tasks:

**i. Customer acquisition**

How and where to prospect for good business is key to customer acquisition? Effective customer acquisition efforts can help companies predict which prospects are likely to respond to a specific marketing campaign.

**ii. Target marketing**

Where to find the right customers and how to identify good customers for Target marketing? Optimal target marketing efforts are broader than customer acquisition efforts and focus on defining which prospects are likely to yield profitable business. Is

**iii. Broker management**

To help company understand how their agency or broker force is performing, and how much of their —good business is being submitted to your company.

**iv. Cost reduction**

To reduce costs, by making decisions on when to use outside data and when not to use?

### v. Retention management

To understand which of your company's clients are most likely to leave and, in addition, which are likely to be profitable and unprofitable

### vi. Claims process management

To understand which claims are likely to be fraudulent, which are likely to develop into large claims, and other factors?

## Example

A small insurance Company wanted to see whether it would be cost effective to eliminate motor vehicle records (MVR's) on a portion of its book of business, enabling a reduction in both expenses and premium. The company used predictive analytics to identify portions of the book where the reduction of expenses would more than offset the lower premiums. The exercise ran 10 years of data – more than 15 lakh Motor Vehicle Records through a predictive analytics system and found that eliminating MVRs on certain business would drive several crores more in profits annually.

Predictive analytics is not just a once-a-year exercise. There's a tendency for Insurers to think that they can complete an annual predictive analytics process, then fix their pricing or implement other changes – and they will be set until next year. They're missing the point, however, that they ought to be analysing the results throughout the year, and changing and tweaking wherever they can.

So if a company carries out an analysis and incorporates the results in its rate plan, the company's executives should use analytics to measure the results throughout the distribution force and apply the results in marketing throughout the year, leveraging the work already done on pricing.

In other words, the full benefit of a predictive analytics approach is not just where a company can use it, but how often the company can use it.

### h) More Predictive Signals Gained

As we said earlier, it's not a matter of how much data, or even how –cleanll your data is; it's a matter of using the best available technology to analyse the data, replacing traditional linear models with tool sets capable of automatically identifying all relevant variables and analysing the predictive power of interactions among them. If you believe you need to find new data sources because you aren't getting sufficient results and can't get anything more out of your data, you probably are not using the best available technology.

When it comes to getting every insight out of the data, it also doesn't matter how large or small you are. There are large global insurers with access to sophisticated analytics tools that are not getting all of the available insights out of their data. And there are mid-sized carriers using machine-learning technology on relatively small data sets to optimise their businesses.

### Example

A top auto insurance Company used a combination of traditional predictive analytics methods, supplemented by more advanced modeling techniques. Using this approach produced results in 18 months. The Insurers analytics team thought they had extracted all predictive signals possible.

However, when machine-learning technology was applied to the same data, the results were surprising. The results showed that 60 percent of the carrier's business was mispriced by more than 10 percent, up to 50 percent. And the machine learning method worked significantly faster, producing results in only eight weeks. If one wants optimal results, try using today's sophisticated tools, which take advantage of machine-learning-based predictive analytics.

All General Insurance companies' small and large, personal and commercial lines insurers' should use modern machine learning based predictive analytics, not just for pricing and underwriting, but for applications that manage the entire life cycle of the customer. It's easy to get started, and it's not necessary to have an army of scientists on the payroll. It will pay for itself quickly, and ultimately it will help your company survive within an increasingly competitive market.

### Test Yourself 1

With regards to role of IT in the growth of insurance companies, success is expected to come from\_\_\_\_\_.

- I. Cloud systems
- II. Analytics
- III. Both of the above
- IV. None of the above

## B. Need for and Importance of Statistics

### 1. Need for and importance of statistics

#### a) Insurance helps cover cost of an unforeseen accident

The motor vehicle is probably one of the most expensive items a person owns. Insurance protects this asset and helps him in coping with the financial loss caused by accidents, damage or theft. Another reason is that while driving, a person is responsible for the safety of:

- i. Passengers
  - i . Fellow drivers
  - i . Other people's property
- iv. Pedestrians, Road users
- v. Insured

Insurance helps cover the costs of potential damages or injuries in case of an unforeseen accident or theft. Above all, in India it is mandatory to have at least a Third Party Motor Insurance before you can drive on the roads.

#### b) Competitive nature of Indian Motor Insurance Market

Motor insurance market in India has entered a highly competitive state. The presence of both private and public sector insurers and the freedom to decide the premium rates makes it imperative that the insurers follow sound underwriting techniques and charge sustainable premiums. It is therefore essential for them to ensure the information at their disposal is accurate and up to date for appropriate decision making. This requires statistics of previous underwritten risks.

#### c) Information appropriate for underwriting purposes

Information appropriate for underwriting purposes are:

- i. Age of the vehicle,
  - i . Condition of vehicle,
  - i . Particulars of refurbished vehicles,
- iv. Imported vehicles and
- v. Other information culled from the proposal forms

**d) Factor for rate of premium**

As rates of premium are based on past loss experience it is most essential to maintain a detailed statistical structure for Motor Insurance. The rate of premium depends upon four factors

- i. Claims cost,
- i . Commission,
- i i. Expenses and
- iv. Profit

The last three can be fairly estimated. But the claims cost is the unknown component of the premium and has to be ascertained by statistical methods.

The erstwhile tariff provided for three main classifications of vehicles and sub-classifications in each class (these classifications continue to be followed at present). It follows that statistics of premium and claims should also be maintained and collated on the same basis. The nature of the cover provided is also relevant as different rates are provided for Own Damage, and Act only covers. This factor should be incorporated in the statistical structure.

**e) Estimating Outstanding Claims**

Interpretation of statistics is as important as collation. For example the claims cost reflect not only the paid claims but also outstanding claims. But there is a long gap in settlement of motor claims, especially third party claims. This delay would mean that the true claims cost would be evident only after 3 to 4 years. Therefore, it is essential that an effective system to place proper estimates on outstanding claims be devised.

Once the claims cost is known, it is possible to develop incurred claims to premium ratio in each classification to consider effecting appropriate underwriting measures by the companies and rate revisions (upward or downwards) by the them.

**f) Prospective loss experience by suitable adjustments**

The results of past loss experience has to be interpreted in the light of changing conditions surrounding motor insurance business. Some adjustments will have to be made and the figure, to some extent, projected into the future taking into account annual increase in the number of vehicles, increase in population, changes in road construction, changes in common or statutory law, trends of third party awards, etc. In other words, past loss experience will have to be converted into prospective loss experience by suitable adjustments.

### g) Role of IT systems in calculating premium rates on real-time basis

The value of motor insurance statistics depends upon the correctness of the figures and the speed with which they can be produced. The collection, collating and interpreting of statistical data has been considerably simplified with the Information Technology Revolution.

The IT platforms have made it possible to capture a large variety of information and subject it to analysis. A few motor insurers in India have been able to decide premium rates on –real-time basis i.e. their systems are recording data of premium and claims on a continuous basis, this in turn is assisting them in quoting premium rates for a particular risk on immediate loss experience ratio.

### Test Yourself 2

In case of motor insurance, which of the below data is appropriate for underwriting purposes?

- I. Age of the vehicle
- II. Condition of vehicle
- III. Other information culled from the proposal forms
- IV. All of the above

### C. TAC as Data Depository and TAC as National Repository

#### 1. TAC as Data Depository

IRDA had earlier designated the TAC as the national repository of the insurance statistical data on underwriting and claims of all motor insurers. Insurers are required to capture all the relevant data and forward to the TAC on a quarterly basis.

In addition to the data provided to the TAC, insurers are recording other information of the vehicles insured by them to provide a competitive edge to their acceptance of risks.

### Example

- i. Some insurers record the colour of the vehicles in private car insurance to ascertain which colour is more accident prone. This is a common feature in the international market.
- i . The regular parking space of the vehicle is another feature noted.



The statistical data is very exhaustive. The TAC has devised a standard format for submission of statistics by all insurers. These data are to be submitted on a quarterly basis. The IRDA is monitoring the prompt submission and penalising insurers who do not provide the details within the timelines laid down.

Standardised codes are laid down for the majority of data required. As insurers may have their own requirements and codes, they are permitted to use codes for their specific requirements, in which case a Code master of such codes are to be sent to the TAC along with the quarterly returns.

### Example

An example of such code maybe a sub-zone code adopted by the insurer e.g. Commercial Vehicle Zone A Sub-zone 2 (Delhi-NCR) etc.

The TAC data requirement is under three major sets. Various alphanumeric codes have been assigned to the data e.g., Vehicle makes code, Insurer code etc. The requirement is of individual records. The data sets are

- i. Underwriting Policy data
- i . Claims paid data
- ii. . Input data

It may be mentioned at this juncture that owing to the dilution of functions of TAC in recent years, the IRDA has constituted the Insurance Information Bureau (IIB) which has taken the place of TAC as data depository. Hence reference to TAC may be read as reference to IIB.

#### a) Underwriting Policy Data

##### Underwriting Data Input: Policy data set

- ✓ Name of insurer and the underwriting office
- ✓ Policy year and number
- ✓ If endorsement, its number
- ✓ RTA location and Code
- ✓ Policy code- type of policy e.g. Liability or Package or TP with Fire
- ✓ Class code- the class of vehicle e.g., Commercial vehicle Auto rickshaw
- ✓ TAC Make code- code allotted by the TAC for most vehicle make and Models e.g. Maruti Omni 8 seater code is 10018
- ✓ Insurer Make code- code allotted by individual companies, if any
- ✓ Zone code
- ✓ Vehicle Age, carrying capacity
- ✓ Registration No, Chassis No, Engine No, colour
- ✓ IDV
- ✓ Permit, Nature of goods
- ✓ Road type

- ✓ Driver, age, experience, claims history, qualification
- ✓ Incurred claims
- ✓ TPPD statutory cover
- ✓ Anti-theft device
- ✓ Automobile association membership, voluntary excess, vintage car
- ✓ Own premises, special design, side car, special rating
- ✓ NCB entitlement and percentage
- ✓ Premiums- gross basic OD, electrical, bi-fuel, trailers, Net OD
- ✓ Premiums- gross basic TP, trailers, Bi-fuel, Driver LL, Cleaner LL, Coolies, conductor, owner PA, other PA, other TP, Net TP

The data required is very comprehensive. It captures most of the details available in the proposal. It is however identity neutral as it does not require the name or address of the proposer. All possible additional covers are also recorded individually as well as the discounts opted.

**Underwriting Data Output:** The macro data statistics that can be generated are with regard to the motor portfolio distribution among all insurers; the classes and sub-classes of vehicles and their distribution across the national zones and premium quantum distribution across all classes of vehicles and the nature and extent of the additional coverage of various risks.

## b) Claims Paid Data

**Claims Data Input:** The claims data requirement sets out to capture a detailed picture of the types, nature and quantum of claims paid separately for OD and TP.

### OD paid claims set

- ✓ Name of insurer and the underwriting office
- ✓ Policy year and number
- ✓ If endorsement, its number
- ✓ RTA location and Code
- ✓ Policy code-type of policy e.g. Liability or Package
- ✓ Class code- the class of vehicle e.g. Commercial vehicle auto rickshaw
- ✓ TAC Make code- code allotted by the TAC for most
- ✓ Vehicle make and Models e.g. Maruti Omni code is
- ✓ Insurer make code - code allotted by individual companies, if any
- ✓ Zone code
- ✓ Vehicle Age, carrying capacity
- ✓ Registration No, Chassis No, Engine No, colour
- ✓ IDV
- ✓ Permit, Nature of goods
- ✓ Road type
- ✓ Driver, age, experience, claims history, qualification
- ✓ Incurred claims

- ✓ TPPD statutory cover
- ✓ Claim year & No., child claim no-if practiced by insurer multiple claims for same accident
- ✓ Date of loss, place of loss, pin code, intimation date
- ✓ TAC nature of loss (NOL) code, insurer NOL code, if other
- ✓ Date of claim payment, nature of loss Total or other, and amount claimed and paid, expenses paid, interest if any paid
- ✓ On account payment if made
- ✓ Basis of settlement if code maintained by insurer
- ✓ Outstanding OD claims at end of year
- ✓ OD summons type- Civil Court or Consumer Forum

### TP paid claims set

- ✓ Name of insurer and the underwriting office
- ✓ Policy year and number
- ✓ If endorsement, its number
- ✓ RTA location and Code
- ✓ Policy code-type of policy e. g. Liability or Package
- ✓ Class code- the class of vehicle e.g. Commercial vehicle, Auto rickshaw
- ✓ TAC Make code- code allotted by the TAC for most vehicle make and Models
- ✓ Insurer make code- code allotted by individual companies, if any
- ✓ Zone code
- ✓ Vehicle Age, carrying capacity
- ✓ Registration No, Chassis No, Engine No, colour
- ✓ IDV
- ✓ Permit, Nature of goods
- ✓ Road type
- ✓ Driver, age, experience, claims history, qualification
- ✓ Incurred claims
- ✓ TPPD statutory cover
- ✓ Fatal or non-fatal
- ✓ TP amount claimed, paid
- ✓ Award paid amount
- ✓ Petition date, summons type
- ✓ Claimant age, sex, current annual income, Provision annual income, occupation
- ✓ Nature of injury, percentage of disability, income loss days
- ✓ Next hearing reason
- ✓ Children <25 yrs
- ✓ Children >25
- ✓ Damaged property details
- ✓ Number of dependants
- ✓ Written statement filed and date
- ✓ Policy filed
- ✓ Whether compromise, criminal-date

- ✓ Insured defended,
- ✓ Section 170 filed, court order, Company's evidence date, drivers, evidence date
- ✓ Claimant or deceased in charge sheet
- ✓ Post mortem date, reason for death
- ✓ Interest rate

An analysis of the claims data input highlights the detailed information sought to be obtained on the losses. It is a first step in the systematic recording of nature and types of losses. At the macro level it provides a picture of the extent of losses faced by insurers across all categories of vehicles and sub-classes.

### c) Input Data

Insurers' records are now created, recorded and stored on a computerised system. The information for underwriting has to be accurate and complete to generate the policy document, and accounting links. Most of the underwriting information generated is in terms of the TAC requirement. There will be a few deviations to incorporate the additional underwriting features that the respective insurer consider relevant and essential for their underwriting practice and their record inputs will provide for this.

**Underwriting Input Data:** The particulars of every risk accepted by the insurers are obtained and can be grouped as under

#### Vehicle particulars

- ✓ The class & sub-class of the vehicle e.g. private car or taxi; private or public use
- ✓ Area of operation &/or zone of registration
- ✓ The make, model, year, engine & chassis No, carrying capacity.
- ✓ The colour of the vehicle and its mileage readings.
- ✓ Additional fittings installed
- ✓ Persons driving the vehicle, age, their experience, licence particulars of owner, others regularly driving the vehicle and regular employed driver.
- ✓ Coverage- the insurance coverage taken with all add-ons and deductions. Each field is captured separately.
- ✓ Value of the vehicle and all additional fittings, individually
- ✓ Premium charged and discounts allowed.
- ✓ With the underwriting data computerized the claims process has also to be linked. The claims process too has been computerized from the time of intimation of the loss to its settlement all are recorded and tracked. This monitoring has speeded up the claim settlement process.

### Claims Input Data: General

- ✓ Vehicle detail - in addition to what is required for underwriting, above, the permit & fitness details, load carried
- ✓ Driver details- driver age, education level, experience of driving, endorsements if any
- ✓ Accident details -location area type of road e.g. city, national highway, state highway, village, hilly etc.
- ✓ Surveyors appointed- spot , final, re-inspection
- ✓ Investigators appointed if any
- ✓ Provisions for unpaid claims and reasons for being unpaid
- ✓ Own Damage - Nature & type of damages sustained, extent, value, recoveries if any
- ✓ Third Party - Injured persons, nature, type & extent of injury, age, income, Case Nos. Court jurisdiction, Claimants -age dependency; Amounts awarded, legal fees and other expense

### d) Output Data

The collating and processing of the above data provides a platform for the insurer to take appropriate decisions on motor insurance. The underwriting and claims data provide a number of useful MIS for insurers

## 2. TAC as National Repository for Statistical Data

### a) Underwriting Output

#### i. Loss ratios for different classes and subclasses of motor vehicles

It can be used to compare with the data for the individual insurer to ascertain the deviation from national average - positive or negative. This will provide the insurers with the appropriate base premium to be charged for the classes. The underwriting response to adverse ratio can then be worked upon

#### ii. Loss ratio for different makes and models of vehicles

A comparison of these ratios can highlight the more loss prone vehicles and measures to counteract them.

The output on claims break-up between OD & TP claims across the various classes individually & collectively. Adverse OD claims can result in follow-up action, in the form of loading of premium or applying specific terms or restrictions.

The statistical data output on age of vehicles and the loss ratios thereon can generate appropriate responses for acceptance of risks and the terms thereof.

Distribution of vehicles across RTA zones can assist in deciding targets for development of business or shrinking of market based on loss ratios.

### **b) Claims Output**

The claims reports generated from the data are normally expressed in the following forms

- i. Claims paid in absolute terms against premium class wise. This statement will give an overall picture of the profitability or otherwise of the motor portfolio of insurers across class wise
- i . Distribution of premium and claims coverage - wise and class-wise. This is snapshot of the distribution of premium and claims for OD & TP. It is still on absolute terms but gives a truer picture of the underwriting practice of companies. OD premiums are within control of insurers; hence high claims here reflect poor underwriting or unexpected catastrophic events for the year.
- i . Incurred claims ratios are a truer picture of the business as they adjust for previous years losses. Claims paid in the period and outstanding at the end of the period less outstanding at the start of the period. Here too the statistics can be generated on consolidated basis or break-up as to coverage and even age & vehicle category basis.

It cannot be more emphasised that an accurate and comprehensive data collections is essential for generating outputs that would be valuable to an insurer in deciding the risks to accept and the appropriate terms to ensure a profitable portfolio in a competitive environment.

### **c) Other Outputs**

There is a strong perception among insurers that TP premiums are unviable. However they have been unable to raise the rates due to the absence of clear and authentic data. Thus one of the major benefits in generation of and maintenance of data by an independent central repository will assist in proving this perception and provide an opportunity in raising the premium rates.

- i. The statistical data on record can generate many other outputs e.g. distribution of survey work among surveyors or advocates in case of motor TP
- i . Analysis of data on TP claims across various courts could help in more accurate provisioning of outstanding claims filed in various courts. E.g. There is a general belief that courts in some states are more liberal in awarding compensation to applicants. The detailed statistical data can over a period support or refute such belief.

- i . They can even provide details of quantum of claims paid to various repairers, the nature of damage and extent could decide whether the payments are reasonable or exorbitant.
- iv. The data could also provide trends on claims settlements for various types of loss or damage for corrective action to be taken, where necessary

Information technology's benefits are only as good as the raw information supplied. It therefore requires a strong commitment and interest from the top management of organisations to ensure that the need for and importance of accurate raw data and the outcome's benefits are brought to the notice of all concerned.

In a de-tariff environment the availability of statistical data to determine prices and profitability is of great importance. It is therefore essential that such information is available quickly and comprehensively. Thus a well-planned and comprehensive information technology platform must be the goal of every insurer.

### 3. Future of Auto Insurance

In the technology world, the latest advancement is only as good as the next thing coming down the line. The auto industry is constantly bringing us new technologies, whether it is for

- i. Safety,
- i . Entertainment,
- i i. Usefulness or
- iv. Simply for pure innovation

Many new car technologies are either specifically built for safety or at least have some sort of safety focus to them. Some of it will help keep us safe, some will give us information like never before and some will let us kick back and just enjoy the ride.

Equipment and features the public takes for granted today -- electric ignition, automatic front & rear windshield wipers, power steering, airbags, cruise control and many more -- began life as unexpected advances that dazzled the public.



### Example

When GM introduced the first automatic transmission -- its Hydra-Matic Drive -- in the 1940 Oldsmobile, it was an expensive option and more of a curiosity than a "got -to-have" feature. Today automatic transmissions have advanced to the point of providing as many as eight forward gears, driver-shift options, computerised driver-adaptable shifting and different shifting modes, such as "sport," "touring" and "snow." But in 1940, not stirring the transmission yourself was a radical concept and only well-heeled risk takers pointed up the extra cash for the new technology. Today's "cutting edge" is tomorrow's "commonplace."

#### a) Fully Autonomous Vehicles

Also known as driverless cars, already exist in prototype (such as the Google driverless car), and are expected to be commercially available around 2020. According to urban designer and futurist Michael E. Arth, driverless electric vehicles in conjunction with the increased use of virtual reality for work, travel, and pleasure could reduce the world's 800 million vehicles to a fraction of that number within a few decades. This would be possible if almost all private cars requiring drivers, which are not in use and parked 90% of the time, would be traded for public self-driving taxis that would be in near constant use.

i. This would also allow for getting the appropriate vehicle for the particular need a bus could come for a group of people, a limousine could come for a special night out, and a Safari could come for a short trip down the street for one person.

i . Children could be chauffeured in supervised safety.

i . Driving under the influence of intoxication (DUIs) would no longer exist, and few hundred thousand lives could be saved each year.

#### b) V2V (Vehicle-to-Vehicle) Automobile Technology

V2V is an automobile technology designed to allow automobiles to talk to each other. V2I is an extension of V2V and allows vehicles to communicate with the roadside infrastructure. Collectively they are known as V2V2I or V2X. The V2X-connected vehicles vision is extensive and has the following goals:

i. All vehicles have communication equipment that allows continuous connection to all nearby vehicles.

i . All vehicles have communication equipment that allows continuous connection to all roadways infrastructures.

- i . Many V2X applications to improve safety, traffic flow, energy usage and others will be developed. Many yet unforeseen V2X applications are likely to emerge.
- iv. V2X will become an enabling technology for future cruise-assisted highways and autonomous driving.
- v. The deployment timing of this vision is uncertain, but deployment will probably start between 2015 and 2020 in Europe and the US. Japan has already started to deploy V2I- based systems. V2V is expected to be significant by 2020 and will become prevalent by 2025.

The IHS Automotive topical report, V2X Technology's Arrival Key to Accident Reduction and Prevention, looks at the current status of the V2X market with reviews of key US, Japan and European Union projects. V2X application, business models and deployment options are also explored. The market potential of V2V is projected based on three forecast scenarios - conservative, expected and aggressive forecasts are included in a spreadsheet model, which has details on four regions: United States, Western Europe, Japan and worldwide.

The V2X Technology's Arrival –Key to Accident Reduction and Prevention report is available on IHS Automotive Advanced Driver Assist Systems (ADAS) Portal. The portal, powered by IHS iSuppli, allows users to quickly assess potential market demand and attach rates for key ADAS and safety systems used in the production of light vehicles. The portal includes profiles of all production vehicles around the world, as well as industry news, technology reports, supplier profiles, OEM-supplier relationships, regulation and mandate details and industry forecasts segmented by application and geographic region.

### c) Alternatives to the Automobile

Established alternatives for some aspects of automobile use include public transit such as

- i. Buses,
- i . Trolleybuses,
- i i. Trains,
- iv. Subways,
- v. Tramways light rail,
- vi. Cycling, and

## vi . Walking

Car-share arrangements and carpooling are also increasingly popular - the US market leader in car-sharing has experienced double-digit growth in revenue and membership growth between 2006 and 2007, offering a service that enables urban residents to "share" a vehicle rather than own a car in already congested neighborhoods. Bike-share systems have been tried in some European cities, including Copenhagen and Amsterdam. Similar programs have been experimented with in a number of US Cities. Additional individual modes of transport, such as personal rapid transit could serve as an alternative to automobiles if they prove to be socially accepted.

### Test Yourself 3

The TAC data requirement is under three major sets. The requirement is of individual records. The data sets are:

- I. Underwriting policy data, Claims paid data and Input data
- II. Underwriting policy data, Premium collected data and Input data
- III. Underwriting policy data, Premium collected data and Output data
- IV. Policy issued data, Premium collected data and Output data

## Summary

- a) With regards to role of IT systems in the growth of the insurance industry, success in the insurance industry is expected to come from two areas: Cloud systems and analytics.
- b) Analytics is the discovery and communication of meaningful patterns in data, especially valuable in areas rich with recorded information.
- c) Analytics is a two-sided coin:
  - i. On one side, it uses descriptive and predictive models to gain valuable knowledge from data - data analysis.
  - i. On the other, analytics uses this insight to recommend action or to guide decision making - communication.
- d) The auto manufacturers are providing connected vehicle services to discerning customers. This includes: GPS, Emergency notification, Roadside assistance, Concierge services and other offerings.
- e) With regards to IT interventions and Data Analytics in insurance industry, the key areas are: enterprise intelligence, enhanced analytics, predictive analytics, data governance and data security.
- f) Insurers have so far identified Analytics, Business intelligence, Data warehousing and Big data to help them make better use of the data they have, access newly available data and make better, more informed decisions to find opportunities, price them more effectively and reduce losses.
- g) IRDAI has set up a subsidiary Insurance Information Bureau of India (IIB) for collating data from the industry and then analysing them
- h) Predictive analytics is not just for fraud management in insurance industry anymore, but the same can extend into other areas of Claims Management such as Surveyors and Loss Adjusters assignment, Loss-adjustment expense and Decision-support
- i) There are three reasons for identifying drug-impaired driving for drivers involved in an automobile accident in the interest of motor insurance stakeholders:
  - i. First reason relates to ‘claim recovery’.
  - i. Second reason relates to ‘assignment of liability’, and especially subrogation opportunities.
  - i. Third reason relates to ‘non-renewal’.
- j) A blood alcohol content of 0.08 grams per deciliter or higher is considered a per se case of driving while intoxicated.

- k) Predictive models are applied not just at first-notice-of-loss or preliminary report of injury, but during the claims process, to enable them to much more rapidly identify and deal with them, because those are the claims that need immediate attention to avoid unpleasantness later.
- l) Some commercial insurance companies have begun to see that better science—the type of science that modern predictive analytics can provide—can help underwriters do their jobs more effectively.
- m) Most companies adopting predictive analytics think of it exclusively as a tool to help them with their pricing and underwriting.
- n) Predictive analytics is also useful in the following, among other tasks: Customer acquisition, Target marketing, Broker management, Cost reduction, Retention management, Claims process management.
- o) Factor for rate of premium: The rate of premium depends upon four factors: Claims cost, commission, expenses and profit
- p) A few motor insurers in India have been able to decide premium rates on —real-time basis i.e. their systems are recording data of premium and claims on a continuous basis, this in turn is assisting them in quoting premium rates for a particular risk on immediate loss experience ratio.
- q) Insurers are required to capture all the relevant data and forward to the TAC on a quarterly basis.
- r) The TAC data requirement is under three major sets. The requirement is of individual records. The data sets are: Underwriting policy data, Claims paid data, Input data
- s) Underwriting Data Input: The data required is very comprehensive. It captures most of the details available in the proposal.
- t) Underwriting Data Output: The macro data statistics that can be generated are with regard to the motor portfolio distribution among all insurers. The classes and sub-classes of vehicles and their distribution across the national zones. Premium quantum distribution across all classes of vehicles and the nature and extent of the additional coverage of various risks.
- u) Claims Data Input: The claims data requirement sets out to capture a detailed picture of the types, nature and quantum of claims paid separately for OD and TP.
- v) Underwriting Input Data: The particulars of every risk accepted by the insurers are obtained and can be grouped as under: Vehicle particulars and Claims Input Data

- w) Claims Output: The claims reports generated from the data are normally expressed in the following forms:
- i. Claims paid in absolute terms against premium class wise.
  - i . Distribution of premium and claims coverage - wise and class-wise.
  - i . Incurred claims ratios are a truer picture of the business as they adjust for previous years losses.
- x) Future of Auto Insurance
- i. Fully Autonomous Vehicles
  - i . V2V (Vehicle-to-Vehicle) Automobile Technology
  - i i. Alternatives to the Automobile
- 



**Answers to Test Yourself****Answer 1**

The correct answer is III.

With regards to role of IT in the growth of insurance companies, success is expected to come from cloud systems and analytics.

**Answer 2**

The correct option is IV.

In case of motor insurance, the following data is appropriate for underwriting purposes: Age of the vehicle, Condition of vehicle, and other information culled from the proposal forms.

**Answer 3**

The correct option is I.

The TAC data requirement is under three major sets. The requirement is of individual records. The data sets are: Underwriting policy data, Claims paid data, Input data.

**Self-Examination Questions****Question 1**

\_\_\_\_\_ is the discovery and communication of meaningful patterns in data, especially valuable in areas rich with recorded information.

- I. Analysis
- II. Analytics
- III. Statistics
- IV. Business Intelligence

**Question 2**

A blood alcohol content of \_\_\_\_\_ or higher is considered a per se case of driving while intoxicated.

- I. 0.08 grams per deciliter
- II. 0.8 grams per deciliter
- III. 8 grams per deciliter
- IV. 80 grams per deciliter



### Question 3

Insurers are required to capture all the relevant data (related to motor insurance) and forward to the TAC on \_\_\_\_\_.

- I. Ad-hoc basis as and when requested
  - II. Yearly basis
  - III. Half-yearly basis
  - IV. Quarterly basis
- 

### Answers to Self-Examination Questions

#### Answer 1

The correct option is II.

Analytics is the discovery and communication of meaningful patterns in data, especially valuable in areas rich with recorded information.

#### Answer 2

The correct option is I.

A blood alcohol content of 0.08 grams per deciliter or higher is considered a per se case of driving while intoxicated.

#### Answer 3

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The correct option is IV.

Insurers are required to capture all the relevant data (related to motor insurance) and forward to the TAC on a quarterly basis.

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# CHAPTER 7

## CONSUMER DELIGHT

### Chapter Introduction

In this chapter you will learn about the evolution of the quality service concept and the basic elements of customer service. The chapter also discusses the regulatory, statutory, self and internal commitments. In the end the chapter explores the service gaps in motor claims and related customer experience management.

### Learning Outcomes

- A. Evolution of Quality Service Concept and Basic Elements of Customer Service
- B. Service Gaps in Claims and Customer Experience Management



## A. Evolution of Quality Service Concept and Basic Elements of Customer Service

### 1. Evolution of Quality Service Concept

Quality is a timeless concept, and the origins of the human approach to managing quality are hidden in the mists of ancient past. We can be sure that humans have always faced problems of quality.

#### a) Caveat Emptor

In the olden days the seller was responsible for supplying the goods but the buyer became responsible for assuring himself of the quality. This arrangement came to be known as the **doctrine of Caveat emptor, let the buyer beware**. Their failure to be aware was at their own peril.

#### b) Quality Management

With the passage of time, quality protection shifted to quality assurance giving rise to the concept of quality specifications. This led to quality management. This brought two types of improvements to fore:

- i. Improvement aimed at **customer satisfaction including product innovation**
- i . Improvement aimed at **reducing customer dissatisfaction** by bringing down chronic waste, inspection and test

Thus took birth of **quality control process**:

- i. by **evaluating** actual quality being produced;
- i . its **comparison** with quality goal and
- ii. . taking **corrective action** if quality does not conform to the goal

#### c) Japanese Quality Revolution

With the rise of consumerism in the 20th century immediately after World War II, the Japanese Quality revolution was launched during 1950's. Within a few decades, that revolution propelled Japan to a position of World Leadership in Quality. It led to increased competition in quality leading to customer focus.

#### d) Philip Crosby's Observations

It is the management systems rather than workers who are cause of poor quality service. It is found that with 99% efficiency of 100 workers makes the organisation efficiency barely 36.4%. Philip Crosby argues that poor quality in the average costs about 20% of revenues. His absolutes of quality are 'conformance to requirements' not goodness and the system for achieving quality is 'prevention', not appraisal. The performance standard is Zero Defect which is not –that close enough. The measurement of quality is the price of non-conformance, not indexes. Crosby states that –Quality is free, because the small cost of prevention will always be lower than the cost of detection, correction and failure.

#### e) Rewards of higher quality

The rewards of higher quality produce include:

- i. greater customer loyalty;
- i . improved market share;
- ii. . higher returns to shareholders;
- iv. reduced service calls;
- v. higher prices;
- vi. greater productivity

#### Important

Jose Rose said, "Quality begins and ends with the customers. The fundamental principal is that the quality is what the buyer defines it as not what the company defines it to be."

## 2. Impact of Nationalisation

- a) **Increase in reach:** Nationalisation has spread the message of insurance to every nook and corner of the country.
- b) **Development of human resource and expertise:** The insurers have become financially strong and developed large human resource brimming with requisite skills and expertise to match any international standards.
- c) **Reduction in policy cost:** The industry has given lowest paid policies to customer absorbing cost of commission and has developed unique rural package covers.
- d) **Social obligations:** The sector continued to cross subsidise to meet out social liabilities to motor accident victims despite adverse claims ratio.
- e) **Stable market:** The insurance sector has succeeded in providing a very stable market.

- f) **Customer friendly initiatives:** The industry has introduced unique concept in settling claims, affirming commitment that –customer is the purpose of business and we will not deny him any legitimate claim on technical grounds.

Despite such grand track record, customer is not satisfied with the insurance industry. He is shouting from the rooftop about the poor quality of service.

### 3. Objectives of Opening the Insurance Sector

One of the principal objectives of opening the insurance industry to private sector has been to improve and upgrade the quality of services offered to the consumers. Therefore, time has already come to delve into quality of customer services in insurance industry which is unfolding in the current scenario.

The liberalisation of economy has triggered opening up of insurance sector. The opening up of the sector has given a sort of jubilation to consumer. The benefits of competitive marketing should percolate down to the consumers. There could be several parameters to evaluate the quality of these services.

These could be in terms of:

- i. Time taken in delivery of policy documents,
- i . Fast settlement of claims to the satisfaction of the claimant,
- i i. Wide spectrum of products to be selected from lower pricing,
- iv. After sale contacts with the consumers on a periodic basis etc.

#### Important

Peter F. Drucker said **“The company that understands and anticipates customer needs, delivers consistently high levels of service and connects to customers via the channels of choice wins”**.

Insurance is a –people centric business and people includes various stake holders viz

- i. Policyholders,
- i . Claimants,
- ii. . Beneficiaries and
- iv. Intermediaries

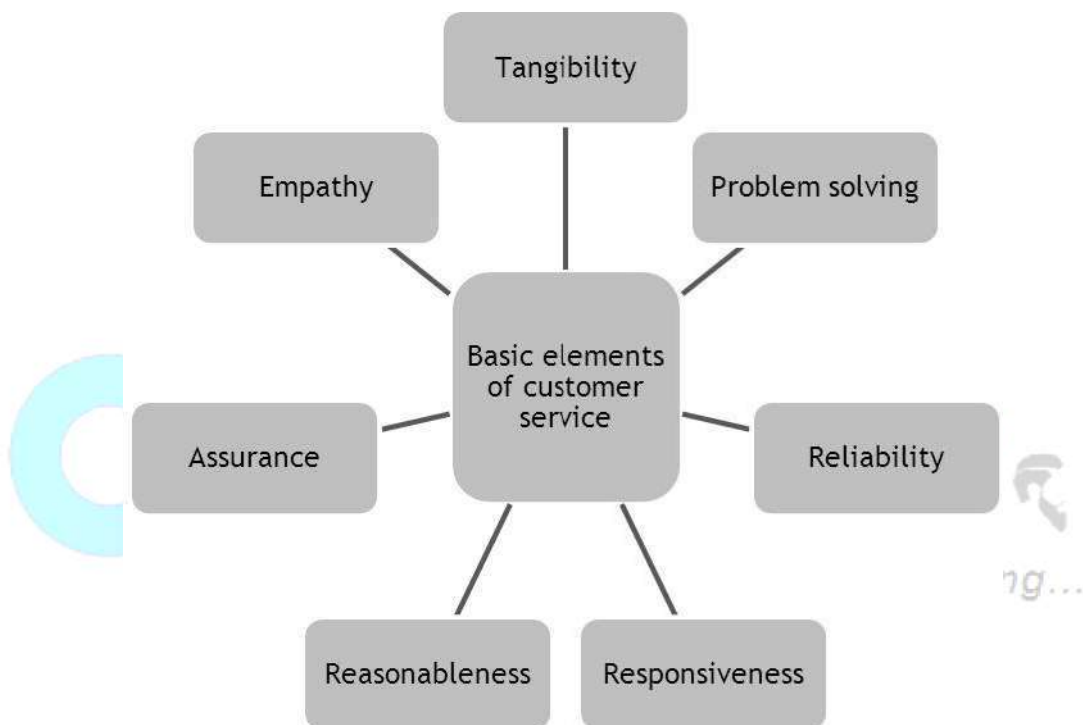
‘Seamless service’ to ‘service full of seams’ is the order of the day. The customer sensitivity is needed from insurance stake holders, and customer service needs to be assessed from the point of **“Under promise and over deliver” vs “over-promise and under-deliver”**. What cannot be measured can never be assessed.

To understand customer satisfaction one needs to look into customer perception of image about the services through

- i. Expectations of services and experience of services,
- i . The design quality (quality of policy) and
- ii. . Servuction quality (production and delivery of quality)

#### 4. Basic Elements of Customer Service

**Diagram 1: Basic elements of customer service**



The basic elements of customer service include tangibility, problem solving, reliability, responsiveness, reasonableness, assurance, and empathy. Let us discuss each of these in detail.

##### a) Tangibility

The tangibilisation of services directly relates to

- i. Promptness in policy issue;
- i . Credibility of the company;
- i i. On-time delivery of policy;
- iv. Simple procedures for policy issue;
- v. Knowledge of the agents regarding different products;
- vi. Effective customer service support facilities;



- vi . Cheque pick-up;
- vii . Enhanced quality of customer service;
- ix. Promptness in settlement of claim

### b) Issues in Problem Solving

The issues in problem solving relate to

- i. Knowledge of the customer service representative;
- i . Waiting time to get connected to customer service representative;
- i i. Politeness of customer service representative;
- iv. Persuasiveness of customer service,
- v. Representative to address the problem
- vi. Perceived financial strength of the company;
- vi . Network of the company (convenient location of the branches);
- vi i. Promised service levels provided;
- ix. Possibility of long term association with company;
- x. Transparent and clear rules and regulations of the policy;
- xi. Promptness in payment procedure;
- xi . Promptness in claim redress;
- xii. . Relaxed documentation norms;
- xiv. Services provided within time frame of long-term reliability i.e., stability of company;
- xv. Level of satisfaction with policy cover;
- xvi. Customisation of policy cover as per requirements;
- xvii. Company's initiative to make customer aware of various policy products and support facilities & covers;
- xvii .Regular updates provided by company;
- xix. Value for money, both in terms of cover and return;
- xx. Appropriateness of returns;
- xxi. Regular update and accounts sharing;
- xxii. Grace period for premium payment;
- xxii .Return on overall investment

With regards to issues in problem solving, in motor insurance, one needs to appreciate

- i. Quality and infrastructure of dealers and garages;
- i . Numbers of tie-ups with different dealers' network;
- i . Types of the dealer centre in terms of its infrastructural facilities;
- iv. Types of the workshops in terms of services they offer;
- v. Politeness and behavior of the customer service representative

### c) Reliability

Reliability of insurance company is shown if the insurance policy meets

- i. The customer's needs which are acceptable to him;
- i . Financial strength of the company in the long term;
- i i. Interconnectivity of the operating branches;
- iv. Providing promised service levels;
- v. Appropriateness of bills verification;
- vi. Promptness in claims dispute redressal;
- vi . Relaxed documentation norms and regulations;
- vi . Adherence to TAT turnaround time of each service i.e., services provided within time frame.

Reliability for the customer is

- i. His sense of security to the policyholder,
- i . Solidity of the insurance enterprise by ensuring their solvency margins within norms prescribed by the regulator,
- i . Guarantee against claims pay ability by investing in government approved securities and adhering to legislative norms for a guarantee fund for all insurance activity

### d) Reasonableness

The policyholder expects to be treated reasonably and be not charged excessively and receive fair treatment as between policyholders and principle of discrimination in rating i.e., equity among policyholders.

The acceptable manner of functioning for customer satisfaction is for insurers to:

- i. Conform to public policy,
- i . Make available retail covers i.e., social / micro sectors, including family units,
- i . Cover to those who need and want insurance protection e.g., for below poverty line (bpl) / economically poor people, the cover has to be affordable,
- iv. Conveniently available i.e., direct mail / tele insurance / on net / 24\*7 / at home / at door step
- v. Cover to be reasonably priced
- vi. Cover to meet the requirements of the policyholder

In other words, insurance should be readily available, reasonably priced and company should be financially strong to meet its liability.

**e) Responsiveness**

Responsiveness for customer to be satisfied refers to sensitivity of insurer towards

- i. Quality of repairs made available;
- i . Promptness in claim settlement;
- ii. . Acceptance and effectiveness of the cashless transaction facilities;
- iv. Degree of clarification on insured amount;
- v. Promptness to react towards claim settlement problems;
- vi. Hassle free repairs;
- vi . Effective renewal reminder mechanism;
- vi i. Proper flow of information,
- ix. Hassle-free reissue of policy documents;
- x. Prompt reissue of policy document;
- xi. Suggestions in terms of precautionary measures for avoiding perils

**f) Assurance**

Customer needs assurance repeatedly through

- i. Applicability of the product / policy cover on customer;
- i . Company's initiative to provide awareness of the product facilities and covers;
- i . Regular updates on timely basis;
- iv. Ensuring adequacy and scope of the insurance policy; and
- v. Appropriate steps employed for the claim settlements

**g) Empathy**

Empathy means to put one self into the position of others. This is possible by

- i. Providing for treatment during break in period;
- i . Personalised consulting / advisory provisions;
- ii. . Effective customer loyalty programmes;
- iv. Providing value-added services and feedback maintenance;
- v. Personal consulting for customised policy and claims solutions;
- vi. Assessment of claim benefits as per rules specified at time of issue of policy;
- vi . Appropriateness in calculating claims settlement;
- vi . Overall satisfaction levels reached with the company (experience of being associated with the company).

## 5. Regulatory, Statutory, Self and Internal Commitments

In India's regulatory regime,

- i. The IRDAI's main objective is to protect policyholder's interest and
- i. IRDAI's development objective is development of retail business, along with spread of insurance in India.

While customer's entitlements are IRDA's, aims as envisaged under IRDA Act 1999 and insurers commitment is internal commitment given in Citizens Charter and the rights of customer available is industry mechanism at customers door step. Do we have progress in these areas? The regulatory commitment and need for Insurance Ombudsman at self-regulatory level has given the needed filip towards providing greater consumer satisfaction.

Deficiency in service, Restrictive Trade Practice, Unfair Trade Practice under Consumer Protection Act 1986 the Statutory commitment, Protection of Policy Holders Interest Do's & Don'ts. IRDAI aims at

- i. Insurance customer receiving precise, clear and correct information, about the services, products and risks;
- i. Recognises Insurance Customers' responsibility for their own decisions, while aiming to ensure that they are not exposed to risks that they should not reasonably be expected to assume.

IRDAI further aims to protect customers of insurance companies and is required to set, promote, monitor & enforce high standards of integrity, financial soundness, fair dealing and competence of those it regulates, in order to protect and to secure fair treatment for insurance policyholders.

### Test Yourself 1

The \_\_\_\_\_ of insurance services directly relates to things like promptness in policy issue; credibility of the company; promptness in claim settlement etc.

- I. Reasonableness
  - II. Responsiveness
  - III. Empathy
  - IV. Tangibility
-

## B. Service Gaps in Claims and Customer Experience Management

### 1. Service Gaps in Claims

Service gaps in claims relate to:

- i. Proportionately large number of claims in motor insurance,
- i . Requirement of quick registration,
- ii. . Requirement of immediate payments,
- iv. Need to explain deductions in claims,
- v. Manage local administration and local politicians interference,
- vi. Completion of claim related forms,
- vi . Implications for controlling offices,
- vii. . Lack of care in designing products in regard to premium, additional covers

There is need for redesigning of proposal form, filling the form in duplicate to provide copy to insured and making it compact to facilitate understanding, provide prospectus of every product containing details regarding scope of benefits, extent of insurance cover, warranties, exceptions, conditions.

#### a) Implications for Controlling Office

The controlling office is required to review working processes to:

- i. Reduce time lag, in issuance of policy, in settlement of claim,
- i . Explore alternative methods of policy stamping,
- ii. . Review penal interest rate in terms of accountability,
- iv. IT support at operating offices,
- v. Develop MIS with IT support to monitor bench marks in respect to time stipulations

#### b) Implications for Operating Office

The office is required to

- i. Record date of receipt of proposal,
- i . Expedite process of underwriting where higher office approvals is required,
- i . Communicate underwriting decision within 15 days,
- iv. Communication for requirements to proposer immediately,
- v. Proposal form to reach policy holder within 30 days as per Protection of Policyholders Regulations.

### c) Claim Settlement Implications

Claims settlement is required within 15 days of loss intimation and to respond within 10 days of communication from policyholder. The IRDA PPI regulation require claims settlement within 30 days on receipt of all papers, payment of penal interest for delayed processing 2% above bank rate on the first day of every financial year.

### d) Implications for Intermediaries

Agents are required to adhere to code of conduct as regard to transparency in operations, providing objective information without bias or favour. Agents / intermediaries should be well versed in relevant selling points and needs of customer and provide full details to proponent to decide for best cover.

The agent is supposed to provide accurate information about customer's moral hazard and morale hazard and risk involved (past losses). The agent must possess knowledge of policy servicing and claims procedure to customers. Agents should submit the proposal form and premium immediately. Prospectus / Brochure / Leaflet of features of policy must be available with the agent. How to increase retention and cross-sell additional services?

## 2. Current Grievance Redressal Mechanism

The grievance redressal mechanism must be both cost effective and consumer friendly and within a time schedule to be laid down for handling grievances.

### a) Internal grievance redressal mechanism of the insurer

Keeping the above tenet, any grievance of a policyholder on any matter relating to the functioning of an insurer have to be submitted first to internal grievance redressal mechanism of the insurer.

### b) Insurance Ombudsman or Consumer Affairs Department of IRDA

If the complainant is not satisfied with the decision of the grievance redressal mechanism of the insurer, it can be taken up with the Insurance Ombudsman or Consumer Affairs Department. The complainant can write to:

Consumer Affairs Department of IRDA  
3-5-817/818, 9th Floor,  
United Towers,  
Basheer Bagh,  
Hyderabad - 500029

The complaint can also be taken up with:  
Secretary Financial Services, Department of Economic Affairs,  
Ministry of Finance, Government of India,  
North Block, New Delhi

The complaint can also be taken up with:  
Director of Public Grievance,  
Cabinet Secretariat,  
II Floor, Sardar Patel Bhawan;  
Sansad Marg, New Delhi

### **c) Courts**

Grievances can be taken up for legal adjudication in Civil Courts and with Consumer Dispute Redressal Agencies and finally with the Supreme Court (the Apex Court).

### **d) IGMS**

The IRDA has also made available an on-line, Integrated Grievance Management Scheme (IGMS) with customer interface besides access to all licensed insurers independently and IRDA in a consolidated manner with facility to monitor, supervise and analyse complaints on pan India basis.

## **3. Customer Grievance Cells**

The mechanism envisages Officer-in-charge at all operational centers to be mobile at doorstep. Operating offices must keep record of all complaints and action taken until final disposal. A record is maintained of complaints received and disposed-off every month. Reports are to be monitored by corporate office.

Dispute resolution at door step for retail customers is managed through Panchayat in rural segment with Banker / Post Master as independent nominees, holding claims Courts; urban segment, claims clearance weeks, customer education through participation in fairs / road shows / dealers shows / media.

At Head Office a retired judge of High Court, the Chief Operating Officer or Executive Director in charge of insurer's customer service and the Managing Director or Chief Executive himself.

## **4. Need for Insurance Ombudsman**

The Consumer Protection Act, 1986 though enacted to settle cases within 90 days is no more a speedy mechanism. Due to lack of adequate infrastructure huge backlog has arisen. Cases are being adjudicated causing 4-5 years impasse. This led the Central Government to propose concept of Ombudsman in Insurance Industry.



### a) Insurance Ombudsman Scheme

Redressal of Public Grievance Rules, 1998 (notified by Central Government on 11th Nov 1998) Governing Body of Insurance Council, Vested with powers to appoint Ombudsman for three years duration to act as Counselor & Mediator. RPG Rules 1998 created for quick disposal of the grievances of the customers, to mitigate their problems involved in redressal of those grievances for Protection of interests of policyholders under Redressal of Public Grievance Rules, 1998 and also in building their confidence in the system, helped to generate and sustain the faith and confidence amongst the consumers and insurers.

### b) Functions of Insurance Ombudsman

The Insurance Ombudsman has limited role though specialised machinery for tackling personal grievances. Insurance Ombudsman is available at 12 centers in India. Insurance ombudsman has been mandated to perform two functions, one is conciliation of disputes and the other is award making up to Rs. 20 lakhs in respect of personal lines of insurance from any person for:

- i. Repudiation of claims both partial and total;
- i . Dispute of premium paid or payable;
- ii. . Dispute of legal construction of policy wordings in case of claims;
- iv. Delay in settlement of claims,
- v. Non-issuance of any insurance documents after receipt of premium, Claims

### 5. Creating Value Added Services

Insurance companies can create value for customers on the basis of five interlocking ways as per Harvard study:

- i. Solutions: to solve customers' problems
- i . Respect: treat customer with respect
- ii. . Emotions: contact with your customers emotions
- iv. Pricing: set the fairest prices
- v. Convenience: save your customers time

### 6. Customer Experience Management

Competition has become more intense, become more retail customer sensitive. Insurers must:

- i. Have more responsive employees,
- i . Develop customer specific internal systems of distribution & redressal,
- i i. Attract customers by professional selling, and
- iv. Evolve customer sensitisation through customer directed efforts

Customer Experience Management (CEM) is one of the most important customer strategies for today's business:

- i. It creates direct impact on insurers brand;
- i . It works as a guiding principle for designing a customer-centric business process;
- i . It influences every staff that acts as customer touch-points during the total customer experience process

#### **a) Be a Friend of Your Customer**

All too often we come across some case, usually in a consumer court, being decided against an insurer and in favour of a client. In one such case the client, a resident of Navi Mumbai, reported the theft of his car. Police reports were submitted, the insurer appointed an investigator, the claim note was also approved. A day before the cheque was to be issued; the stolen vehicle was recovered by the police. The vehicle was suspected to have been stolen by alleged terrorists in connection with the blasts at Akshardham temple. Since the vehicle was recovered prior to the insurer issuing the cheque, the insurer denied liability. More than 10 years later, the car is still in police custody as "material evidence".... and the client is still running from pillar to post. There are two aspects under motor theft claims:

- i. If the vehicle was recovered prior to settlement of the claim including issue of the settled amount, the insured should accept the recovered vehicle immediately.
- i . If there are damages or change in color / theft of spares, under the said claim, such spares is / is payable including the prescribed towing charges against same claim intimation.

The policy only requires the matter to be reported to the police. Even an FIR is not mandatory. In view of various judgments cited on the issue any delay in settlement beyond 90 days has little justification as stipulated by the regulations of the IRDA also. The fact that an insured peril has operated causing a loss, must be taken as sufficient trigger to accept liability and pay the claim. The insurer should settle immediately if we talk of consumer delight

#### **b) Insurer's Primary Service**

What is insurer's primary service? Is it issuing cover note or policy or settling claims? When consumer is said to be satisfied? Whose satisfaction is important, insurers or insured's?

These are some questions which need to be addressed when talking of consumer delight. Consumer is delighted only when his genuine claim is settled without any hassles. Are insurance companies taking any efforts to settle claims and settle them expeditiously? Paradoxically all actions taken by insurers are in terms of claims settlement ratio, which ironically does not account for number of claims closed as no claim and number of claims where the insured disputed quantum of claim.

Insurers do not adhere to turnaround time for settlement of claim, assistance given to client in speedy settlement of claim. Should insurers' not provide Claims Councilors' to help the client to take his claim?

#### **i. Claims Counselor**

Insurers should have Relationship Managers as claims counselors who will reach the client and help him in obtaining all documents and shifting of vehicle for repairs, procuring estimates and in consultation with surveyor make him reach to an amicable settlement. Ensure that scrap (sic salvage) items are duly verified and disposed off expeditiously and economically. Help client in verification of the vehicular documents and arrange for transfer of Registration papers in case of Total loss or theft claims.

#### **ii. Third Party counselors"**

In case of third party injury claims, the beneficiary is left to fend for themselves where the black coat provides all help according to his professional understanding.

Whose client is beneficiary in any case?

Should insurers not help them in reaching to amicable compromise settlement?

The need of the hour is \_TP counselors' who will help the injured or legal representatives of deceased by extending services of their tie up hospitals where the accident victims are taken for treatment / convulsing.

#### **c) Culture of Helping Attitude**

The client must feel that insurance company is willing, even to the extent of going out of way, to settle the claim. The culture of helping attitude and standing behind the client for his financial safety must be the motto of each employee. This requires the insurers to change their attitude of finding faults to reduce payments or repudiate the claims or hoodwinking the client to submit him to accept lower amounts as full and final settlements.

#### d) Bond of Trust and Confidence

Consumer delight is possible when a bond of trust is created by insurer with the client so that client is not left to fend for themselves. The maximum number of claims are disputed by insurers in the courts on the ground that the client has accepted the claim in full and final settlement while the client remains dissatisfied and accepts partial payment to recompense his losses to some extent if not fully.

Similarly in TP claims, if all other policy requirements are met, insurers must not only offer compromise amount on the basis of just compensation arrived but also deposit in the court with the consent to release the amount and let the case be then contested on the principle of fault liability. This will enthuse confidence in the beneficiaries and build a degree of trust about insurance company's best intentions to settle the claim.

What needs to be done is to affirm this trust and confidences that the insurance company is solidly behind the genuine claimants always to provide consumer delight. When a client prefers his insurance claim, the whole insurance team must be extremely supportive and be seen as taking the claim in all possible and correct manner for the damages and be ready to help in getting the vehicle back with a smiling face for me. Neither the dealer should have any complaints for the services of insurer nor should the client hold any odd views. The client expects help with respect and responsive services.

#### Test Yourself 2

Insurance ombudsman has been mandated to perform the function of Award making up to \_\_\_\_\_ in respect of personal lines of insurance from any person.

- I. Rs. 5 lakhs
  - II. Rs. 10 lakhs
  - III. Rs. 20 lakhs
  - IV. Rs. 40 lakhs
-

## Summary

- a) Quality management has brought two types of improvements to fore:
  - i. Improvement aimed at customer satisfaction including product innovation
  - i . Improvement aimed at reducing customer dissatisfaction by bringing down chronic waste, inspection and test
- b) The performance standard is *Zero Defect* which is not –that close enoughll. The measurement of quality is the price of non-conformance, not indexes.
- c) The rewards of higher quality produce include:
  - i. greater customer loyalty;
  - i . improved market share;
  - ii. . higher returns to shareholders;
  - iv. reduced service calls;
  - v. higher prices;
  - vi. greater productivity
- d) Jose Rose said, –Quality begins and ends with the customers. The fundamental principal is that the quality is what the buyer defines it as not what the company defines it to be. ll
- e) The impact of Nationalisation includes:
  - i. Increase in reach
  - i . Development of human resource and expertise
  - i i. Reduction in policy cost
  - iv. Social obligations
  - v. Stable market
  - vi. Customer friendly initiatives
- f) There could be several parameters to evaluate the quality of these services. These could be in terms of:
  - i. Time taken in delivery of policy documents,
  - i . Fast settlement of claims to the satisfaction of the claimant,
  - i i. Wide spectrum of products to be selected from lower pricing,
  - iv. After sale contacts with the consumers on a periodic basis etc.
- g) The basic elements of customer service include tangibility, problem solving, reliability, responsiveness, reasonableness, assurance, and empathy.

- h) With regards to issues in problem solving, in motor insurance, one needs to appreciate:
- i. Quality and infrastructure of dealers and garages;
  - ii. Numbers of tie-ups with different dealers' network;
  - iii. Types of the dealer centre in terms of its infrastructural facilities;
  - iv. Types of the workshops in terms of services they offer;
  - v. Politeness and behavior of the customer service representative
- i) Reliability for the customer is:
- i. His sense of security to the policyholder,
  - ii. Solidity of the insurance enterprise by ensuring their solvency margins within norms prescribed by the regulator,
  - iii. Guarantee against claims pay ability by investing in government approved securities and adhering to legislative norms for a guarantee fund for all insurance activity
- j) The policyholder expects to be treated reasonably and be not charged excessively and receive fair treatment as between policyholders and principle of discrimination in rating i.e., equity among policyholders.
- k) Responsiveness for customer to be satisfied refers to sensitivity of insurer.
- l) Customer needs assurance repeatedly through:
- i. Applicability of the product / policy cover on customer;
  - ii. Company's initiative to provide awareness of the product facilities and covers;
  - iii. Regular updates on timely basis;
  - iv. Ensuring adequacy and scope of the insurance policy; and
  - v. Appropriate steps employed for the claim settlements
- m) Empathy means to put one self into the position of others.
- n) Current Grievance Redressal Mechanism includes:
- i. Internal grievance redressal mechanism of the insurer
  - ii. Insurance Ombudsman or Consumer Affairs Department of IRDA
  - iii. Courts
  - iv. IGMS
- o) Insurance ombudsman has been mandated to perform two functions, one is conciliation of disputes and the other is award making up to Rs. 20 lakhs in respect of personal lines of insurance from any person.

- p) Insurance companies can create value for customers on the basis of five interlocking ways as per Harvard study:
- i. Solutions: to solve customers' problems
  - i . Respect: treat customer with respect
  - ii. . Emotions: contact with your customers emotions
  - iv. Pricing: set the fairest prices
  - v. Convenience: save your customers time
- q) Customer Experience Management (CEM) is one of the most important customer strategies for today's business:
- i. It creates direct impact on insurers brand;
  - i . It works as a guiding principle for designing a customer-centric business process;
  - i . It influences every staff that acts as customer touch-points during the total customer experience process
- r) Consumer is delighted only when his genuine claim is settled without any hassles.
- s) Claims Counselor: Insurers should have Relationship Managers as claims counselors who will reach the client and help him in obtaining all documents and shifting of vehicle for repairs, procuring estimates and in consultation with surveyor make him reach to an amicable settlement.
- t) Third Party counselors': In case of third party injury claims, the beneficiary is left to fend for themselves where the black coat provides all help according to his professional understanding.
- u) The culture of helping attitude and standing behind the client for his financial safety must be the motto of each employee.
- v) Consumer delight is possible when a bond of trust is created by insurer with the client so that client is not left to fend for themselves.
-



**Answers to Test Yourself****Answer 1**

The correct answer is IV.

The tangibility of insurance services directly relates to things like promptness in policy issue; credibility of the company; promptness in claim settlement etc.

**Answer 2**

The correct option is III.

Insurance ombudsman has been mandated to perform the function of Award making up to Rs. 20 lakhs in respect of personal lines of insurance from any person.

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**Self-Examination Questions****Question 1**

\_\_\_\_\_ for customer to be satisfied refers to sensitivity of insurer towards quality of repairs made available; degree of clarification on insured amount; hassle free repairs etc.

- I. Reliability
- II. Reasonableness
- III. Responsiveness
- IV. Empathy

**Question 2**

\_\_\_\_\_ said, –Quality begins and ends with the customers. The fundamental principal is that the quality is what the buyer defines it as not what the company defines it to be. ||

- I. Jose Rose
- II. Philip Crosby
- III. Peter F Drucker
- IV. Adam Smith

**Question 3**

\_\_\_\_\_ of insurance company is shown if the insurance policy meets the customer's needs which are acceptable to him; financial strength of the company in the long term; interconnectivity of the operating branches etc.

- I. Reasonableness
  - II. Reliability
  - III. Responsiveness
  - IV. Empathy
- 

**Answers to Self-Examination Questions****Answer 1**

The correct option is III.

Responsiveness for customer to be satisfied refers to sensitivity of insurer towards quality of repairs made available; degree of clarification on insured amount; hassle free repairs etc.

**Answer 2**

The correct option is I.

Jose Rose said, —Quality begins and ends with the customers. The fundamental principal is that the quality is what the buyer defines it as not what the company defines it to be. II

**Answer 3**

The correct option is II.

Reliability of insurance company is shown if the insurance policy meets the customer's needs which are acceptable to him; financial strength of the company in the long term; interconnectivity of the operating branches etc.

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# Part II

## Motor Third Party Insurance



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# CHAPTER 8

## THIRD PARTY LIABILITY INSURANCE

### Chapter Introduction

In this chapter you will learn about the international legal scenario, purport of the Third Party claims management in India. We will also explore persons who can claim compensation, jurisdiction of Civil Courts and the alternative methods of settlement. Towards the end of the chapter we will understand the principles of damages, quantification and assessment of compensation; besides limited defenses available to insurer.

### Learning Outcomes

- A. International legal scenario in Motor Insurance
- B. Third Party Claims Management in India
- C. Who can Claim Compensation?
- D. Jurisdiction of Civil Courts
- E. Alternative Methods of Settlement
- F. Principles of Damages
- G. Defenses available to Insurer
- H. Defenses for Insurance Companies

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## A. International Legal Scenario in Motor insurance

**International Legal Scenario:** Germany, England, France, Australia, South Africa, USA

### 1. Germany

Motor Third Party insurance in Germany is based on the German Road Traffic Acts. The motor insurance liability is based on Tort i.e., negligence of the driver of the vehicle is required to be proved to claim compensation. Insurance is compulsory. The law specifies limits for death or injury and property damage. It allows for payment of lump sum or annuity or step by step throughout the life of the claimant. It is the practice to pay annuity in the case of minors and severely injured persons who may be unable to manage their finances e.g. due to brain injury. The limits of liability presently prevalent are as follows:

Death or injury	Maximum Lumpsum	Euro 600,000
	Maximum Annuity	Euro 30,000 pa
Death or injury of several people from same occurrence	Maximum Lumpsum	Euro 3,000,000
	Maximum Annuity	Euro 180,000 pa
Property damage		Euro 1,000,000

### 2. England

Motor insurance in India has followed the practice of Motor insurance in England. The difference in practice in England presently is with regard to the formation of a Motor Insurance Bureau (MIB) comprising most insurers offering motor insurance, although Lloyds underwriters are not its member but they usually follow similar practices with regard to TP Liability.

- i. Liability for injuries to third party is unlimited.
- i . Property damage is STR. 1,000,000/- . However, insurers provide wider property damage cover.

The Motor Insurance Bureau takes on responsibility to compensate Third Parties for motor accidents involving vehicles that are uninsured, or untraced. This is possible as they maintain a fund contributed by all the members. This is similar to our system of Solatium Fund for Hit & Run cases. The MIB goes further by paying for compensation where the vehicle is uninsured i.e. identified with no insurance

### 3. France

Motor Third Party liability in France is a legal obligation based on strict liability. Insurance and is compulsory. Liability for injuries is unlimited whereas property damage is limited. Contributory negligence is applied only in the case of driver claims. Thus third parties get claims irrespective of contributory negligence.



Unidentified and uninsured vehicles victims' are compensated from the Guarantee Fund (Fonds de Garantie).

Compensation may be in lump sum or annuity for severely injured persons or minors. Compensation settlement offers must be made within the stipulated time frame otherwise the interest rate payable on compensation amounts is doubled.

#### 4. Australia

Third Party personal injury is compulsory in Australia but the practice of insurance differs among the States. The fund and payout for such liability is maintained by the States of South Australia and Victoria. The cost is included in the licence registration fees or vehicle registration fees. New South Wales and Queensland require insurance through the state specified insurers. The Queensland government controls the price for the cover. Property damage is not compulsory and may be insured with the OD insurance.

#### 5. South Africa

Personal injury liability is paid by the state In South Africa. A percentage on the price of motor fuel is allocated for this fund.

#### 6. USA

Motor Third party insurance practice differs among the states of the USA. It may also differ based on the category of vehicle e.g. personal, commercial etc. The term is called 'financial responsibility liability'. Each state has different minimum limits required but these are not binding and claimants can sue for tort liability which can be substantial.

The Department of Motor Vehicles (DMV) ensures minimum liability coverage is in place. This coverage may be in the form of:

- i. Cash deposit with the authority
- i . Surety bond from licenced surety providers
- i i. Self-insurance
- iv. Insurance through licenced insurers within the state

Proof of such coverage being in place, has to be provided to the Department of Motor Vehicles. Failure to do so could result in cancellation of the registration or impounding of vehicle or fines or imprisonment. The compensation limits would be in the following manner:

- i. Injury to one person
- i . Injury to more than one person from one occurrence
- i i. Property damage

**Texas:** This would be written as 25 / 50 / 25 which translated is US\$ 25000 / 50000 / 25000 for each of the above heads. These limits apply in the state of Texas.

**Alaska:** In Alaska it is 50 / 100 / 25 or California 15 / 30 / 5.

**New York:** New York has different limits for injury and death for one or more than one thus 25/50//50/100//10.

The practice is for owners to take additional covers to the extent they can afford to cover tort liability.

### Test Yourself 1

In Germany, in case of death of a person, the maximum lumpsum amount that can be paid under Motor Third Party insurance is\_\_\_\_\_.

- I. Euro 3,00,000
- II. Euro 4,50,000
- III. Euro 6,00,000
- IV. Euro 7,50,000

### B. Third Party Claims Management in India

Third Party Claims Management occupies a very vital cog in the wheel of an insurer. It forms a major component of the portfolio of any insurer. From Ambassador to Nano, India has come a long way in the development of automobile sector. India is now the 11<sup>th</sup> largest producer of motor vehicles

The basic insurance concepts and general principles change contextually, in relation to compulsory motor insurance. General principles per se may be the bedrock or foundation of insurance, but they have to be and must be tailored for understanding and appreciating the construction of the applicability of such general principles in the light of statutory nature of the contract of motor insurance and benevolent intention of the Parliament, reflecting the will of the people, to provide succor and relief to the innocent victims of rising tide of motor accidents what with the exploding vehicle population and alarmingly slow quality growth of the infrastructure component vis-a-vis the road network, poor traffic laws compliance in India. That is the purport of Third Party Claims management, to drive home the truths and be told as they are.

## 1. Statutory Liability in Motor Portfolio

Motor insurance is different specie altogether in the context of contract of Insurance and the Third Party liability insurance. It is premised on the fact that motor insurance is compulsory vide Section 146 MV Act, 1988 (erstwhile Section 94 of MV Act, 1939). In view of the statutory nature of the said liability, the Courts tend to come to the rescue of the victims. In [(Skandia Insurance Claim) 1987 ACJ 411] the Supreme Court after adverting to [(Captain Itbar Singh) 1958-65 ACJ 1 (SC)] made it clear that the purpose of a contract of motor insurance was to provide protection to the community of unsuspecting motor accidents victims.

### a) General insurers file PIL to tackle uninsured vehicles issue

General insurance companies have filed public interest litigation in the Supreme Court to get a direction to strictly enforce the provisions of the Motor Vehicle Act, which make it a criminal offense to ply a vehicle without insurance. Despite the fact that third party motor insurance is mandated by law, general insurance companies have found that there are large numbers of uninsured vehicles which continue to ply on the roads.

#### Ponder over this

A report by ICICI Lombard General Insurance said the number of uninsured vehicles is estimated in the range of 40 per cent in the case of cars and 70 per cent in the two-wheeler segment. According to General Insurance Council of India, —it is the responsibility of the police and the Regional Transport Office to ensure that there are no uninsured vehicles plying on roads. However, strict implementation of this is a challenge.¶

Third party motor insurance is a bleeding portfolio for general insurers with high claims ratio in excess of 120 per cent in recent times. It was not intended for the insurer to obtain motor insurance premium and run their business on commercial lines. Hence, it needs to be primarily understood and kept in mind that the construction of a Motor Insurance Policy viz. a Third Party liability would be diametrically different from the construction of the same contract in relation to an own damage liability. This distinction need be kept in mind while understanding the verdicts of the courts and pursuing further litigation in relation to awards of Motor Accident Claims Tribunals.

General principles applicable to Motor Third Party Liability insurance are discussed below.

## 2. Modification in Doctrine of Uberrimae Fides

It is important to note that compulsory third party insurance has introduced a modification in the doctrine of utmost good faith. Notwithstanding, the insurers entitlement to avoid or cancel or may have avoided or cancelled the policy, the insurer is mandated by law to pay to the third party, the award decreed plus the costs and interest awarded, as if the insurer were the judgment debtor. Insurers' right to defend in this context is also restricted to specific conditions under Section 149(2). The principle of utmost good faith has been modified by Indian legislature to this extent.

### a) Judgment Debtor

The contract of Motor Insurance permits the insurer to avoid its liability in various circumstances e.g.,

- i. Dishonour of premium cheque,
- i . Post-accident insurance,
- ii. . The vehicle in question remaining unidentified though it is covered in a fleet,
- iv. Driving licence of the driver is not found effective, and valid,
- v. Vehicle is used for the purpose other than the purpose insured for, etc.

If these circumstances do not fall within the purview of Section 149 (2) of 1988 Act, the insurer cannot invoke defence and escape liability awarded against the insured. The terms of contract between insurer and insured, which determine their inter se rights and liabilities, are different from statutory liability of the insurer for the third party risk.

If a Certificate of Insurance has been issued complying with statutory insurance provisions of the 1988 Act, Judgement in respect of compulsory third party liability will be awarded against Insurance Company even though the insurer is entitled to avoid the Policy.

### b) Benevolent legislation

**It is a benevolent legislation** as far as compensation is payable towards third party liability. The insurer has to pay to the third party, the amount decreed including cost and interest awarded, as if the insurer was the judgment debtor, subject to the statutory limit of property damage and / or unlimited liability in case of death or disability.

### c) Deep Pocket Theory

An insurer is required to pay to Third Parties, even though he may be entitled to avoid or cancel the policy or may have avoided or cancelled the policy. The proviso is an offshoot of deep pocket theory, which requires a capable person to bear. The remedy available to the insurer is to proceed against the insured for breach of contract and to recover the amount so paid to satisfy award under the provision of the Act, 1988. The insurer is, however, not liable to pay, where the insurer cannot be fastened statutory liability under the provisions of 1988 Act as given in Chapter X, XI & XII read with the Central Motor vehicle Rules 1989.

The contract between the insurer and the insured may permit the insurer to avoid his liability under various circumstances. However, if these circumstances do not fall within the purview of Section 149 (2) of Act 1988, the insurer cannot invoke them in its aid and escape statutory liability towards the third party risk. The terms of the contract between the insurer and the insured, which determine their „inter se“ rights and liabilities are different from statutory liability of the insurer for the third party risk.

The remedy available to the insurer is to proceed against the insured for the breach of the insurance contract and to claim reimbursement of the amount paid to satisfy the award. However, if the insurer is not statutorily liable e.g., liability of passengers carried in Goods Carriage Vehicle, save as provided in the Act 2007, insurer is under no obligation to pay to third party.

### 3. Insurable Interest

Motor vehicle is a property owned by a legal person who is exposed to loss or damage, including liability towards third party caused by negligent use of the vehicle in public place. This infers that extent of ownership interest in a motor vehicle and its continued existence enables the owner or other users, to use the vehicle with owner's knowledge and permission.

Motor vehicles are insured against third party liability and other liability under the statutory provisions of Motor Vehicle Act 1988. It would not be correct to argue that as long as the damage to the vehicle is not covered, there is no insurable interest.

The owner insured may authorise other persons to drive his vehicle. Such users have strictly speaking no insurable interest in any third party liability, but owner is deemed to act as an agent in arranging the indemnity on behalf of such other persons who may drive the vehicle, and the owner incurs legal liability for the use of vehicle in public place. If that is not so, the injured third parties will have no recourse to recover damages.

### a) Under MV Act 1988

The statutory nature of the contract of insurance is always kept in mind while dealing with the Third Party claims. That it is meant to come to the rescue of the innocent motor accidents victims, is never lost sight of. Parliament had mandated Section 157 of MV Act, 1988 granting compulsory transfer of benefits of a contract of insurer in favour of the purchaser of the vehicle.

It is generally understood that the person seeking insurance must have a legal right to insure the subject matter of insurance. Therefore, insurers insist on the **Registration Certificate** of the vehicle being in the name of the insured, at the time of availing cover.

But as per Section 146 Motor Insurance cover is compulsory, and it is a settled law that any user of the road is required to ensure, that there was a valid policy in force at all times. It is equally well accepted that such insurable interest need not flow from ownership or registration of the vehicle alone.

#### Example

In [1991 ACJ 625] the Madras High Court ruled that it did not matter whether the Registration Certificate was in the name of A and the policy of insurance in the name of B, so long, as there was a cover existing as on date of accident.

Hence, insurable interest and **General Regulation 32 of the All India Motor Tariff** have to be understood contextually. That is, in case insurers had issued the insurance policy, without ensuring that the Registration Certificate was in the name of the insured, they cannot later on suggest that the contract of insurance was not enforceable or it was not valid as far as Third party liability is concerned. The contract of insurance, even if issued, contrary to GR 32, would be valid and enforceable, as insurable interest in the context of statutory motor insurance is not premised on ownership and registration alone.

More importantly, it needs to be understood that the sale of a motor vehicle, come under Sale of Goods Act, 1930 and not under MV Act, 1988. So, even if the Motor Vehicle was not transferred in the name of purchaser, the purchaser would still be the legal / defacto / de jure owner as on the date of purchase, as held by the Supreme court in [1980 ACJ 233] itself, which is good and binding law.



### b) Should the industry device a driver's liability cover separately?

A moot question is, whether the indemnity so arranged on behalf of other person e.g. a friend driving, whether creates any obligation to reimburse the vehicle owner? Should we not think of introducing concept of –Driver's liability in addition to the 'Act liability' to protect the legal right of the vehicle owner, who is not obligated to pay on behalf of a third person and the third party is entitled to compensation, if there was no insurance available on vehicle or the insurance cover has expired. The question, therefore, is whether injured third parties have any recourse to recover damages?

#### i. Where a vehicle has no insurance?

Where vehicle is driven without owner's permission? Indian insurance industry must take initiative to make available a separate cover for such drivers who are using other person's vehicle. The owner cannot be held liable, where the vehicle has been stolen or is used unauthorisedly by another person for the acts committed by that other person.

## 4. Principle of Subrogation

### Definition

Subrogation is the transfer of legal rights of an insured against third party, to the insurer, when the loss or damage to the vehicle is caused by the negligence of any other person.

Insurer steps into the shoes of insured's rights, remedies and options following settlement of a claim under the policy and the insurer may also exercise administrative control over claims, suits and other proceedings accordingly in the name of the insured. Under common law, subrogation operates after the claim is paid.

In case of insurance of motor vehicle, loss or damage to a stationary vehicle whilst parked may be caused by another vehicle and the owner / insurer of the offending vehicle will become liable. Subrogation usually arises when there is collision among two vehicles, one of which is to be blamed for the accident.

Recovery of loss from the owner of the offending vehicle, involves issues such as negligence and the same will have to be determined and liability is to be properly established by the courts, for recovering the loss.



However, insurers do not acquire any better title of interest than what the insured possessed at the time of accident, and if insured has no right of action, the insurers too in turn do not acquire any rights. As the insurer steps into the shoes of the insured to enforce the principle of subrogation, the right of recovery of Insurer from the third parties is limited to the amount of claim settled and any excess amount so recovered, will have to be passed on to the insured / owner of the vehicle.

This also infers that the insured is barred from making any admission himself or compromising the amount of recovery from third parties, after the insurers have settled his claim.

However, in practice, subrogation has been modified by **Knock for Knock agreement** between insurers in case of liability arising out of physical damage to vehicles involved and respective insurers meet full liability of vehicles insured by them.

### 5. Non-applicability of Principle of Contribution to Third Party Liability

The Principle of Contribution does not apply to third party liability for death or bodily injuries arising out of the use of the motor vehicle and the Courts do not entertain any plea from the insurer seeking ratable contribution for this liability under their policy.

Section II of the Motor Policy dealing with liability to third parties stipulates that in terms of and subject to the limitations of the indemnity, the insurer will indemnify any driver who is driving the motor car on the insured's order or with his permission, provided that such driver is not entitled to indemnity under any other policy

In commenting upon the ratable proportion clause appearing in the policy, Mr. Raoul Colinvaux in his book, „**The Law of Insurance**“, discusses the rights of the insured / driver vis-a-vis the insurer as hereunder:

The burden of proving that the assured is entitled to call upon the other insurer to pay in the event of a loss lies upon the insurer who is praying the clause in his aid. If both policies are legally binding covering risks, they will become enforceable and contribute a ratable proportion of the loss.

The contribution condition need be specially worded in Private Car Policies to cover the owner of the motor vehicle for third party liability while driving cars not belonging to him so that the liability of such drivers is contributed by them.

## 6. Doctrine of Causa Proxima

The application of the doctrine of causa proxima or rule of proximate cause is equally important. The definition of the rule of proximate cause was laid down in *Pawsey vs. Scottish Union* as hereunder:

### Definition

**Proximate cause** is an active and efficient cause that sets in motion a train of events, which brings about a result without the intervention of any force started and working actively from a new and independent source.

The maxim *causa proxima non remota spectatur* meaning that the proximate and not the remote cause is the factor to be taken into account. The aforesaid loss is the loss against which the motor vehicle is insured under the policy.

Loss or damage to a motor vehicle may be occasioned by one cause or a combination of causes.

### Example

A stationary vehicle may be hit by another vehicle in running condition from the rear end, the stationary vehicle may injure persons or damage property, but in deciding the cause of claim or admissibility of the claim, the principle to be looked into is what the direct or dominant cause of loss is?

## 7. Necessity for Third Party Insurance

### Important

Section 146 of the of 1988 Act provides that no person shall use (except as a passenger), or allow any other person to use, a motor vehicle in a public place, unless the vehicle is covered by a policy of insurance complying with the requirements of the current MV Act 1988.

Section 146 is amended (by Amendment Act 1994) to cast an additional duty that the owner of the vehicle carrying dangerous or hazardous goods shall also go in for a policy of insurance under the –Public Liability Insurance Act, 1991<sup>II</sup>.

–Public plac<sup>II</sup> whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriag<sup>II</sup>. (See Para 8(p) for definition,)

It is not merely driving of the vehicle without insurance to contravene the Act 1988. The sheer presence of motor-vehicle in stationery condition, in public place will also constitute the ‘use’ of vehicle. Secondly, the ‘use’ should be made in a ‘Public place’.

### Definition

Any place or stand at which passengers are picked up or set down by a stage carriage is a –public placell.

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The law is not so much concerned with the ‘ownership of the place’ as with its ‘use or user’. Ownership of place may be private, but if use is by public, it is a public place.

However, a person driving a motor vehicle merely as a paid employee will not be treated as contravening the Act 1988 if he has no knowledge that there is no policy in force.

Section 146 seeks to protect members of public using public places from the risks of accidents caused by the ‘user’ of motor vehicles. **“The motor vehicle can be likened to a wild animal; whosoever keeps it, does so at his risk”.**

A Court can only pass an award or decree. It cannot ensure that such an award or decree results in actual payment, because the person held liable may be insolvent or may not have sufficient resources to meet the award. To overcome the situation, the law has made it obligatory that no motor vehicle shall be used unless third party insurance is in place. The law also provides that the judgement obtained shall not be defeated by the incorporation of exclusion clauses in the Policy other than those authorised by Section 149 of the Motor Vehicles Act, 1988.

### Important

All motor policies, therefore, contain a clause called **“Avoidance of certain terms and right of recovery”** reading as under:

Nothing in this policy or any endorsement hereon shall affect the right of any person to recover an amount under or by virtue of the provision of the Motor Vehicles Act.

But the insured shall repay to the Company all sums paid by the Company, which the Company would not have been liable to pay but for the said provisions.

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## 8. Exemptions

The provisions relating to compulsory third party insurance do not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

Exemption may also be granted by the appropriate Government for any vehicle owned by:

- i. The Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise:
- i . Any local authority;
- i . Any State Transport undertaking, (for example, where such undertaking is carried on by a State Government or any Road Transport Corporation established under the Road Transport Corporation Act, 1950).

However, the above exemption is made only if a fund is established and maintained by that Authority for meeting any liability arising out of the use of any vehicle. The fund has to be established in accordance with the Rules framed under the MV Act 1988.

## 9. Requirements of Policies

The policy is required to be issued by an 'authorised insurer', i.e. an insurer in whose case the requirements of the Insurance Act, 1938, are complied with. Section 147 of the Motor Vehicles Act, 1988 requires that the policy of insurance must provide cover:

- i. Against any liability which may be incurred by the insured in respect of death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the carriage, or
- i . Damage to any property of a third party; or
- i . Against death or bodily injury to any passenger of a public service vehicle, caused by or arising out of the use of the vehicle in a public place.

The policy, however, shall not be required to cover:

- i. Any contractual liability; or
- i . Any liability in respect of death arising out of and in the course of employment of the employee of the insured, or in respect of bodily injury sustained by such employee arising out of and in the course of his employment. The policy must, however, cover liability arising under the Employee's Compensation Act, 1923 in respect of death or bodily injury to any such employee,
  - (a) Engaged in driving the vehicle, or
  - (b) Engaged as conductor or ticket examiner in a public service vehicle, or
  - (c) If it is a goods carriage, being carried in the vehicle.

Whereas Employee's Compensation Act, 1923 imposes a liability on the employer to pay compensation to 'Employee' for accidents arising out of and in the course of employment', it does not make it compulsory for the employer to insure that risk. But, the Motor Vehicles Act, 1988 makes it compulsory for the owners of vehicle to insure their liability under the Employee's Compensation Act, 1923 towards certain categories of 'Employee' employed in connection with motor vehicles. In practice motor policy is extended to cover owner's liability towards 'workmen' also under Common law and Fatal Accidents Act on payment of a nominal per capita extra premium.

Liability towards fare-paying passengers is required to be compulsory insured. The MV Act, 1988 thus recognises motor vehicles owners' responsibility towards passengers who pay for their carriage in the vehicle e.g. passenger in an auto-rickshaw, taxi, ambulance, hearse, postal vans or a passenger bus. Compulsory insurance is also required in respect of passengers who are carried —by reason of or in pursuance of a contract of employment.

#### **a) By reason of or in pursuance of a contract of employment**

The expression, —by reason of or in pursuance of a contract of employment, requires explanation. A passenger would be carried —by reason of his contract of employment, if he is allowed by the employer to travel in the vehicle as an aid to the work or if he is ordered by the employer to travel in the vehicle. On the other hand, if the contract of employment gives a right to the passenger to travel in the vehicle as a part of service conditions, the conveyance will be —in pursuance of the contract.

- b) **Limits of Liability:** A policy of insurance is required to cover any liability incurred in respect of an accident
- i. **There is unlimited liability for third party death or personal injury.** This would cast upon the insurance companies the duty to satisfy the entire judgement, and no proportion thereof, can be shared by the insured unless the liability of the insurer is exonerated in terms of the statutory defenses contained in Section 149(2) of the Act 1988. The amendment of 1994 includes in the various provisions of the Act also the provisions of the Section 163(A) - 'structured formula' introduced by Amendment Act 1994.
- ii. **In respect of damage to any property of a third party out of one accident, a limit of Rs. 6,000/- (Rupees six thousand only).** As per the Act 'Property' includes goods carried in the Motor Vehicle, roads, bridges, culverts, causeways, trees, posts and milestones. Insurers in India are providing increased coverage for property damage viz. Two wheelers Rs. 1,00,000/-; other vehicles Rs. 7,50,000/-. This increased cover does not include goods carried on the vehicle.

#### 10. Duty of Insurers to Satisfy Judgments

Section 149 of 1988 Act provides that: If, after a Certificate of Insurance complying with compulsory insurance provisions of the Act 1988 has been issued, judgment for compulsory third party liability is obtained against an insured person, and then the insurer has to pay to the third party the amount decreed plus costs and interest awarded, subject to the sum insured under the policy. The important point to be noted here is that the insurers have to pay the third parties even though they may be entitled to avoid or cancel the policy or may have avoided or cancelled the policy.

##### a) Rights of Insurers

Before the commencement of the proceedings, the insurers are entitled to receive notice through the Court or the Claims Tribunals, as the case may be, of the bringing of the proceedings or in respect of any judgment awarded so long as execution is stayed thereon pending an appeal. The insurer who receives the notice is entitled to be made a party thereto and to defend the action only on any of the following grounds given Section 149 (2):

Section 149 (2): (A). There has been breach of a specified condition of the Policy, being one of the following conditions, viz.:

- i. A condition excluding the use of the vehicle:
- (a) For hire or reward, where vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or



- (b) For organised racing and speed testing, or
  - (c) For a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
  - (d) Without side-car being attached, where the vehicle is a motor-cycle; or
- i . A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or
  - i . A condition excluding liability for injury caused or contributed to by conditions of war, civil war, or civil commotion; or

Section 149 (2): (B) That the policy is void on the ground that it was obtained by non-disclosure of a material fact or by representation of fact which was false in some material particular.

The insurer can evade liability only by raising successfully any of the defenses listed above and not by any other manner. For insurers are impleaded in the suit Condition 2 of the Motor policy requires the insured to give notice to insurance Company about the suit. The Act, however, provides that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the Policy by virtue only of this proviso shall be recoverable by the insurer from that person.

## 11. Rights of Third Parties against Insurers on Insolvency of the Insured

Section 150 of 1988 Act provides for the rights of third parties in the event of the insolvency of the insured or in the event of winding up, when the insured is a Company. The Act provides that if, either before or after that event, any third party liability is incurred by the insured, his rights against the insurer under the Policy are transferred to the third party to whom the liability was incurred. When such transfer takes place, the insurer will be under the similar liability to the third party as he would have been to the insured person, but:

- a) If the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, the insured person's rights against the insurer in respect of the excess are not affected. For Example: the Act provides for TPPD to the extent of Rs. 6,000/- only, whereas the insurers liability under Private Car policy is Rs. 7,50,000/-. Thus the TP claimant will be entitled to claim up to 7,50,000/-



- b) If the liability of the insurer to the insured person is less than the liability of the insured person to the third party, the rights of the third party against the insured person in respect of the balance are not affected.

In the event of an insured becoming insolvent or making arrangements with his creditors (insured is a company, being wound up) the rights of the insured under the policy will be transferred to and vest in the injured third party. In other words the injured third party is able to recover compensation direct from the insurers. In the absence of this provision, any sum recovered by the insolvent insured from his insurance company would have formed part of his assets to which his creditors would lay a claim in proportion to their debts.

## 12. Settlement between Insurers and Insured Persons

Section 152 of 1988 Act provides that no settlement made by the insurer in respect of third party liability is valid unless the third party concerned is a party to the settlement. Further Section 152 provides that when the insured becomes insolvent (or if the insured is company is wound up) no agreement made between the insurer and the insured person (after liability has been incurred after insolvency, and winding up proceedings have been commenced) shall be effective to defeat the rights transferred to the third parties.

## 13. Effect of Death of Insured Person

Section 155 of 1988 Act provides that if the insured person dies after incurring third party liability, then the cause of action survives against the insured's estate, or legal heirs or against the insurer. If this provision was not made, then the third party's right of action against the negligent owner of the vehicle would die with the death of the owner. This explains why the Third Party section of a Motor policy always contains a paragraph stating that the company will indemnify the insured's legal representative in terms of the policy in the event of the insured's death.

## 14. Duty to Furnish Information

- a) **Section 151 of 1988 Act** casts a duty on a person who has incurred a liability to a third party to disclose all particulars of his insurance if demanded by the third party. The duty also applies to the insurer who is expected to give an inspection of the policy and other documents to the injured party.
- b) **Section 160 of 1988 Act** provides that a **Registration Authority** or the officer in charge of a Police station is required to furnish identification marks of the vehicle and the name and address of the person using the vehicle at the time of accident or of the injured person,

- i. if required by a third party who alleges that he is entitled to claim compensation in respect of an accident; or
- i . If required by an insurer against whom a claim has been made in respect of any Motor vehicle.

The liability to pay compensation for victim's accident arises under the law of tort, i.e. the motorist's negligence has to be established. The majority of these victims are from the weaker and poorer sections of the society who neither have any knowledge of the legal remedies available to them nor the financial means to pursue them. Besides, if the third party is guilty of his contributory negligence, then the compensation is scaled down depending upon the degree of contributory negligence.

The question of negligence has to be decided in a Court of Law or Tribunal and litigation is prolonged and expensive process. Trials of claims cases before Courts or Tribunals are generally long drawn out and involve considerable trouble and expenditure to the claimants for compensation. Thus, insistence on proof of negligence is said to cause great hardship to claimants. Compensation is awarded only after the Tribunal is satisfied on the aspect of negligence.

The Supreme Court and several High Courts had repeatedly observed that social justice and a sense of humanity require that the principle of 'No Fault liability' should be adopted in automobile accidents. Motor Vehicles Act, 1988, Chapter X Section 140 to 144 deals with No-Fault liability.

### 15. Liability without Fault

#### a) Section 140

Section 140 of Motor Vehicles Act, 1988 provides as follows:

Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of Rs. 50,000 (fifty thousand rupees) and the amount of compensation payable under the sub-section in respect of the permanent disablement of any person shall be a fixed sum of Rs. 25,000 (twenty five thousand rupees). (1939 Act, the amounts were Rs. 15,000/- and Rs. 7,500/- respectively.

In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

A claim for compensation under sub-section (1), shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163A. An analysis of the provisions reveals the following:

- i. The claimant involved in a motor vehicle accident is not required to prove wrongful act, neglect, or default (i.e. negligence) on the part of the owner of the vehicle or by any other person.
- i . The claim under these provisions is not defeated or affected in any way, by any wrongful act, neglect or default on the part of the claimant; nor can be quantum of compensation be reduced on the basis of the claimant's share of responsibility for the accident. In other words, the legal defense of „contributory negligence" is not available to the motorist and his insurer.
- i . These provisions apply in cases where the claimant suffers death or permanent disablement, as defined in the Act (See Para 15 a Section 140).
- iv. The object behind no-fault principle is to give minimum statutory relief expeditiously to the victim of the road accident or his legal representative. To that extent, this provision constitutes a measure of social justice. Where no-fault liability is concerned, there is clearly a departure from the usual common law principle, that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for death or permanent disablement arising out of a motor vehicle accident.

### b) Section 142

Section 142 provides that permanent disablement of a person shall mean any injuries or injuries involving:

- i. Permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
- i . Destruction or permanent impairing of the powers of any member or joint; or
- i . Permanent disfigurement of the head or face.

### c) Section 141 (1)

Section 141 (1) of 1988 Act reads as follows: The right to claim compensation under Section 140 in respect of death or permanent disablement of any person shall be in addition to any other right (referred to as the right on the principle of fault) to claim compensation in respect thereof, under any other provision of this Act or of any other law for the time being in force.

Thus, it will be seen that claims for death or permanent disablement can also be pursued under other provisions of the Act on the basis of negligence. The motorist is liable to pay compensation on the basis of „No Fault“ as well as on the basis of „Fault“ or negligence. he has to pay first the compensation on \_No fault‘ basis.

If such compensation paid is less than the compensation awarded on the principle of \_fault‘ or \_negligence‘, the motorist is liable to pay the balance.

### Example

For example, if Rs. 30,000/- is awarded for permanent disablement on the basis of negligence, the claimant is entitled to receive only Rs. 5,000/- being the excess over the no-fault compensation settled first.

On the other hand, if the amount of compensation paid on the basis of \_no fault‘ is equal to or more than the amount of compensation payable on the basis of \_fault‘ or \_negligence‘, then the claimant is not entitled to receive the compensation awarded on the basis of negligence.

### Example

For example, if the claimant has received compensation of Rs. 25,000/- for permanent disablement on 'no fault' basis and is awarded Rs. 25,000/- or say Rs. 15,000/- on 'no fault' basis, he is not entitled for this second mentioned compensation.

This means that if the compensation on the principle of fault liability is less than the amount awarded under no-fault liability, then the Insurers are not entitled to recover the excess payment from the insured made under no-fault liability; but if it is more, then the difference between the two compensation amounts will be required to be paid by the insurers.

The Amendment Act 1994, amended Section 141 to make it clear that the right to claim compensation in terms of new structural formula referred to in section 163 (A) - described later in this chapter shall not be an additional benefit. Both the benefits are mutually exclusive.

Section 143 lays down that the provisions of Chapter X of the Motor Vehicles Act, 1988 dealing with liability without fault shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Employee's Compensation Act, 1923, resulting from a motor accident. The Time limit for depositing compensation under this section is one month

#### d) Section 163 (A)

Sections 163 (A) and 163 (B) are newly added by the Amendment Act of 1994 effective from 14th November 1994:

- (a) Section 163 (A) contains special provision as to payment of compensation on "**structural formula basis**". This is a new provision for payment of compensation to road accident victims as per determined formula. The amount of compensation payable to claimants is calculated in a tabular form and shown in the Second Schedule which appears as an annexure to the Amendment Act, 1994
- (b) In case of fatal accidents a table of compensation is provided showing the amounts payable depending on the age of the victim and the multiplier applicable. The amount of compensation so arrived at in case of fatal accident claims is reduced by one-third in consideration of the expenses which the victim would have incurred towards maintaining himself, had he been alive.

- (c) Under the Schedule, the amount of such compensation shall not be less than a specified amount (currently Rs. 50,000/-).
- (d) Besides the amount of compensation outlined above for fatal cases, the schedule also indicates:
- i. General Damages of specified amounts payable in case of death for:
    - ✓ Funeral expenses
    - ✓ Loss of consortium, if beneficiary is the spouse
    - ✓ Loss of estate
    - ✓ Medical expenses, that is, actual expenses incurred before death, supported by bills / vouchers, not exceeding a specified amount
  - i. General Damages of specified amount are payable in case of injuries and disabilities for:
    - ✓ Pain and suffering for grievous and non-grievous injuries
    - ✓ Medical expenses, that is, actual expenses incurred supported by bills/vouchers not exceeding, as onetime payment, specified amount.
  - i. Disability in non-fatal accidents: Compensation for loss of Income, if any, for actual period of disablement not exceeding 52 weeks, PLUS either of the following:
    - ✓ In case of payment total disablement, the amount payable shall be arrived at by multiplying the annual loss of income by the —multiplier<sup>II</sup> applicable to the age on the date of determining the compensation, or
    - ✓ In case of permanent partial disablement, such percentage of compensation which would have been payable in the case of permanent total disablement as specified in the above item.
- (e) The Schedule also specifies notional income of non-earning persons.

In any claim for compensation under this Section, the claimant shall NOT be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner(s) of the vehicle(s) concerned or of any other person.



Thus, the compensation mentioned in the Schedule shall be payable on the basis of –No Fault<sup>II</sup>. However, the scheme is optional, and if the claimant feels that the amount prescribed in the Schedule is not acceptable, a claim can be filed under the existing provisions, that is, under Section 166 of the Motor Vehicles Act.

#### e) Section 163 (B)

When a person is entitled to claim compensation under Section 140 and Section 163 (A), he shall file the claim under either of the said sections and not under both. The adjudicating authorities in all cases would be Motor Accidents Claims Tribunals (MACT).

The Government is empowered to revise the Schedule keeping in view the changes in the level of cost of living. The Amendment Act, 1994 amended Section 141 to make it clear that the right to claim compensation in terms of new structured formula referred to in Section 163 (A) - shall not be an additional benefit. Both the benefits are mutually exclusive.

### 16. Hit and Run Accident

The Motor Vehicles Act, 1988 is a piece of **social legislation** and its provisions are designed to protect the rights of victims of road accidents. In spite of the wide protection afforded by the provisions of the Act, there remain certain gaps in which the road victims may not have any remedies.

#### Example

If the identity of the motor vehicle causing the accident cannot be established and, as a result, the victim has no recourse to any legal remedies; he cannot proceed against either the owner of the vehicle or the insurance company which had insured the vehicle.

The Motor Vehicles Act, 1939 was amended, with effect from 1st October, 1982. A new Chapter VII-A was added dealing with –liability without fault in certain cases<sup>II</sup> and Hit & Run cases. In this new Chapter VII-A, Section 109-A to C dealt with claims arising out of „hit and run“ accidents. In the Motor Vehicles Act, 1988, Sections 161, 162, and 163 of Chapter XI deal with ‘hit and run’ accidents.



The Law Commission in its 51<sup>st</sup> Report had recommended amendment of the Motor Vehicles Act 1988 to provide for compensation in –hit and run cases. The recommended legislative provision was as follows:

- a) Where an accident, involving the death or bodily injury to a person caused by or arising out of the use of a motor vehicle occurs, and it is proved that a claim for compensation in respect of such accident cannot be made because the person liable to pay such accident cannot be ascertained after reasonable efforts, the person entitled to such compensation shall be entitled to receive it from the State.
- b) Where in respect of any accident, any claim is made under sub-section (1) and it is found that the claimant has received or is entitled to receive, any sum as compensation or, indemnity from any person other than the driver or owner of the motor vehicle which occasioned the death or bodily injury, the amount to be awarded to the claimant against the State under sub-section (1) shall be reduced by that sum.

This Section proposes to provide for payment of compensation (Solatium) as follows:

- c) In respect of the death of any person resulting from a hit and run motor accident, now a fixed sum of Rs. 50,000/- (currently Rs. 25,000/-).
- d) In respect of grievous hurt to any person resulting from a hit and run motor accident, now a fixed sum of Rs. 25,000/- (Currently Rs. 12,500/-).

### Definition

Section 161 defines –hit and run motor accident as accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose.

According to this Section, –grievous hurt shall have the same meaning as in the Indian Penal Code. Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits. According to Section 320 of the Indian Penal Code the following kinds of hurt are designated as grievous:

i. Emasculation

i . Permanent privation of the sight of eye.

i . Permanent privation of the hearing of either ear.

- iv. Privation of any member or joint.
- v. Destruction or permanent impairing of the powers of any member or joint.
- vi. Permanent disfiguration of the head or face.
- vi . Fracture or dislocation of a bone or tooth.

The Solatium was payable out of a –Solatium Fundll established by the Central Government with effect from 1st October, 1982. According to the earlier Amended Act, the finances of the Solatium Fund consisted of contributions from

- i. Central and State Governments - 30%
- i . General Insurance Industry - 70%

It is the Indian insurers who would now pay compensation as per the Scheme framed by Central Government.

**Section 162** allows refund of payment made under Section 161 where compensation is awarded by MACT in such cases and paid by insurers separately. The Section states that payment of compensation for death or grievous hurt under Section 161 above shall be subject to the condition that if any compensation or other amount is awarded or paid in respect of such death or grievous hurt under any other provisions of this Act or any other law or otherwise, so much of the other compensation or other amount aforesaid as is equal to the compensation paid under Section 161, shall be refunded to the insurer.

Before awarding compensation, the Claims Tribunal, Court or other authority has to verify whether compensation has already been paid under Section 161 or an application for payment of compensation is pending. If the compensation has already been paid under Section 161 then the Tribunal or Court, as the case may be, should direct the person liable to pay compensation awarded by it to refund to the insurer so much thereof as is required to be refunded.

On the other hand, if an application for payment of compensation is pending under Section 161, it should forward the particulars as to the compensation awarded by it to the insurer.

## Test Yourself 2

As per the 'limits of liability' specified in the MV Act, in respect of damage to any property of a third party out of one accident, the limit is\_\_\_\_\_.

- I. Rs. 6,000/-
  - II. Rs. 12,500
  - III. Rs. 25,000
  - IV. Rs. 50,000
- 

## C. Who can claim Compensation?

### 1. Who can prefer Claims?

The following persons can prefer claims for death or disability due to negligence of the driver of a vehicle:

#### a) Pedestrians

Pedestrian has a right to use the footpath but also to use the road occasionally and also to cross it.

#### b) Fare paying passengers

The passengers carried in a public service vehicle are called fare-paying passenger. The owner of the vehicle is under a legal duty to provide road worthy vehicles but also to appoint competent drivers having effective valid driving licence. The owner's responsibility commences from the time a passenger enters the vehicle and continues until the passenger un-boards from the vehicle safely.

#### c) Non-fare paying passengers

The duty of owner towards non-fare paying passengers is to exercise reasonable skill and care and to provide reasonably safe mode of conveyance.

#### d) Persons travelling in other vehicles

These persons may be driver, passenger or owner of the other vehicles who expect the other driver to drive safely.

#### e) Children

The driver is required to show extra care towards children present on the road, as law does not expect a child to exercise the same degree of care as an adult has to exercise.

## 2. Doctrine of Res Ipsa Loquitur

The fact that an accident has occurred is not considered in law as prima facie evidence of negligence. The burden of establishing negligence in a motor vehicle accident claim for compensation lies on the claimant. This burden is considerably lessened by the application of the maxim res ipsa loquitur means that the accident speaks for itself or tells its own story. The burden will then be on the defendant to establish that the accident has happened due to some cause other than their own negligence.

### a) Prima facie negligence

If vehicle climbs on a pavement causing bodily injuries to pedestrians walking on the footpath, then the circumstances indicate that there has been prima facie negligence and the claimants need not prove negligence. In fact the onus will shift to driver to prove that he was not negligent. Under the doctrine of res ipsa loquitur, the plaintiff establishes a prima facie case of negligence where:

It is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; and

- i. **Failure to take proper care:** On the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitute a failure to take proper care of the plaintiff's safety. Effect of the application of the maxim res ipsa loquitur
- i . **Indian Position:** For the application of this maxim, there is no better authority in India than the words of the Apex Court [(Pushpa Bai Purushottam Udeshi and ors Vs. Ranjit Giinning And Pressing Co. and another) 1977 ACJ 343 (SC)]. Vehicle capsizing has been held covered by res ipsa loquitur [2008 (2) LW 1096].
- i . Though the doctrine is a rule of evidence and not a norm of substantive law, it would suffice for a claimant to establish the primordial ingredient of the initial presumption against a driver for establishing negligence. The burden would then shift to the tort feisor to rebut this presumption to escape liability, e.g., the sketch cannot be the basis to affix negligence or apply the maxim res ipsa loquitur. Oral evidence is very important. The burden of proof for negligence, on claimants, is very heavy; res Ipsa loquitur can be invoked.

### b) Non applicability of doctrine of res ipsa loquitur

**Claimants failed to discharge the initial burden:** Where the claimants failed to discharge the initial burden of proving the rash and negligent driving [1982 ACJ (Suppl.) 56 All (DB)], there was no burden on the insurer on behalf of the owner of truck which hit a cyclist while crossing a bridge, to prove careful driving of the vehicle.

In other words the doctrine res ipsa loquitur will apply only when the claimant was unable to prove the nature of occurrence of the accident. Res ipsa loquitur is only a means of estimating logical probability from the circumstances of the accident.

### c) Cause of accident is known

The doctrine of res ipsa loquitur would not apply when the cause of accident is known. Similarly where the injured and his witnesses were in full knowledge of the facts and circumstances of the accident and had intentionally withheld the truth from the court [1982 ACJ (Suppl.) 401 (HP)] the doctrine of res ipsa loquitur wouldn't be attracted.

It is clear that the doctrine of res ipsa loquitur will apply only when there was no evidence to lead the court to the conclusion, with regard to the incident for the purpose of fastening the liability and finding who the defaulting party was [1986 ACJ 405 (All.)]

### d) Due precaution

A driver attempted to cross a bridge overflowing with knee-deep water, as the river was in spate due to adverse weather condition. [1994 ACJ 116 (Madras)] The bridge collapsed and the bus was washed away causing death of the passenger. It was held to be negligence of driver for not taking due precaution while driving and it could not be accepted as an Act of God.

## 3. Defences" against Negligence

An allegation of negligence may be rebutted by the following defences:

### a) Volenti Non-fit injuria

This means that if a person voluntarily consents to run the risk, the question of negligence does not arise. This defence may arise in passenger liability claims. When a person has, of his own willingness and consent decided to become a passenger in a public service vehicle, then he cannot complain of matters ordinarily incidental to traffic to which the vehicle will be exposed.

### b) Inevitable Accident

Inevitable accident is an accident which occurs despite ordinary care, caution, and skill. The burden to prove inevitable accident rests upon the driver of the vehicle. He must establish the cause of the accident and also that the result of that cause was inevitable.

### c) Act of God

An act of God is a direct, violent, sudden, and irresistible act of nature, which cannot be foreseen with reasonable care e.g., storms, lightning, earthquake, etc.

### d) Emergency

If the injury is caused to a person who has placed himself in a situation of imminent danger to himself, no negligence will be attributed. Sometimes a pedestrian using a road may unexpectedly cause the driver of oncoming vehicle, to take turn to save him, and thereby cause injury to another pedestrian.

In such circumstances the driver would be able to raise the defense of emergency. He will not be blamed, merely because he does not do the right thing in the circumstances, which are referred to as an agony of the moment.

## 4. Vicarious Liability

What is the basis of doctrine of vicarious liability?

### Definition

Vicarious means that takes or supplies the place of another.

(Shorter Oxford English Dictionary, 3rd Edition 1944, and Vol. 2<sup>nd</sup>)

Vicarious liability means that one person takes the place of another so far as liability is concerned.

Certainly by the turn of this century it was clearly established that the liability of a master was based not on the fiction that he had impliedly commended his servant to do what he had done tortuously, but on the more safe and simple ground, that it had been in the scope or during the course of his employment or authority. Although this relationship of master and servant is by far the most important in which vicarious liability is recognised by the law but it is not confined merely to it. It follows that those for whose negligence a person may be liable must be considered under the following headings:

- ✓ Servants,
- ✓ Agents,
- ✓ His children,
- ✓ Independent contractors

#### **a) Owner and Driver Joint tort-feasor in Motor accident**

Both the owner and driver are joint tort-feasors. In motor accident the primary liability is that of the driver and once the driver is found negligent, the owner is vicariously liable, and liability of insurance company is an imputed liability contemplated statutorily. In other words, the liability of owner and driver being joint tort feisor is joint and several and applicant is entitled to recover the compensation from driver too. In a case where the joint tort feisor were held to be at fault, it was held that apportionment need not be made as liability was joint and several.

#### **b) Latent Defect in the machine**

On the question of negligence it is often pleaded by the tort feisor that the accident was not caused by their negligence but due to latent defect in the machine. However, by a series of decisions it is by now settled that where such a plea is raised the burden is squarely on the party thus pleading to prove the latent defect. Not only this, it is incumbent on them to prove that they had regularly maintained the vehicle and repaired it and in spite of such reasonable care, latent defect persisted and the accident ensued. Thus the burden is cast and escape route to a tort-feasor is hindered.

### **5. Contributory and Composite Negligence** *A new way of learning...*

Contributory negligence would arise where Z had contributed to the occurrence of the accident. Where Z had no involvement in the accident, but the accident was caused due to the combined negligence of A & B then it would be a case of composite negligence. If due to the negligence of A and B, Z has been injured, Z can sue both A and B for the whole damage.

There is a clear distinction between contributory negligence and composite negligence. The composite negligence liability is joint and several. The term contributory negligence applies solely to the conduct of the plaintiff. It means that there has been an act or omission on his part, which has materially contributed to the damage. But in case of composite negligence the plaintiff himself has no hand in the occurrence of the accident.

The difference between the two is of great importance in motor accident claims. If it is a case of composite negligence then no reduction in compensation payable to a claimant would occur whereas, in contributory negligence the claimant's compensation would be reduced in proportion to his share in the negligent act.



### a) Apportionment in composite negligence

When it is composite negligence, there is the added question, whether apportionment of compensation needs to be made between the tort-feasor in the ratio 50:50 or in the ratio of their shares in the negligent act. It needs to be emphasised that composite negligence would mean joint and several liability to the tort-feasor. The claimant would be at liberty to sue either of the joint tort-feasor or both of them, if he so chooses.

The joint tort-feasor would be liable for the entire compensation. As the liability is joint and several, the joint tort-feasor would be liable for the entire claim and it would be for the claimants to choose against whom he would execute ([Refer (Devaki Nandan Bangar vs. State of Haryana), 1995 ACJ 1288(P.H)]; [(Oriental Insurance Co. Ltd, vs. Narendra Kaur and ors).2002 ACJ 1716(P.H): (Narendra Pal Singh vs. Punjab State,) 1989 ACJ 728(P.H)]; the claim.

The distinction needs to be well understood for the good of the Motor accident victims. While some decisions have chosen to hold that there was no need to apportion liability as liability was joint and several, there are others which have held that the Court had a duty to apportion liability because it was enjoined to do so by virtue of (Sec.110-B of 1939 Act) now Section 168 of MV Act 1988 as the Court had to fix the shares of driver, owner and insurer. Further contention is that such apportionment would dispense with the need for further litigation to fix inter se liability and thus avoid multiplicity of proceedings.

Even while apportionment was made, the Courts were duty bound to observe that the claimants could execute 100% against either and there was no compulsion to execute the award only at 50:50 etc. In a given case, if two vehicles were involved and one was not insured, it would mean a lot to the interests of the victims. If the Court were to hold that apportionment was 50:50 and the claimants did not have the right to proceed for 100% against the insured vehicle, then the claimants may be left in the lurch, with no hope to realise 50% of the award.

If, on the other hand the Court holds that notwithstanding such apportionment, it was open to the claimants to seek 100% from either of the parties, the interests of the victims would be well guarded. It would be for the party paying up the entire award to seek contribution from the other. The ultimate decision on this point is available in [(Ganesh vs. Syed Munned Ahamed) - 2000 ACJ 1463]

## 6. Contributory Negligence

Where an accident is caused due to the negligence of both the parties, substantially there would be contributory negligence and both would be blamed. Where vehicles collide the apportionment at 50:50 would be fair. The crucial question on which the liability depends in contributory negligence relates to whether either party by exercise of reasonable care, has avoided the consequence of others negligence that would be liable for the accident.

In order to hold that there was contributory negligence, there must be positive and credible evidence adduced by the respondents.

### Example

In a case, where the injured was riding TVS 50 and was hit by a Transport Corporation bus from behind, there was no contributory negligence held in this case.

If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused, would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a person who has materially contributed to the damage, the act of omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning.

#### a) Travelling on the Ladder Attached

The injured was travelling on the ladder attached to the bus on the rear. The apportionment was made on negligence at 30:70 between the driver and passenger. Interestingly, the insurer of the bus was held not liable, as the injured was not a passenger. [(Satyawar vs. Rashid Khan) 2007 ACJ 1396 (P&H)]

#### b) Engaged in Agricultural operations

The deceased was engaged in agricultural operations, using the public road as thrashing floor, when the accident occurred. It was held that there was an element of contributory negligence in such conduct and hence the award was reduced by 30% for such contribution.

#### c) Head Jutting Out

Where the passenger had his head jutting out and there was an accident with a colliding vehicle, liability was apportioned between the driver and the claimant at 50:50.

#### **d) Carrying Two Pillion Riders or Absence of Driving Licence for Rider**

The Tribunal found in the claim for the death of a motorcyclist, who was carrying two pillion riders, that the driver had also contributed to the occurrence. However, it was held that without any evidence to show contributory negligence, it cannot be inferred from the absence of driving licence for the rider or from carriage of two pillion riders by itself. [(Manjo Bee vs. Sajjad Khan) 2007 ACJ 737 (MP)]

Where the victim was a 10-year-old girl, it was held that no contributory negligence could be attributed to her. [(Giata Bai Vs. Himachal Road Transport Corporation) 2007 ACJ 1061 (HP)]

In a very peculiar case, the victim had fallen into a well and suffered injuries. He was rescued and rushed to a hospital. While being taken in a taxi, there was a motor accident and he died on the spot. It was held that the claim was tenable; however, since the victim had already suffered injuries by the fall into the well, the award could be reduced by 50% applying the maxim of contributory negligence.

#### **e) Apportioning liability in contributory negligence**

Apportionment means reduction to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim the question of apportionment does not arise.

- i. In a case filed under Section 163-A, the Court would not be right in apportioning liability on the basis of contributory negligence. [(Ramkanyabai Vs. Unav Transport Co (P) Ltd) 2007 ACJ 2003 (MP)]
- i . The finding that scooterist was to blame for the mishap was set aside in appeal on the ground that the driver of the mini bus did not get into the witness box. [(Oriental Insurance Co Ltd Vs. Narayani Modi) 2007 ACJ 1723 (MP)]
- i . Application of notional income for an agriculturist was found to be in order. [(Ponnumany alias Krishnan Vs. V.A.Mohanan) 2008 (7) MLJ 269 (SC)]
- iv. The finding of the Tribunal that the rider of the 2-wheeler and the bus driver were guilty at 50:50 was reversed holding that mere exoneration of the bus driver by the criminal court was not a valid circumstance to hold. [(R.Duraisamy vs D.Arunguham) 2007 (4) LW 500 (Mad)]

## 7. Composite Negligence

Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence but a case of injury by composite negligence. Negligence is a careless conduct, although there may not be any duty to take care. Negligence also refers to breach of legal duty to take care. In [Lochgelly Iron and Coal Co. vs. M. Mullan, 1934 A.C.I.] Lord Wright pointed out negligence means more than needless or careless commission; it properly connotes the complex concepts of duty, breach and damage thereby suffered by the person in whom the duty owed. Entire case law has been discussed in [2007 (4) ACC 631 (All) (DB)].

In a case of composite negligence, only Transport Corporation Bus was made party, the other Private Bus was not impleaded. It was held that Transport Corporation cannot complain about finding on negligence. [2007 (2) TN MAC 563] Where both the vehicles were insured with the same company, each need not be impleaded twice over as both are liable jointly and severally. As the insurer on the insurance policy gave no evidence, hence the insurer was held liable. [2007 (2) TN MAC 510 (Mad)]

In case of head-on collision, if one of the drivers does not enter the box, then the finding that only one driver was at fault is correct. [2007 4 ACC 123 (MP)]. In case of head-on collision the apportionment of liability equally between the drivers was upheld. [(Gujarat State Road Transport Corporation vs. Hargovinddas R. Modi) 2007 ACJ 1198 (Guj)]. In another case it was found that there was a collision between a tractor and a van and in the prosecution launched against the tractor driver he had chosen to admit his guilt. In the said circumstances, the finding that both drivers were to blame was set aside and the tractor driver alone was held to be at fault. [(Oriental Insurance Co Ltd vs. Vijaya) 2007 ACJ 2105 (Mad)]

### a) Apportionment on the type of vehicle

In case of composite negligence two vehicles are involved and the injury / death is sustained by a third person. The negligence is apportioned on the basis of the type of vehicle involved. The proportionate liability in case of two similar vehicles may be 50% on each vehicle.

Apportionment of liability in a case of composite negligence was held to be improper. [(Kusumben Vipinchandra Shah vs. Arvindbhai Narmadashankar Raval) 2007 AIHC 2392 (Guj)]. In a case where the joint tortfeasors were held to be at fault, it was held that apportionment need not be made as liability was joint and several. In a case of composite negligence, there is no question of apportionment of liability at 50:50, as liability is joint and several.

### b) Apportionment for Heavy and Medium transport vehicle

- i. heavy vehicle vis a vis medium transport vehicle, the apportionment may be 60%-40% respectively. There was a collision between a bus and lorry and it was held in appeal that since in the connected claims both drivers were held to be at fault, the finding should be the same in other connected claims too. Liability should be apportioned between the two drivers at 50:50. [(S.Palaniswamy vs. Chinnakali) 2007 (2) TN MAC 147 (Mad)].
- i. . heavy vehicle vis a vis light motor vehicle, the apportionment may be 70%-30%.
- i. . It may further reduce to 80%-20% for heavy vehicle vis-a-vis two wheelers. In one case the liability between the drivers was apportioned at 75:25. [(Sumitra Sana vs. Ramsakha Chourasia) 2007 ACJ 1718 (MP)].

### c) Liability joint and several

When two vehicles collide, and **only one driver was prosecuted** is not material; the apportionment was made at 50:50.

Where two vehicles were involved in the accident and **only one vehicle was impleaded** and both drivers were found to be at fault at 50:50, the claimants were held entitled only for 50%; since they had failed to implead the other vehicle. [(Kuldeep Singh vs. Indrajeet Singh Kohli) 2007 ACJ 2383 (Uttara)]

In a case of composite negligence, the choice to sue either or both was with the claimant and as such the claimant was entitled to 100% from the impleaded truck and it was for this truck to seek reimbursement, if any, from the other truck in separate proceedings. [(Mayaram vs. Mehboob) 2007 ACJ 918 (MP)]; [(Nani vs. Soma La) 2007 ACJ 1163 (Raj)].

A Full Bench decision of the Karnataka High Court in [2000 ACJ 1463] was not brought to the notice of the Single Judge at Supreme Court. In that decision it was held that in case of composite negligence, liability being joint and several, notwithstanding such apportionment, it was permissible for the claimants to execute the entire award against either of the tort-feasors. It was held that where the claim was lodged against only one of the tort-feasors, the Tribunal was not bound to apportion liability, as it would be an exercise in futility. [(Uttar Pradesh State Road Transport Corpn vs. Rajani) 2007 ACJ 1771 (All)]

#### d) Principle of Apportionment for passenger vehicles

Where a passenger vehicle is found overloaded and the number of claimants exceeds the seating capacity of the vehicle as per R.C. Book, the insurers are required to pay to the extent of permitted seating capacity, by choosing the highest awarded amounts of claims, which is distributed amongst all the cases equally.

#### Authors note

The method of distribution of compensation among passengers may be prescribed in the policy as propounded by Justice K. Sreedhar Rao Judge High Court Karnataka (refer Compendium of Medico- Legal Information for easy settlement of Motor Accident Cases).

#### e) Liability under Employee's Compensation Act, 1923

Where the injured or deceased is an Employee as per definition under Employee's Compensation Act, 1923, the liability of the insurer to pay compensation is limited to the extent as prescribed unless there is a wider coverage under Package Policy.

The co-owner was engaged as driver of the Tractor & was receiving salary died in a tractor accident [Pushpabai vs. Ramotibai 2002 (&) ACJ 1341 (MP)]. Although the co-owner was being employed as driver but he does not cease to be co-owner, hence no compensation is payable under Employee's Compensation Act, 1923.

### 8. Sovereign Immunity

The Courts in India have uniformly deprecated the tendency of the State to raise plea of sovereign immunity. The crux of the reasoning is that the State would be entitled to raise the defence successfully only where it can prove that the function, in which the vehicle was involved, was an exclusive sovereign function in which no private individual could have been engaged.

If the act, during which the accident ensued, could be accomplished by a private individual, then the plea of the sovereign immunity falls flat. Even where military trucks are involved, the plea is not allowed to be agitated as it must not be.



## 9. Effect of Criminal Trial before MACT

As the degree of proof required for Criminal trial is higher, the decision of the criminal case would not have direct bearing on the outcome of Claims Tribunal. However if the driver voluntarily pleads guilty, it would be prima facie proof of negligence. Though a plea of guilt rendered before the Criminal Trial, on a similar analogy cannot be of a great significance, it would be relevant while fixing the liability for the accident before a Claims Tribunal. It is a settled law that the proceedings before a Criminal Trial are not binding on the Claims Tribunal as held in [1980 ACJ 435].

### a) Effect of Conviction

The drivers pleading guilty to the charge of non-possession of driving license does not give any chance to the insurer to escape liability. The acquittal of driver will not exonerate the owner of the statutory liability under MACT and the latter would have to independently arrive at its own conclusion for affixing the liability.

### b) Effect of Acquittal

The plea that criminal case has resulted in the acquittal and that the MACT must follow suit, was rejected in [N.K.V.S. Bros (P) Ltd vs. V.S.M. Karumari Ammal 1980 ACJ 435 (SC)]. The requirement of culpable rash and negligent driving is essential for the purpose of awarding compensation by the Tribunal and this right is not prejudiced by the acquittal in criminal case.

## 10. Legal Representatives

The third party liability claims for compensation are made in respect of accidents involving the death of or bodily injury to persons arising out of the use of the vehicles, or damage to property of third party, or both under Section 166 of 1988 Act. Application for such compensation may be made by the person who has sustained injury or by the owner of property or where death has resulted from the accident, by all or any of the legal representatives of the deceased, as the case may be.

There is clear departure from the provisions of the Fatal Accidents Act, 1855 where, such action or suit could only be brought for the benefit of the wife, husband, parent or children of the deceased / injured as the case may be. The question of brothers and sisters, more so when they are major and independent, has been the cause of great conflict for claiming compensation under Motor Vehicle Act 1988.



## 11. Definition of Legal Representative

The definition of term legal representative is found in Rule 2 (C) of Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules 1989.

### Definition

Legal representatives shall have the meaning assigned to it under Clause (ii) of Section 2 of Code of Civil Procedure, 1908 (Central Act of 1908). Section 2 (11) of CPC which reads as under:

Legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party, sues or sued in a representative character, the person on whom the estate devolves on the death of the party to suing or sued.

The brothers and sisters of the deceased person, even if not dependent on the deceased, though married, are entitled to compensation. Where the father is himself an earning member, he is not a dependent. In a claim petition, the widow and the father of the deceased were the claimants, the father passed away, pending suit for action. The brother of the widow was not allowed to be impleaded as legal heir of father of her husband.

## 12. Dependent under EC Act 1923

Employee's Compensation Act, 1923 is a beneficial legislation. The statute itself contains the list of persons entitled for the claim. Unlike in the case of a MACT claim dependency is irrelevant. Mere relationship would suffice under the 1923 Act, and if named in the statute as widow, mother, and children or even widowed sister etc., the claimant becomes entitled to the statutory compensation as a matter of right.

The statute itself provides for the 'Factor' to be adopted for the age of the victim, and as for wages, in the face of proof thereof, that shall be the wages. In its absence or it being lesser than minimum wages for the notified workmen category, the Employee's Compensation Commissioner can and may have to rely upon minimum wages to compute the compensation payable. It would be suffice for the claimant to be an identified dependent as per the statute to sustain an EC claim.

Liability under EC Act, 1923 is absolute while in a MACT claim, proof of negligence of the tortfeasor is mandatory as held in Maimoon Bi case [1977 ACJ 118 (SC)]. But in the case of an EC claim, it would suffice if the victim was a workman / employee and accident arose in the course of employment and the claim arose out of it. Even if the victim was at fault himself, he can sustain the claim.

Probably, a difficult defence for the employer / insurer would be that the workman was willfully negligent. A totally impossible defense to sustain and avoid liability, since mere negligent driving or prosecution by the police or even conviction arising from admission of guilt before a criminal court, would not be proof of willful conduct. Requirement of burden of proof to avoid liability in a EC claim is hard to come by.

### 13. Legal Representative and Dependency

It is true that the legal representative shall be construed to be wider in amplitude than legal heir as is commonly understood. But while arriving at 'Just compensation', the court has to necessarily arrive at the dependency of the claimants. It is the settled law for the purpose of dependency that the proof of actual reliance on the deceased for upkeep and survival would matter and not mere relationship. Of course, for the widow, children and parents, such consideration of dependency is in built and accepted as given.

But if the claimants were brothers or sisters or even married children living separately, dependency becomes an important criterion. In case all the legal heirs of the deceased are in active service, they are still entitled to make a claim under the 1988 Act. Their claim cannot be rejected on the ground that they are not dependents on the deceased. Such an approach is opposed to the purpose of legislation and the beneficiary will be a tort-feasor.

#### a) Adoption of the minor

In a case the claim was by the natural father along with second wife claiming adoption of the child from the natural mother. It was found that the natural mother was financing the child and in fact was seeking to get back the custody. The claim for death of boy was held maintainable at the instance of natural mother only. [(The Oriental Insurance Co Ltd v Lalitha Sharma) 2007 ACJ 1033 (HP)]. Where the Tribunal came to note that there were other legal representatives also in the case but were not impleaded, it had a duty to award their shares from and out of the compensation.

In another case the adoption of a minor daughter was held not acceptable in the absence of authentic evidence to this effect. Further, the claim of the parents for the death of their daughter was held sustainable on proof of dependency, and the non- impleading of the husband, who was alive but living separately in illegal intimacy with another woman was held to not affect the claim by parents. [(Minor Shyamala v A. Madheswaran) 2007 (2) TN MAC 478 (Mad)]

**b) Claim on the basis of a Will**

An appeal by an injured claimant, seeking enhancement, would not lie after the death of the injured pending such appeal. The claim on the basis of a Will was negative, and it was ruled that such a person cannot invoke the benefit when the finding was that she was not a legal heir or dependent of the deceased. She could work out her remedies by proving the will before a Civil Court. [(Jillelamudi Nagamani v Sarvepalli Vijayalakshmi) 2007 (3) ACC 35 (AP)]

It can, therefore, be safely inferred that when persons such as widow, husband, children or parents are available, brothers and sisters cannot claim to be legal representatives. But in the absence of first mentioned persons, brothers and sisters can claim compensation under the held legal representatives within the meaning of relevant sections under MV Act 1988

**14. Dependency under EC Act 1923**

Whether dependency would be a major factor in motor accident as in Employee's Compensation Act, 1923, in considering maintainability is a question that has been a bone of contention for long. An employee is entitled to move either the, Employee's Compensation Commissioner or the MACT but not both under the MV Act 1988. In fact, in the claim petition drafted under Claims Tribunal Rules, verification column requires the claimant to solemnly affirm that he had not received any compensation under the provisions of the Employee's Compensation Act, 1923.

Similar position has been restated in case of ESI Act where if an employee could sustain a claim under Section 53 of ESI Act for compensation, he could not file a claim petition under MV Act 1988.

Where a claimant happens to be an employee they need not prove negligence for receiving compensation payable to them under the provisions of Employee's Compensation Act, 1923. An employee remains a claimant even where he was himself negligent e.g., a driver or where workman is unable to establish negligence, then also he can maintain a claim before the Claims Tribunal in view of the application of the procedural law applicable to MV Act 1988.

**a) Option to move EC Commissioner or Motor Accident Claims Tribunal**

As per Section 167 of MV Act, 1988 it is open to the workman to exercise an option to move MACT or go before the EC Commissioner. But on the exercise of option there are differing views. If the claimant moves the Commissioner and the employer admits liability and deposits compensation, then the workman can be said to have exercised his option.

### b) Employer complies with the Mandate

If, however, the employer, complies with the mandate of Section 10-A of EC Act, 1923 and on his own admits liability and deposits the compensation, which the workman chooses to withdraw, then he cannot be said to have exercised his option to seek compensation.

He may still be entitled to seek the remedy before MACT but technically, they may not pass muster if the language of Section 167 is read properly. For each claim, there can only be one remedy. Insurers may be justified to resist any claim arising before MACT after the workman had received compensation under WC Act, 1923 or was covered under ESI Act, of which Section 53 is a bar for any further claim.

### c) Employee to Sue in MACT in No Negligence Cases

In the context of EC claim, where negligence is not a pre-requisite and not a bar to sustain the claim of a workman, there has been development in the legal position enabling the workman / driver to sue before MACT also. The Supreme Court upheld a MACT claim for the death of an auto rickshaw driver who was found murdered for gain [(Rita Devi) - 2001 ACJ 801 (SC)], which was held to be an accidental murder.

Where the victim is an employee under EC Act 1923 [{Oriental Insurance Co Ltd v Mani} 2004 ACJ 1790 (Mad DB)], and he could legally enforce a claim before MACT also, but his entitlement would be restricted to such sum payable under EC Act, 1923.

### d) NFL limit for Workman at fault

Where the workman / driver was himself at fault and would appear to have admitted his guilt and been convicted thereupon. The liability of insurer may be restricted only up to NFL [(Nandakumars case) 1996 ACJ 555 (SC)]. However, that decision may now have to be read in line with the march of law that if he was a workman then such liability may be as per EC Act, 1923 and not as per NFL alone.

## Test Yourself 3

Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is a case of injury by\_\_\_\_\_.

- I. Contributory negligence
- II. Composite negligence
- III. Combine negligence
- IV. None of the above

## D. Jurisdiction of Civil Courts

Claims for compensation for liability under the Motor Vehicles Act arise out of negligence and fall under the law of torts. As this is a civil matter, the remedy is to file a suit in a civil court. This was the procedure to be followed in the initial years even after the introduction of the MV Act. However, the long drawn out procedure of proving negligence and increasing number of cases resulted in a pile-up of pending matters in civil courts. This was against the principle of social justice as the claimants did not get timely relief. They also incurred exorbitant expenses on court fees and other legal charges.

### 1. Motor Accidents Claims Tribunals

For the speedy disposal of third party claims and at a minimum cost, the Claims Tribunals have been constituted by different State Governments, under Section 110 of Motor Vehicles Act, 1939. Such tribunals are presided over by a person of the rank of a District Judge or High Court Judge. Only a nominal fee has to be paid for instituting a case and court fee is not based on the value of the suit. Thus it is very much less expensive and poor third party claimants are not prevented from making proper claims. All third party claims for personal injury and property damage up to Rs. 6,000/- have to be filed with claims tribunals.

### 2. Beneficial Legislation

Chapters X to XII of 1988 Act was incorporated for the benefit of the innocent motor accident victims. There has been a sea change in the purport and impact of the march of law from the dispensation under MV Act 1939 to MV Act 1988 and subsequent amendments down all these years. The Parliament in its wisdom has gone about securing and protecting the interests of the affected victims. The Courts are duty bound to keep in mind the beneficial intent behind this legislation. The construction of the statutory provision is itself in consonance with this intendment. (National Insurance Co. Ltd., Vs. Swaran Singh) 2004 ACJ 1: AIR 2004 SC 1531: 2004 (3) SCC 297: 2004 (1) Supreme 243: 2004 (1) ACC 1]

#### a) Quicker Justice

It was felt that the ordinary Civil Courts could not deal with Third Party Claims and expeditiously grant relief to the victims. As it is, the judicial process is very slow and time-consuming in the Indian context. It would appear that time had come to cry for Judgment, not Justice. Bearing this in mind, Parliament had directed the constitution of Claims Tribunals as specialised forums in the hope that they would handle and deliver justice in time, in these cases.

The expectation, to be fair, has been belied. The exponential increase in the motor accidents, the failure to increase the number of **“Claims Tribunals”** and the procedural wrangles indulged in by the lawmen in their genius has meant that lots of the victims have only been pitiable. The need then was felt to introduce **“No Fault Liability”** under Section 140 of the 1988 Act and then came Section 163-A **“structured Schedule Compensation”** for all cases of death, based on proof of age and income. They thought that there could be a Table of computation of compensation, to fix the compensation payable instantly. Similarly, for injury claims too there could be a Table of Computation of compensation.

With regard to the vexed question of **“assessment of disability”** which is now within the whims and fancy of stock witnesses appearing before Tribunals, there could be constitution of Medical Boards in all Districts, which shall have the final say in the assessment based on the guidelines issued by the Ministry of Social Justice Women Empowerment dated 1st June 2001. Then alone, it may be possible to see quicker dispensation of justice. Even then, we should not rule out the genius of the lawmen to quibble on legalese to keep the victims at bay.

### 3. Jurisdiction of Claims Tribunal

Section 165 of the 1988 Act gives the Motor Accident Claims Tribunals (MACT) exclusive jurisdiction to decide the claims with regard to death, personal injury as well as property damage, irrespective of the amount involved in the property damaged, whether on fault basis or **“no-fault”** basis. An explanation has been added to Section 165 of 1988 Act

Any application for claim filed with the Motor Accidents Claims Tribunals on basis of **“fault”** shall also contain a separate statement that a claim for compensation on **“no fault”** basis is also made. Thus an important change was made by the new Section 165 in granting exclusive jurisdiction to MACT, empowering the claimant to take up claims for damage to property without any limit. However, under Section 147 (2)(b) the limit for compulsory T.P. Property damage remains at Rs. 6,000/- only.

The jurisdiction of the claims Tribunal is now a matter of clarity, what with the Supreme Court upholding its right to deal with claims involving trains too, on level crossings. [Union of India Vs. Bhagwati Prasad 2002 ACJ 721 : AIR 2002 SC 1301 : 2002 (3) SCC 661 : 2002 (2) Supreme 272]

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



There is no mention of the term public place therein, which infers that even with regard to claims occurring in private place, claims could be lodged before the MACT. Nevertheless, so far as insurers are concerned, the policy of insurance is required to cover only accidents occurring in public places within the meaning of Section 2(24) of the Motor Vehicles Act 1988.

**Power of Civil Court:** The Claims Tribunal no doubt had come into being. But the Supreme Court had ruled that creation of the Claims Tribunal was only a forum creation. The law relating to liability would still be in the realm of Torts and Common Law [1977 ACJ 118 (SC)]. To sustain a claim based on Torts, the claimants would have to establish fault on the part of the tort-feasor. The Claims Tribunal was vested with exclusive jurisdiction to decide such claims.

#### **a) Claims Tribunal is vested with power of Civil Court**

Precisely speaking, Claims Tribunal is vested with the power of Civil Court, for the purpose of taking evidence and compelling the discovery and production of documents and material objects and for other purposes in disposal of claim brought before it. The MACT Rules have not made applicable in specific terms, all provisions of Civil Procedure Code e.g., Order 1, Rule 10 (2) of CPC refers to the owner to allow parties to be impleaded during the conduct of proceedings. [1980 ACJ 298 (SC)] it was held that the powers under CPC can be invoked as ancillary powers required for the valid and proper adjudication of claim by a MACT.

#### **b) Exercise of Powers - Transferring of petition**

The Supreme Court has categorically stated that High Court ought to treat the Tribunals as Courts [1983 ACJ 123 (SC)] for the purpose of transferring claims petitions from one Tribunal to another. Supreme Court has transferred claims petitions from one state to another when sufficient cause was shown. It is now a settled principle that once the matter reaches the High Court, all provisions of CPC would be applicable as it hears the appeals as an original appellate court.

#### **c) Letters Patent Appeal**

The same analogy when applied to Letters Patent Appeal may be substantive in law. The Letters Patent Appeal challenging the order passed by a single Judge of the High Court under Section 140 of MV Act 1988 was found maintainable in [Chandra Kant Sinha vs. OIC co. Ltd & Anors. 2002 ACJ 210 (SC)]. But the power of Latent Patent Appeal has been taken away consequent to insertion of Section 100-A of the Code of Civil Procedure by Amendment Act 922 of 2002) in respect of matters arising under special enactment or other instruments having the force of law.



**d) Modification of award**

The High Court will include the Order 41 Rule 33 of CPC to modify the award, even where no cross objections are filed on any aspect [refer UIIC vs. R. Sathyanarayanan etc. 2005 1-LW 358 (D.B)]

**e) Limitation on Jurisdiction**

An owner travelling in the vehicle made a claim against the State Government for the action of a Policeman. The policeman apprehended that the lorry was transporting some contraband material, threw a plank of wood with nails on it against the tyre of running lorry, causing overturning of the vehicle. The claims Tribunal was found bereft of jurisdiction to entertain such claim petition having been constituted under Section 110 of MV Act 1939 as the respondents were neither driver, nor owner nor insurer of the lorry.

The jurisdiction depends on whether there had been any use of motor vehicle and it cannot be ousted on a finding at a later point of time that it was the negligence of a Train and not the Motor Vehicle in question [Union of India vs. Bhagwathi Prasad & Ors. 2002 ACJ 721 (SC 3j)]. MACT is empowered to pass two different awards under Section 163-A and Section 166 arising out of the same accident filed by different claimants. [2003 ACJ 2053 (P&H)]. However the claims Tribunal cannot inquire into compensation that can be claimed and awarded under Employees Compensation Act, 1923 on the basis of statutorily imposed strict liability under the said 1988 Act.

**f) Place to sue**

Under sub section (2) of Section 166 (amended by Act 54 of 1994) the claimant has the option of filing the claim petition before the Claims Tribunal within whose jurisdiction

- i. The claimant resides, or
- ii. Claimant carries on business or within whose jurisdiction the defaulter resides or
- iii. Where the accident occurred and / or
- iv. Where the policy issuing office is situated

The term ‘claimant carrying on business’ can be taken as occupation; implying a student studying at Mumbai becoming entitled to have the claim petition transferred from MACT Thane to MACT Mumbai.

The claimant has a choice of forum. At the instance of claimant a claim filed at Sivakasi as per his Ration Card was held to be in order. As long as the claimants were not guilty of forum shopping there was no justification to reject the claim at the fag end of trial of the case [(P.Pandiammal v Anand) 2008 (7) MLJ 996.]

An employee's compensation claim was filed at Tezpur where the parents of the deceased claimed that they were residing and making their livelihood. The employer on the premise that accident had occurred at Nalgaon contested it. The Supreme Court upheld the claim filed at Tezpur on the ground that the claim was filed where the claimants were **ordinarily residing** and which was permissible under the beneficial legislation. The contention of the employer that claim of the parents on their residence was not supported by documentary proof was rejected in the absence of cross-examination of the testimony of the claimants, on their residential status.

#### 4. Forum Shopping

In view of this clouded state of affairs and prejudice to the cause of victims, Parliament deemed it appropriate to introduce a change by which the claimants could institute the claims at their place of residence too, under Section 166 of MV Act 1988. This welfare measure is within a beneficial legislation, akin to Section 60 of Copyright Act.

There is a regretful practice of forum shopping based on convenience of, not necessarily victims but of lawyers too. It is an undeniable reality that this arena is infested with the vice like grip of ambulance chasers. In such circumstances, one is a witness to the fact of claim petitions being instituted on the basis of **forum shopping** at the convenience of the counsel on record with assumed addresses euphemistically portrayed as now residing at. The ordinary residence of the claimant is shifted for the convenience of every one.

##### a) Duplication of Claims

This choice of forum has caused untold hardships to the community of respondents. In cases where **2 vehicles are involved**, there have been instances of 2 claims being lodged in 2 different places against 2 different owner's and insurer's, without either of them smelling a rat. There was no cross verification possible to weed out this menace earlier but the advent of Core Insurance this is checked to a great extent.

Further, the insurers also face claims by **rival legal heirs** before different forums impleading different offices of their choice. The insurers have been seen to be paying up from both ends for different sets of claimants where no centralised communication set up available. And if they discover, by chance the fact, it may be too late as well on some occasions.

### b) Suggestion for checking the menace of forum shopping

As for transfer of such claims petitions, there could be a provision introduced to vest the Tribunals themselves with such power much like those under EC Act, 1923 even for inter-state transfers, leave alone transfers within a State, ridding the appellate forums of the need to address these problems. It is always possible that a provision can be provided in the MACT Rules of each State insisting upon production of **proof of ordinary residence** to maintain the claim before the concerned Tribunal to place a premium on assumed addresses leading to forum shopping.

## 5. Parties to the Claim Petition

It is to be noted that as per Section 2(30), owner means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor and in relation to a motor vehicle which is the subject matter of hire purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of vehicle under agreement. The hire purchaser/ lessee are the owner of the vehicle under Section 147 read with Section 2(30) of MV Act 1988.

The husband of the deceased had settled the claim with the owner of the vehicle for a sum of Rs.15,000/- and entered into an agreement accepting the sum in full quietly and agreeing not to prefer any further claim. Notwithstanding such agreement, a claim was pursued and the Claims Tribunal dismissed the same, as not sustainable. However, on appeal, the High Court ruled that such a settlement for a sum lesser than even statutory no fault liability, was not binding on the claimants. In another case it was held that the settlement between husband of deceased and owner is not valid and binding.

Under Section 140, the injured, or in case of death of heirs, his legal representative can file a claim petition in Form I under Rule 4(1), where the respondents are the owners or insurers of the offending vehicle. An interim compensation may be passed against any one owner of the vehicle involved in the accident, without impleading owner of the other vehicle.

Under Section 166 the injured or in case of death of his heirs the legal representatives can file a claim petition in Form II under Rule 4(1) and (2) where respondents are owner of the vehicle, insurer and driver of the offending vehicle, as there is no provision in the Act on this aspect. The financier of the motor vehicle under Hire Purchase agreement is not a necessary party in proceedings, as question of breach of terms of hire purchase is beyond the scope of adjudication before the tribunal.

**a) Damage to third party property / loss of income**

The Claims Tribunal as constituted under Section 110-A of MV Act can entertain the claim for damage to property as long as there is a physical connotation to it. But claim for loss of income due to inability to use the vehicle, can be laid only before a Civil Court.

**b) Condoning delay to file claim**

The Claims Tribunal was initially vested with the jurisdiction to condone delay in filing claim petition on sufficient cause being shown within the meaning of Section 110 A (3) of MV Act 1939. Later Section 166 (3) of MV Act 1988 provided that claim petition had to be filed within six months of occurrence of the accident with a proviso to condone the delay for sufficient cause provided the application is filed within 12 months from the date of occurrence. However this Section 166 (3) was omitted under amended Act 54 of 1994. Therefore, effective position as on date is that, there is no bar on period of limitation under the 1988 Act currently in force for filing a motor third party claim. The Claims Tribunal is required to entertain claim petition regardless of date on which accident took place.

**c) Evidence without formal proof**

Certified copies of FIR, inspection map, site inspection memo, panchnama, injury report or post mortem report and other documents prepared by Police or Physician while discharging official duty are admissible as evidence without any formal proof. A true copy of Insurance Policy is admissible in evidence under Section 74 read with Section 77 of the Evidence Act without any formal proof, when the petition did not contain particulars of offending vehicle and the owner failed to produce the original Policy even after notice under the 1988 Act.

**d) Appeal Provision under Motor Vehicle Act, 1988**

Section 173 provides for provision of filing Appeal for a person aggrieved by an award of MACT. However, there is a bar on filing appeal for an award of a Claims Tribunal if the amount in dispute is less than ten thousand rupees. However, there is no bar for an amount in excess of Rs. 10,000/- if awarded by the Claims Tribunal.

**Section 173 - Appeals:** Any person aggrieved by an award of the Tribunal, derives right to file an appeal under this Section, within a period of ninety days from the date of award. Further an appeal cannot be admitted for consideration or maintained without deposit of Rs. 25000/- or fifty percent of the amount awarded, whichever is less, by the person required to pay the award. Any subsequent deposit of half of the amount is not considered compliance of the mandatory requirement and is liable to be rejected at the admission stage.

However, the party who is awarded with the liability cannot file an appeal unless he deposits 50% of the award or a sum of Rs.25,000/- whichever is less, along with the appeal. No appeal can be filed against the order of the Tribunal if the amount involved is less than Rs.10,000/-.

Under Order 41 Rule 22 of C.P.C read with Section 173 of the 1988 Act, cross objection tantamount to appeal. Therefore, without mandatory deposit the appeal provision under Section 173 is not maintainable.

The insurance company cannot question the compensation awarded by the Claims Tribunal by filing a joint appeal, as it would result in a mockery of Section 149 (2) where insurance company is not entitled to seek relief directly, it cannot be allowed to seek relief indirectly allowing joint appeal. The benign principle that justice shall not suffer because of hyper technicalities is clearly understood and though a joint appeal is not maintainable, the appeal by the owner deleting the insurer is maintainable [Asha & ors vs. United India Insurance Company Ltd & Anors. 2004 ACJ 448 (SC)].

## 6. Duty to satisfy Judgments

Third party risk in the background of a vehicle which is the subject matter of insurance is dealt in Chapter XI & XII of the Motor Vehicle Act 1988.

Proviso to Section 147 of the 1988 Act reads as hereunder:

—A policy shall not be required (i) to cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Employee's Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to, any such employee:

- i. Engaged in driving the vehicle or
- i . If it is a public service vehicle engaged as Conductor of the vehicle or in examining Tickets on the vehicles, or
- i . If it is a goods carriage, being carried in the vehicle.

It has been held in in the case of a cheque having been dishonoured; the insurer under Section 147 of 1988 Act, having issued the Motor Insurance Policy is mandated to pay & recover, as the contractual liability has become void ab initio for want of consideration, which failed due to dishonour of premium cheque [2008 ACJ 1111].

It has been clarified that direction to insurer to pay and recover from the insured cannot be carried so far as to issue such directions, where there was no contract of insurance in force on the date of accident.

**a) Insurer to pay and recover from owner**

The Supreme Court observed that it would be equitable if the insurance company pays the amount of compensation to the claimant and recovers it from the insured. Where the driver did not hold a valid endorsement, the insurer was directed to pay and seek recovery from the insured. [(Oriental Insurance Co Ltd v Yudhishter Joshi) 2007 (3) TAC 440 (Uttara)]

The interest of justice will be sub-served if the appellant insurance company herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied and recover the same from the owner of the vehicle.

The insurer was called upon to pay the claim and seek recovery from the insured on the ground that the insured's driver held a fake driving licence. The insurer had gone up to the apex court and lost their case. When, however, they sought to recover from the insured under Section 174, the insured contested and took the matter on revision contending that the finding of the MACT on breach by insured was not proper. Agreeing with the contention, the direction to recover was set aside and matter remitted for fresh disposal on this issue.

**b) No need to file a suit for recovery**

Therefore, it has been held that it would be equitable if the insurance company pays the amount of compensation to the claimant and recovers it from the insured. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but the Insurer may initiate a proceeding before the executing court, as if the dispute between the insurer and the owner was the subject matter of determination before the Claims Tribunal, and the issue was decided against the owner and in favour of the insurer.

Before release of the amount to the claimant, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.



### c) Tribunals to hear claims for damage to property and revenue loss

Fundamentally, the creation of the claims tribunal was a creation of the statute. Under MV Act, 1988, any limitation for a TPPD claim has been removed. If so, even a claim under the head revenue loss has to be laid before the Tribunal only, as there is total ouster of jurisdiction of the civil court from entertaining any claim in relation to a motor accident claim. One important development in this arena is the decision of the Apex Court that in case of Motor accident on unmanned railway crossing involving trains, if the claims were against the owners and drivers of Motor vehicles too, then such claims would be tenable before the Tribunal. There was no necessity for the victims to sue before a Civil Court or elsewhere.

### d) Tribunals possess powers and trappings of Civil Court

Coming to the powers of the Tribunals, it is now well settled that the Tribunals have all the powers and trappings of a Civil Court. It is not a Civil Court per se, is true. It is a Tribunal and is created by a statute. Nevertheless, it has now arisen from a series of judgments from the Supreme Court downwards that such Tribunals would have all powers required and necessary for invocation of Civil Procedure Code for this purpose.

They have repeatedly ruled that to render justice among the parties, the Tribunals can invoke such inherent powers. The relief of impleading parties or amendment of claim petitions to enhance the claim or change the pleadings or record legal representatives on deaths of claimants, or restoration of claim petition dismissed for default or set aside an ex parte decree against a respondent are all now mechanically accepted as applicable. Every single provision of CPC was applicable before Tribunals, irrespective of whether MV Act or the relevant rules had held them applicable before it.

### e) Power of review

One important adjunct of the power of a Civil Court being available to the MACT is the power in relation to review or recall of an award against the insurer. Power of review is a specific power and the legal position is that unless such power was vested with a Tribunal, it cannot invoke the right. In fact, in criminal jurisprudence, there is a bar on Magistrates to invoke any such power of review.

**Fraud and justice:** It was for the first time [in (United India Insurance Co. Ltd v Rajendra Singh) 2000 ACJ 1032] and [in (Oriental Insurance Co Ltd v R. Mani) 2000 ACJ 247 (Mad)] that such power of review was recognised and vested with the MACT. It was in the context of proceedings initiated by the insurers that the **claims were tainted and fraudulent** and, therefore, there was an abuse of process of law.



In that context, the relief sought by the insurer to review / recall the award already passed against them, was upheld by the Supreme Court and reliance was placed on Section 151 and Section 152 CPC for this purpose (residual powers). Fraud and justice can never dwell together and if so, the Tribunal, which had rendered the award, could in appropriate cases, invoke the inherent powers read with Sections 151 and 152 of CPC and review / recall the awards already passed.

In the context of the existence of fabricated motor accidents claims all over India, this power is very significant for the entire insurance industry to protect itself. It needs to be understood that such power of review may have no power of limitation also. Normally, such power of review shall be invoked within 30 days of the order. But [in (United India Insurance Co. Ltd Vs. Rajendra Singh) 2000 ACJ 1032], insurer became aware of the fraud after 4 months of the award. Still the relief was upheld as available.

Further such power of review is traced to inherent power of a Tribunal and Sections 151 and 152 CPC and not Or.47 R.1 CPC or Section 114 CPC, for which alone a period of limitation is prescribed under Limitation Act, 1963. Hence, the insurers can legitimately seek the power of review in appropriate cases where they became aware of the fraud subsequently and they had not already contested claim as being fabricated and adduced no evidence to this effect also, without fear of the relief being time-barred.

#### **f) Limitations to file Appeal**

Once an award is passed the award has to be deposited within 30 days from the date of its announcement as given under Section 168(3) unless either party decides to go in appeal. Section 173 stipulates that any person aggrieved by an award of the Tribunal, derives right to file an appeal under this Section, within a period of ninety days from the date of award. However, the party who is fixed with the liability cannot file an appeal unless he deposits 50% of the award or a sum of Rs.25,000/- whichever is less, along with the appeal. No appeal can be filed against the order of the Tribunal if the amount involved is less than Rs.10,000/-.

As the High Court is a constitutional Court. Hence, it has all the powers and trappings of such court, without a glitch. Limitation to file appeals is of course prescribed under the 1988 Act. In case of delay, an application has to be moved before High Court for condonation of delay. It would make sense to lodge appeals within the stipulated period of 90 days in case of MACT claims and 60 days in case of EC claims.

For, if there is a delay in filing such appeal, then as per Or.41 R. 3 (3A) of CPC, there shall be a bar on the High Court from granting interim relief, pending disposal of the application for delay. Only after condonation of delay, any stay can be sought for.

Insurers cannot seek any other alternate remedy of injunction against execution, as law does not permit another remedy if the basic remedy is barred and circumvention of the legal process is not permissible.

Coming to the powers of the High Court, it is for the individual High Court to frame rules for hearing the appeals by a Single Judge or Division Bench, depending on the stakes. The insurers have a statutory right to file an appeal under Section 173 of MV Act, 1988. But it would be subject to the High Court entertaining it. It is open to the High Court to dismiss the appeal at the stage of admission itself, if it did not see merit in the case.. But the legal position is as yet not fully settled, in the absence of a verdict of the Supreme Court and there is divergence of opinion.

## **7. Power of Execution, Appeal and Revision Petition**

All the powers of a Civil Court are, therefore, available to both Tribunals and the High Court. Powers of execution to MACT, as of a Civil Court under Or.21, are available to the Motor Accident Claims Tribunal. The High Court can exercise the power of transferring claim petitions within the State from one District to another under Section 24 of CPC.

Under Section 173 no appeal is provided for if the amount in dispute is less than Rs. 10,000/-. But in cases such as no insurance, no coverage for a pillion rider, or unauthorised occupant in a goods vehicle etc., even if the amount in dispute is less than Rs. 10,000/- insurers can invoke the remedy of a revision petition or a writ petition under Article 227 of Constitution of India.

It is true that Supreme Court has ruled that when an appeal remedy was available, the insurer cannot file such a revision petition. But that is distinguishable in this case, where an appeal remedy is not otherwise available. Such appeals have to be filed within 90 days of the award, excluding the time taken to obtain the award copy and in case of revision petition as above; there is no period of limitation prescribed.

### **a) Period of limitation and territorial jurisdiction**

As per amended MV Act, 1988 as of 14/11/94 there is no period of limitation envisaged for filing Motor accident claims. In respect of claims, which have not been lodged already or not dismissed by any Court of law, any claimant can sue today safely. That is, to say, even a claim as old as 30 or 40 years can be filed today, since limitation petition is not at all applicable as held by Supreme Court in [Dhannalals case]. So far as appeals are concerned, there is a time limit of 90 days and if not filed in time, application can be taken out for condonation of delay.

As for SLP to Supreme Court under Article 136 of Constitution of India, if no leave was sought for or obtained before High Court, it would be 90 days and if sought for before the High Court and if it was granted or rejected, it would be 60 days of the order of High Court. As for the territorial jurisdiction, claimants can now file the claims at a place they reside and not necessarily where the accident had taken place as it used to be. But courts deprecate the practice of ‘forum shopping’, i.e. the claimants picking and choosing a court of their choice, by producing a false address. Some courts in the States insist upon proof of residence to accept the place of ‘ordinary residence’ to entertain the claims.

### b) Revival of old claims

Their needs to be a rider to the well accepted proposition that there was no period of limitation for such claims. The rider shall be that it shall be so except in respect of those cases which had become time-barred by 14/11/1994. This ought to be so since the amending Act 1994 has not provided for ‘revival of cause of action’ even for time-barred ones. The decisions adverted to [(National Insurance Co. Ltd., Vs. Singaram S. Abdul Jabher) 1997 (1) LW 209] do disclose a need for such a revival clause. Except for this caveat, a limitless period of limitation has been a veritable boon for redressal of grievances of victims.

It is true that the insurers may be defenceless in relation to claims which may be a decade old or more. Records may not be available at all. In case the revival aspect is taken care of, even this minor grievance would be taken care of. Since as of 14/11/94, there is no ambiguity about the removal of period of limitation, in respect of accidents occurring thereafter, and hence no insurer or transport corporation can complain, about any delay, as they are required to organise themselves in conformity with the changed legal position.

## 8. Vigilance by Insurers - Key to protect Fraudulent Claims

In the context of this aspect of period of limitation and territorial jurisdiction, insurers have a lot to worry. The key is to centralise the claim module so that any claim generated anywhere in India is notified by the policy issuing office to the office handling the claim, lest there was duplication of claims. It is possible also that in case of involvement of two vehicles, the same claimant may cleverly lodge a EC claim against his employer / insured / insurer in a given court and then go ahead and lodge a Motor accident claim against the colliding vehicle / other insurer in another place in MACT.

Insurers verify such aspects. The two claims may be against two different insurers and unless investigated and verified, may escape the eye of both insurers. Further, there may be claims lodged by rival claimants in two different States, and unless collated and correlated, may be independently contested as well. Further, in the absence of any period of limitation, vigilance is the key.

If the insurer was liable to a limited number of claims, they must take this defence and ensure that future claims are suitably avoided.

**a) Pay and recover Supreme Courts discretion and does not amount to binding decision**

One important development of noteworthy significance is the repeated directions to insurers to pay and recover from the insured. Further in the context of absence of driving licence or absence of endorsement to drive the vehicle, Supreme Court in [Swaran Singh in 2004 ACJ 1 (SC)] chose to hold that insurers cannot avoid liability, **unless the breach by the insured was deliberate, willful and intentional and the cause of accident also was traceable to the absence of such driving licence**, the remedy for insurers would be to pay and recover. In cases where the driving licences were fake or fabricated, Supreme Court invoked the discretionary power vested with them alone under Article 136 and 142 of Constitution of India to permit the victims to receive the compensation from insurers and insurers being given the right to recover from the insured.

If the insurer was held not liable, the courts should exonerate them and cannot follow the example of the Supreme Court in directing payment and recovery power which only the Supreme Court had, as now held in [2008 (2) LW 19 (SC)].

**b) Pay and recover for victims on the road only**

Supreme Court has clarified that in the absence of driving licence per se, the insurer cannot be asked to pay and recover. If the insured had done his homework and checked the competency of the driver, than the driving licence turned out to be fake, cannot be held to be a breach by him. The insurer was liable to indemnify the insured owner, following the verdict of the apex court. If the victim was a passenger on the insured vehicle, then too insurer cannot be asked to pay. Only if the victim was *third party, namely a person on the road and outside the vehicle*, such direction to pay and recover can be applied.

Further, it is also now accepted that such right of recovery, whenever granted, can be executed before the Tribunal and there is no need for the insurer to pursue a separate civil suit for recovery as held in *Lehru, Kamla, and Kusum* and so on.

But, in a case where the insurer had failed to plead no insurance, and adduce evidence and was held liable to meet the claim, in the absence of pleading and evidence, they can always obtain the right to pursue the remedy of recovery from the insured, for which only a Civil suit can be laid and it cannot be before the Tribunal itself.

There have to be independent proceedings, since the insurer failed to prove their case before the Tribunal. But for such exceptions, the right of recovery can be executed, before the Tribunal by the insurer. In fact apart from the power to execute before the Tribunal, in (Anjana Shyam case) the Supreme Court has even granted the right to insurers, to seek the remedy of attachment, before the judgment as per Order 38 Rule 5 of CPC in appropriate cases, to protect their interest in pending claims and before the award itself.

Where the insurer sought to stall the disbursement of the awarded sum to claimant, pending security to be furnished by the owner of the vehicle - writ petition also filed. Insurer cannot stall payment to claimant for inter se dispute between insurer and insured. [2007 (4) ACC 77 (Kant)]

#### Test Yourself 4

Claims for compensation for liability under the Motor vehicles Act arise out of negligence and fall under the\_\_\_\_\_.

- I. Law of negligence
- II. Law of torts
- III. Law of liability
- IV. None of the above

#### E. Alternate Methods of Settlement

Conciliatory or negotiated settlements of the legal claims are always beneficial to the insurers. It is a means for fast disposal of cases which helps not only the insurance company in expeditious determination of liability but also helps the claimants to get reasonable amount of compensation without waiting endlessly to obtain an award. The fast disposal also helps the MACT to reduce their pendency of cases, to facilitate speedy justice by saving time wasted in unwanted complex procedures of the courts.

The quicker disposal of cases through conciliation is appreciated as a positive sign of the insurance companies' willingness to help the victims of motor accidents, which is the moving spirit behind the enactment of MV Act 1988 by the legislatures. The fast disposal of claims also enhances the image of the insurance company in the public eye.

The settlement so achieved, is highly economical to the insurance company. Fast disposal eliminates the adverse impact of inflationary trends and depreciation in value of money and the resultant increase in the amount of awards. In India inflation rate is very high, and it varies from time to time, based on various factors. If we take a long-term view, we can consider the average of inflation @ 7.5% as a very conservative estimation of the inflation.

This inflation results in depreciation of money value in actual terms and we keep adjusting to such inflationary pressure and depreciation in money value, as time passes.

Similarly, any compensation amount that we think reasonable today will appear to be a paltry sum after 10 years. This is due to the operation of invisible pressure or attunement of our mind to the inflationary trends and may also be in response to the constant changes in the economic condition of the citizens of our country.

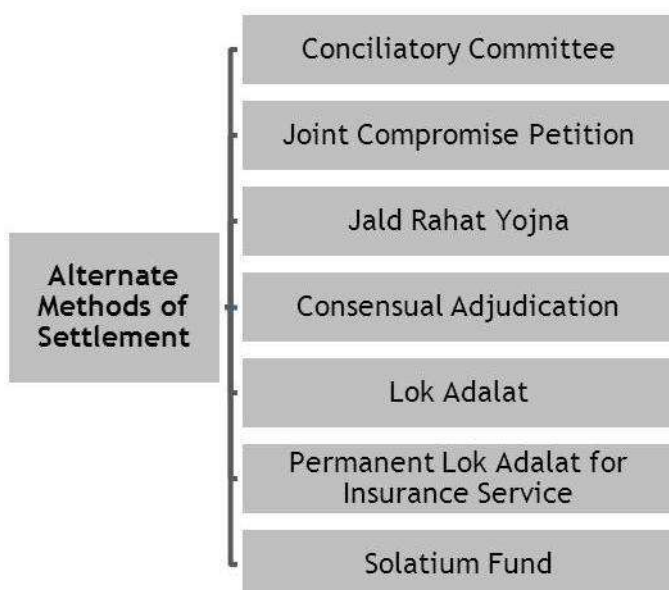
### Example

If we work out an example at the rate of an assumed inflation of 7.5% per annum & 9-12% per annum interest, an amount of Rs. 1,00,000/- ten years ago will push the total out go to Rs. 4,53,420/- if we allowed the case to be awarded by the MACT.

However, Rs. 1,00,000/- paid as out of Court settlement ten years ago, invested to earn interest / dividends the total income at 10% compound interest the totals corpus (Principal + Interest) would work out to Rs. 2,59,370/-. There still would be a net loss of Rs. 1,94,050/- (Rs. 4,53,420 - Rs. 2,59,370). Therefore, if claims are settled through alternate methods of settlement, insurers tend to save by way of reduced claims out go and ultimately make better contribution to society at large.

### 1. Conciliatory Committee

Diagram 1: Alternate methods of settlement





To dispose of Motor TP Claims and Claims under Jald Rahat Yojana (JRY) through Compromise, the concept of Conciliatory Committee, as an alternative forum have been introduced u/s 152 of the Motor Vehicle Act 1988, as amended in 1994. The conciliatory committee is required to have a retired High Court Judge or District Judge, an insurance executive (Manager / DGM / GM / CMD of GIPSA Companies) and an Orthopedic Surgeon.

The Conciliatory Committee would process an application for compensation as per legal advices of the panel Advocate and in terms of (as a guide line) the provision of the Structured Compensation u/s 163A of MV Act 1988, as amended in 1994, for settlement of TP claims between the insurer and the insured persons.

The JRY Scheme has been introduced by the General Insurance Corporation of India for settlement of non-fatal claims involving non-minor injuries, at the pre-litigation stage. The Conciliatory Committee is required to process applications for claims under JRY as per legal advice of the panel advocate and on the basis of the opinion of an Orthopaedic Surgeon advising the percentage of the disability sustained by the victim / applicant to recommend to the competent authority for the approval of the claim. Since the settlement is effected at the pre-litigation stage and without involving the Court, no consent award is necessary.

But a disadvantage of JRY is that the claimants may again move Tribunals if they feel that the amount passed by the Conciliatory Committees under JRY is inadequate. Therefore, the very purpose of avoiding the legal procedure may be frustrated and the company will not only have to pay the amount given by the committee under JRY but also satisfy the award passed by the Tribunal.

However, in order to avoid this situation, we can take shelter u/s 22C (1) of the Legal Services Authorities (Amendment) Act, 2002, which states any party to a dispute may, before the dispute is brought before any Court, make an application to the permanent Lok Adalat for the settlement of dispute. Therefore, if our primary liability is established through investigation, the cases may be placed before the permanent Lok Adalat for consent award, which shall be deemed to be a decree of a Civil Court and shall be final and binding on all the parties to the dispute.

## 2. Joint Compromise Petition

**Divisional in-house Conciliatory Committee (DICC) / Regional in-house Conciliatory Committee (RICC):** For speeding up the process of litigation and speedy disposal of cases DICC / RICC had been set up in 1997 by General insurers in order to explore the possibility of settlement of Motor TP claims exclusively.



**The DICC** consists of Officer in-charge of the Division, Officer in-charge of Motor Claims and one other Officer from non-motor stream. The present revised limit of financial authority of DICC for Motor TP claims is Rs. 10,00,000/-.

**The RICC** consists of Officer in charge of the Region, Officer in-charge of motor portfolio and one other Officer not below the rank of Manager. The present revised limit of financial authority of RICC for Motor TP claims is Rs. 18,00,000/-.

If cases are settled through DICC / RICC, a joint compromise petition, duly signed by both the parties, with their advocates, is required to be filed before the respective MACT, where the case is pending, in order to get the consent award.

### **Step No. 1**

Documents to be checked / verified for establishing liability:

#### **a) Underwriting Documents**

The source for collecting underwriting document is generally the underwriting office.

- i. Policy copy with endorsements if any, covering the vehicle at the material time of accident, as mentioned in the claim application.

#### **i . Compliance of Section**

##### **64VB i.i. Vehicular Documents**

- (a) Registration Particulars / Registration Certificate Book
- (b) Route Permit (if the vehicle is commercial)
- (c) Driving License (whether valid and effective)
- (d) Owner insured
- (e) Policy record / Court of SDUM having jurisdiction over the area in which the accident occurred

#### **b) Documents relating to Police case**

FIR; Panchnama; Charge sheet; Investigation Report

#### **c) Lodging of FIR a must**

DDR (Daily Diary Report), is an agreement entered into by the driver / owner and the injured persons / legal heirs of the deceased, to avoid a criminal case hence emphasis should not be given; since normally the sections of Indian Penal Code that arise in a case of RTA are Sections 279, 337, 338 & 304 of Cr PC falling under the category of cognisable offence against which registering of FIR is a mandatory.

The source for collecting documents is Police Authority, Court of SDM / JM having jurisdiction over the area in which the accident occurred.

i. **Submission of Police Report:** Section 158(6) of the MV Act 1988, (amended, w. e. f. 14-11-94) casts a duty upon the police to submit a report of the accident to the Claims Tribunal as well as the Insurer, as soon as the information is available.

ii. **Final Police Report / Charge sheet u/s 173 Cr. P. C.**

iii. **Investigation Report (Mandatory):** The Investigator is required to obtain the details of the following documents:

(a) Identification of claimant (Voter I.D. Card / Photograph duly certified by the Competent Authority viz., Panchayat / Councilor / Local MLA / MP / Gazetted Officer)

(b) Income Certificate of the victim verified from employer, or if self-employed, verification through documents.

(c) Age proof of the injured claimants deceased, school leaving certificate / Hospital record / Voter ID card.

(d) Details of dependents in case of the death of the victim, age, income, status and relation of the dependent / claimant with the victim.

(e) The involvement of the vehicles in the accident and the involvement of that claimant injured / deceased in the said accident to be ascertained / authenticated.

(f) Driver's statement and owner's statement as to the cause of accident and the nature of loss sustained by the victim/ claimant in detail.

(g) All the injury reports of the victims, verified from the respective hospitals / nursing homes with authenticity.

iv. **The Panel Doctor has to verify the following aspects**

(a) The alleged injury as narrated under the claim petition, the medical papers (in original) submitted before him and his clinical examination, all to tally with the nature of the injury.

(b) Whether the injury (ies) is / are major / minor

(c) Whether claimant has sustained permanent total / partial disablement?

(d) Degree of disablement

(e) Whether the medical bills submitted by the claimants have relevance with the injury treatment

(f) Present status of the injured person

**v. Documents relating to death**

(a) Post-mortem report

(b) Death Certificate

**Step no. 2**

After verification of all the documents as mentioned above, if it is found that the liability is otherwise not in dispute; the cases may be segregated in order to explore the possibility of out of court settlement. Necessary assessment of compensation should be made keeping in mind the provisions of MV Act 1988, as well as the guidelines to this effect, and the assessed amount be offered to the claimant by registered post for his consent for compromise, under intimation to the Tribunal.

If no response is received from the claimant within the specified time of 30 days, then Insurer can approach the Tribunal with the offer for necessary recording by the Court that the claimant is not entitled to any interest on the offered amount since he had failed to accept the offer.

If the claimant is ready to accept the offer of compromise on the assessed amount he / she may be requested to give his / her consent for such compromise in writing and the matter placed before the fora as mentioned above, for effecting necessary compromise, or the same may be placed before the tribunal for a consent decree.

**3. Jald Rahat Yojna**

It is a scheme where claimant is not required to file any claim in the Claims Tribunal or Court or any other authority. The settlement is arrived with the assistance of an independent panel comprising of:

i. Retired judges,

i . Medical Practitioners and

i . Retired Insurance Executives

The claimants have the liberty to engage advocates and the amount is so arrived by negotiation and mediation process.

The claimant is required to submit his claim to insurance company directly along with the

- i. Registration Certificate book,
- i . Insurance particulars of the offending vehicle,
- i i. Copy of FIR,
- iv. Proof of age and income of injured,
- v. Photographs of site of accident,
- vi. Medical certificate in support of the claim,
- vi . Medical bills, and
- vii. . Hospital records and prescribed consent form

However, the claimant may file his claim in Tribunal if the settlement is not reached amicably.

This method is used for third party minor injury claims that do not require adjudication of disability certificate and determination of future earning capacity etc. Besides, it does not require complex arguments and extensive evidence from either party.

#### **4. Consensual Adjudication**

This method is most suitable as it allows both parties to reach a consensus even during the currency of the case files in Claims Tribunal. The contesting parties are free to file the application for compromise so reached in the Tribunal, which is accepted, by the Claims tribunal as consensus adjudication and order to this effect is passed accordingly.

Himachal Pradesh High Court has established Conciliatory Boards to expedite the compromise settlement which are aided by the Conciliator appointed by the Courts that help contesting parties to arrive at a compromise.

#### **5. Lok Adalat**

Since April 1985, Lok Adalat have been exclusively organised for settlement of motor third party claims. Although the concept of Lok Adalat was very much in vogue since early years, this forum was made available for settlement of motor third party claims under the initiative of former Chief Justice of India, Shri P.N. Bhagwati. Since then number of Lok Adalats have been organised throughout the country and number of claims have been settled through this forum to the satisfaction of the claimants.

It is expected to gather further momentum for settlement of these claims through this media as both claimants and the insurance companies get benefit out of it.

### **Guidelines for placing the motor third party claims before Lok Adalat**

#### **a) Organisation of Lok Adalat session**

Generally State's Legal Aid Boards or District Legal Aid Committees organise Lok Adalat sessions at different places. An initiative may be taken by the Motor Accident Claims Tribunal (MACT) or the insurance companies also to organise Lok Adalats though it is necessary to organise Lok Adalats through Legal Aid Boards.

#### **b) Participants in Lok Adalat**

The claimants along with their advocates and insurance company and their advocates participate in arriving at settlement of claims. The panel of Lok Adalat comprised of Retired High Court Judge / Retired Judge and other eminent persons, so constituted to arrive at compromise settlement. When both the parties namely the claimant and insurance company, agree to the suggested amount, the claim is considered as settled and agreement forms are signed by both the parties as token of having accepted the settlement through compromise.

#### **c) Procedure for placement of Third Party Claims before Lok Adalat**

As a procedure, state organising body, namely either **State Legal Aid Board** or the **District Legal Aid Committee**, calls for a statement listing therein the claims which the insurance companies propose to place before Lok Adalat session. MACT may also forward pending claims with them for disposal before Lok Adalat. Claimants or their advocates may sometimes suggest to the Legal Aid Boards to place their claims before Lok Adalat. However, whenever claims are referred to the organising body by the agencies other than the insurance company, list of such claims is forwarded to the insurance companies for their concurrence to place those cases for settlement in Lok Adalat.

#### **d) Parameters for placing of claims**

Companies place the claims normally falling within the following parameters, before Lok Adalat:

- i. Where occurrence of the accident is within the policy period.
- ii. Where estimated liability for compensation is expected to be within the financial Authority of regional in-charge.

- iii. Where no substantial point of law is involved.
- iv. Where no defenses are available under Section 149(2) of the Motor Vehicle Act, 1988, such as driver not holding effective driving licence and breach of policy condition relating to limitations as to use.
- v. Where Police Record shows that the driver was holding effective driving licence.
- vi. Where despite concerted efforts on the part of the insurance companies they are not in a position to prove conclusively to the satisfaction of the court that the vehicle was driven by a person not duly licensed.
- vii. Since there is a provision of automatic transfer of insurance in pursuance of Section 157 of MV Act 1988, the companies cannot take defence of non-transfer of insurance of the vehicle on their books. Hence such claims may be placed before Lok Adalat for disposal.
- viii. Where more than one vehicle insured with different insurance companies, is involved in an accident resulting into a third party claim, companies may place such claims before Lok Adalat pending for deciding the degree of blame attributable for causing the accident so as to apportion the liability by the tribunals. In such cases the companies may agree for settlement on 50-50 basis.
- ix. As the present Motor Tariff covers liability in respect of owner or his representative when travelling in the goods carrying vehicle with his own goods without payment of additional premium, the companies may place the claims for compensation in respect of such owners before Lok Adalat.

Insurance Companies do not accept conditional settlement such as subject to verification of certain documents, production of documents etc. On having reached the agreement for compromise settlement, concerned MACT issues a Consent Order specifying inter alia the period during which the agreed amount should be deposited. On receipt of such Consent Order, companies are required to deposit the amount as agreed to with the MACT, within 30 days from the date of award as per statute. Otherwise, MACT are inclined to impose interest to the agreed settlement.

The payment of interest on compromise settlement would defeat the very purpose in deciding the amount in the Lok Adalat. The company generally takes immediate steps to deposit the amount and it is felt that there are no reasons for delay in depositing the amount once the same is agreed in the Lok Adalat. The statutory obligation has already been cast on insurance companies to deposit the amount within the period of 30 days from the date of award.



### e) Lok Adalats for pending claims at High Court / Supreme Court

In the event of Lok Adalat for pending appeals before High Court / Supreme Court is organised, such compensation MACT claims where quantum of compensation is in dispute may be considered. The appeals which are filed to decide the point of law need not be considered for placing before Lok Adalat. The second National Lok Adalat is scheduled on April 12<sup>th</sup> 2014.

### f) Claims for Employees liability covered under Motor Insurance

Applications for compensation filed by the paid employees may also be placed before Lok Adalat, whether wider legal liability is covered or not. In case wider legal liability is not covered under the Motor Policy, compromise settlement of such claims before Lok Adalat may be accepted provided the quantum of compensation is at par with the compensation payable under the Employee Compensation Act, 1923 and is acceptable to the claimant.

## 6. Permanent Lok Adalat for „Insurance Service“

By amendment no. 37 of 2002, called „Legal Services Authorities (Amendment) Act“ which came into force with effect from 11-06-02, Permanent Lok Adalat have to be established to cover ‘Public Utility Service’ and ‘Insurance Service’ in terms of the definition of the public utility services u/s 22 A of the Legal Services Authorities (Amendment) Act, 2002.

It is evident from the Act that Lok Adalat is an alternative forum where cases can be compromised by both the parties, with the intervention of the member Judges. Every Lok Adalat organised for an area shall consists of:

- i. Servicing or retired judicial official,
- i . Member of the legal profession and
- ii. . Social worker or a person engaged in Para legal activities in the area

Lok Adalats have jurisdiction to determine and arrive at a compromise settlement between the parties to a dispute, in respect of any case pending before or any matter falling within the jurisdiction of and not brought before any Court, for which the Lok Adalat is organised. However, award of the Lok Adalat is at par with the decree of a Civil Court and is final and binding on all the parties to the dispute and no appeal lies in any Court against the award.

### a) Insurer Perspective of Lok Adalat

An insurer has four basic objectives to lean heavily towards the institution of ‘Lok Adalat’ and other ‘Conciliatory Forums’ in place of regular Motor Accident Claims Tribunals, where we have over 400,000 cases pending for adjudication.



**i. Shortening the process of litigation**

The first objective relate to drastically shortening the process of litigation in order to save legal costs and interest liability.

**ii. Question of quantum**

The second objective relates to striking a reasonable deal on the question of quantum with the claimants, to lighten the burden of unexpected high awards.

**iii. Reduction in accumulated cases**

The third objective relates to reduced accumulated cases, which in effect means reduced provisions, ultimately reflecting favourably on the bottom-line of insurers. From the social view point, reduction in accumulated losses tends to mitigate the hardship of the claimants, by offering of reasonable sum which suits both the parties.

**iv. Reduction in Workload of Office**

The fourth objective relates to reduced work load in the office consequently reducing the expenses of management.

**7. Solatium Fund**

Wherever the identity of the vehicle is not known and death or injury has resulted out of accident, the claimants are entitled for the compensation, out of the Solatium Fund under Section 163 for Hit and Run victims of accident. The manner of disbursement of claims is left to the Government which is dealt with in the rules. Section 161 provides for payment of compensation to hit and run accident victims i.e. where the identity of the offending vehicle is not established. This is paid out of Solatium Fund. The amount for death is Rs. 25,000 and for grievous hurt is Rs. 12,500.

**Test Yourself 5**

The present revised limit of financial authority of Divisional in-house Conciliatory Committee (DICC) for Motor TP claims is\_\_\_\_\_.

- I. Rs. 75,00,000/-
  - II. Rs. 50,00,000/-
  - III. Rs. 25,00,000/-
  - IV. Rs. 10,00,000/-
-

## F. Principles of Damages

### 1. Principles governing determination of Compensation

A man is not compensated for the physical injury. He is compensated for the loss, which he suffers as a result of that injury. There is no compensation available for sentimental agony, no damages for hearts anguish, and no financial assistance for mental tribulations. The compensation amount should be commensurate with the injuries sustained and the sufferings undergone by the injured claimant. Bodily injury is to be treated as deprivation, which entitles a claimant to damages and the amounts of damages vary according to the gravity of the injury and degree and duration of deprivation.

Three basic principles governing determination of compensation in injury disablement claims:

- i. Principle of Assessability
- ii. Principle of Uniformity
- iii. Principle of Predictability

#### a) Principle of Assessability

In case of grave injury, where the body or the brain suffers massive impairment, it is difficult to assess fair compensation in terms of money. The principle of assessability envisages that the award must basically be a „conventional figure“ derived from experience and from awards pronounced in similar cases, to ensure some measure of uniformity in awards.

#### b) Principle of Uniformity

The principle of uniformity is of utmost importance in administration of justice so that similar cases are decided uniformly; otherwise, there will be criticism and dissatisfaction in general community and a grievance for causing discrimination. The uniformity in award requires each case to be weighed upon its own individual merit.

Since no two cases are alike, awards in comparable cases do enable the Court to seek guidance, not by referring to a particular case and treating it as a precedent, but by looking at general level of damages in similar cases, which would offer predictability by means of comparison of such cases by analogy.

#### c) Principle of predictability

The injured parties should be able to predict with some measure of accuracy, the sum that is likely to be awarded in a particular case, as per the basic principle of predictability in assessment of compensation. The amount of compensation should neither be inadequate nor token.

However, it may be noted that sympathy for the claimant should not be allowed to affect the calculation of damages.

The ratio of judicial compensation hinges on the pivotal issues of:

- i. Reasonable compensation
- i . Uniformity in approach
- ii. . Assessment with moderation

The award should neither be punitive or exemplary nor extravagant or oppressive. While assessing damages, the Court excludes all considerations, which rest in speculation or fancy, though conjecture to some extent is inevitable.

## 2. Quantification of Compensation

The standard for quantification of compensation must be an objective standard. The following items / heads in personal injury claims are awarded:

- i. Shock, pain and suffering and loss of amenities of life.
- i . Injury itself, depending upon the disability, whether permanent, temporary, partial or complete.
- i . Medical and incidental expenses
- iv. Loss of income till the date of petition and from the date of petition till the date of award and future loss.
- v. Loss of earning capacity, having bearing on above.
- vi. Shortened life expectancy.
- vi . Loss of prospects of marriage, avocation, education, social, economic and cultural opportunities.
- vi . Loss of beauty due to disfiguration.
- ix. Disability, physical, mental and social.
- x. Medical treatment towards future treatment, if any.
- xi. Any other depending upon the facts and circumstances of the case in case of motor accident compensation claims, award is of two types, special compensation and general compensation.

### 3. Kinds of Damages

#### Definition

**Pecuniary damages:** These damages (also known as special damages) are generally designed to make good the pecuniary loss, which is capable of being calculated in terms of money.

**Non-pecuniary damages:** Those damages which are incapable of being assessed by arithmetical calculation.

The High Court of Gujarat considered the principles laid down in (Davies and Nance case) and explained the law to be applied for ascertaining the damages in such cases

#### a) Pecuniary Damages (Special Damages)

Pecuniary damages are also called special damage or special compensation. These relate to actual financial loss or expenses resulting from accident e.g., medical, surgical and hospital expenses. These damages are to be specifically proved and have to be supported by bills and vouchers. The special damages include the following:

- i. Expenses incurred by the claimant in respect of injury, which may include medical expenses, special diet, and cost of nursing or attendant including loss of earning, or profit up to the date of trial.
- i . Loss of earning capacity may include incapacity to earn in future and also incapacity in the labour market, loss on account of termination of service or discontinuance of any trade, business or profession.
- i . Any other material loss, which may require any special treatment or aid to the injured for the rest of his life.

#### b) Non-Pecuniary Damages (General Damages)

Non-pecuniary or general damages are those, which the law presumes to flow from the negligence. These general damages are awarded as monetary compensation for pain and suffering, mental and nervous shock, loss of amenities of life, continued impairment of health, loss of prospective earnings, loss of matrimonial prospects in case of disfigurement etc.:

- i. Damages for mental and physical shock, pain and suffering either already suffered by the claimant or likely to suffer in future. Damages are given for both mental and physical pain and suffering.

- i . Damages to compensate for the loss of amenities of life. It results when the injured is deprived of ordinary experiences and enjoyment of life. e.g., claimant may not be able to sit, walk, run or loss of marriage prospects, loss of conjugal happiness etc.
- i . Damages for loss of expectation of life: when the injury leads to shortening of normal expectation of life e.g., longevity of the affected person on account of injury.

iv. Other inconvenience, hardship, discomfiture and mental stress in life

There is a consensus on judicial precedents that when general damages are quantified, the status of a claimant in his life acquires significance. But it is the injury sustained by the claimant, which are material and not his status in life. The injury will cause the same pain, suffering and agony to the sufferer irrespective of the fact whether he is a pauper or prince, young or old.

There is neither a quantitative scale nor any mathematical formula, by which damages for pain, sufferings, loss of amenities of life and injury to health can be quantified in terms of money.

#### 4. Assessment of Compensation

Assessment of compensation depends on the following features:

- i. Nature of injuries
- i . Status of person
- ii. . Effect of injuries on the person in future
- iv. Mental and physical pain that the injured has suffered
- v. The age of the injured
- vi. Replacement of limb
- vi . Nature of medical treatment
- vi . The general effect on health and efficiency
- ix. The effect on marriage prospects
- x. Loss of earnings and other allied matters

### a) Disability in Non-fatal Accidents

In disability cases, the compensation is awarded to the victim for personal as well as economic loss suffered by him. The damages for personal loss will include general damages for pain and suffering, as well as loss of amenities of life.

Bodily injury is to be treated as a deprivation, which entitles a plaintiff to damages and (that) the amount of damages varies according to the gravity of injury. Deprivation may bring with it three consequences:

- i. Personal suffering and loss of enjoyment of life;
- i . Actual pecuniary loss resulting into an expense reasonably incurred by the plaintiff; and
- i . The probable future loss of income by reason of incapacity or diminished capacity for work

It was further held that the principle of restitution in integrum i.e., placing in original financial position was unattainable as a perfect compensation, but the damages are to be assessed on a fair valuation standard on this head.

### b) Basis for loss of earning capacity

In order to prove the nature of injuries sustained and the alleged loss of earning capacity a Doctor indicates:

- i. Percentage of permanent and temporary disablement,
- i . Functional disability and

Loss of earning capacity : it is not a substitute for percentage of the physical disablement. It is one of the factors taken into account. There is no set method for assessing compensation in disability for actual assessment. In [Vinod Kumar vs. Ved Mitra] MP High Court formulated certain rules in this regard to bring a measure of predictability to the awards given by the Courts. The three factors are to be looked into while determining award:

- i. The amount of compensation awarded must be reasonable and must be assessed with moderation;
- i . Regard must be had to awards made in comparable cases; and
- i . The sums awarded should to a considerable extent be conventional

### c) Disability in non-fatal accidents for non- earning persons

Following compensation amounts are recommended under Motor Vehicle (Amendment) Bill 2007 in case of disability to the victim arising out of non-fatal accident. A Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks plus either of the following subject to maximum of Rs. 10.00 lakhs for disability in non-fatal accidents in cases other than non-earning persons.

- i. In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the appropriate Multiplier applicable to the age of the victim on the date of determining the compensation.
- i . In case of Permanent Partial Disablement, the amount of compensation payable shall be arrived at by multiplying the compensation payable in case of permanent total disablement as specified under item (i) above by the percentage of loss of earning capacity caused by that injury.

For injuries deemed to result in permanent total disablement / permanent partial disablement as per Section 145 (h), the percentage of loss of earning capacity shall be as per Schedule I of the Employee's Compensation Act, 1923.

### d) General damages in case of disability in non-fatal accidents as proposed in Motor Vehicle (Amendment) Bill 2007

- i. Pain and suffering Non-grievous injury up to Rs. 5,000
- i . Pain and suffering Grievous injury upto Rs. 20,000
- ii. . Medical expenses incurred before the death not exceeding duly supported by bills / vouchers: Rs. 50,000

## 5. Assessment of Injury Claims

No two persons suffering even similar injuries can attract the same or similar compensation. The heads under which compensation can be computed are truly astounding. The scope for awarding general damages as opposed to special damages is too wide to be fully spelt out. While it is true, that it is a settled law that compensation in injury claims can attract a higher award than even in cases of death, for the reason that the injured has to endure the disability for the rest of his life. In practical terms it is found that the discretion vested in assessment is abused and on top of it the evidence adduced in support of injuries is fabricated.



### a) Permanent Disability

It was from 1/10/82 that ‘No Fault liability’ under Section 92-A was introduced in MV Act 1939. The expression permanent disablement was used in the statute itself. Any impairment of the functioning of the limbs or parts of body or disfiguration of the face would leave behind a permanent disablement. But the language is couched in generic terms and it has, therefore, led to varying interpretations.

What appears to have become the norm or accepted standard is that irrespective of the nature of a fracture, it is treated as permanent disablement attracting the minimum compensation under ‘No Fault Liability’.

It is time there was an institutional mechanism introduced in the statute itself for the assessment of permanent disablement, even if the discretion to assess compensation thereupon rested with the Tribunals.

### b) Evidence of Permanent Disablement and Just compensation

The evidence of permanent disablement has become a vexed issue. Ultimately, the Courts are seeking to award Just compensation.

For the sake of consistency and uniformity the notification issued by Ministry of Social Justice and Empowerment dated 1/6/2001 must be applied in the assessment of permanent disability suffered by victims.

Guidelines have been drawn under it which if applied would make sure that evidence of disablement was genuine and true. The fabrication and falsification or padding of evidence may be minimal. The person imposed with the obligation to pay compensation would also be aware of it. Leaving it to the whim and fancy of such stock witnesses has rendered this jurisdiction liable to misuse and abuse.

## 6. Guidelines for Assessment of Permanent Disablement

Apart from incorporation of these guidelines as the standard or norm or yardstick for assessment of permanent disablement, the introduction of a clause in the MV Act, 1988 itself is called for. Such provision could be to the effect that assessment of disability shall be as per the stated guidelines and such assessment shall be only through a Medical Board constituted in each District

The injured ought to appear as a matter of rule before such Medical Boards and produce the certificate of assessment of disability before the Tribunals, and the assessment of disability shall be held binding on the Tribunals without need for examination of the Medical Board so constituted.

This would save a lot of time and ensure speedier disposal of claims also. More importantly, it would usher in an era of consistency and uniformity and also introduce an element of bona fide in the assessment of disability, which is thoroughly lacking as on date.

A provision for application of the guidelines mentioned above and reference to Medical Board for assessment of permanent disability with the certificate to this effect issued by the latter constituting binding proof of it, need be introduced. Such statutory mandate will rid the system of all the pernicious practices now prevalent due to the role play of stock witnesses/medical men.

#### **a) Insurer's Right to Examine the Injured**

The Insurance Companies and Transport Corporations did not care to adduce contra evidence on alleged disablement and therefore, the assessments of stock witnesses of claimants were becoming a fait accompli. But then when an insurer sought to refer the claimant for such examination for rebuttal evidence through their expert, the plea was rejected by the Madras High Court as unfounded. It was ruled that it would suffice for the insurer to cross examine the medical expert of the claimant and there was no necessity for the insurer to compel the injured to appear before their expert [(R. James vs. National Insurance Company Limited) 2004 ACJ 918].

This view requires reconsideration by the court in the light of the malpractices prevalent in this area. When a claimant seeks compensation from a respondent then the respondent has every right to examine the injured to verify the truth and bona fides of the claim. Mere cross-examination of a stock witness would get them nowhere. By examination through their nominated expert or even through Medical Board the evidence of the stock witness can be shown up for what it was. Further, as the person being forced to pay compensation, the paymaster had a legal right to seek verification of the nature of injuries and possible disablement. **The insurer must exercise such right and if refused should take it up to the Apex Court to test the correctness of the denial of such relief.**

#### **b) Loss of Earning Capacity vis-a-vis Loss of Earning Power**

This is another vexed question as a component in the assessment of compensation in injury claims under the head of award under permanent disablement. The injured, so disabled, may suffer a direct impact on earning capacity. For such consequence of disablement, a separate and distinct sum may be called for as loss of earning power. It is settled law that the two heads are distinct and separate. In [(Ramesh Chandra Vs. Randhir Singh) 1990 (3) SCC 723] the Supreme Court had affirmed the distinct status of the two heads.

In [(MD, Thiruvallur Transport Corpn., Vs. Thangavelu )1995 (2) LW 685], it pointed out that permanent disability was the cause and the effect was loss of earning power. Hence separate sums would have to be granted thereupon. Way back in [(MD, Thiruvallur Transport Corpn., Vs. M. Janardhanam) 1987 ACJ 233] itself it was pointed out that compensation could be computed in proportion to the disability assessed. Now in the Second Schedule there is a reference to such computation.

### **c) Padding up the Claims for Permanent Disability through Multiplier method**

The practice of assessment of compensation in proportion to the disability assessed, has led to the regrettable practice of padding up the claims for permanent disability. The multiplier method is being adopted indiscriminately in assessing compensation under this head. The Courts fix the earnings mechanically as per evidence and the multiplier as per age, and loss of earning power is computed in proportion to the assessed physical disability adopting the multiplier method. This has led to bloated awards disproportionate to the actual facts. In [(United India Insurance Co. Ltd., Vs. Veluchamy) - 2005 ACJ 1483: 2005 (1) CTC 38] the Madras High Court had occasion to consider this aspect:

—That the multiplier method ought not to be applied indiscriminately assuming that in every case of disablement suffered there must be a corresponding award for loss of earning power in proportion to the assessed disablement. There must be credible evidence to support an award. Further, even while considering a sum under this head, it was ruled that multiplier has to be much less than the schedule figure and the earnings too should be discounted for assessment. But the unfortunate reality is that instead of appreciating this decision for what it was, this decision is being seen as vindication for assessment of compensation in injury claims adopting the multiplier method.

### **d) General Damages for Death Cases**

The compensation in fatal accident cases is assessed under:

- i. Pecuniary loss of maintenance to the dependents
- ii. Loss of savings to the estate of the deceased including
- iii. damages for pain & suffering, loss of expectation of life to the deceased

The Motor Vehicle Act, 1988 enlarges the scope of legal representatives who can initiate action or suit. The fatal cases involve claims in respect of:

- i. Special damages up to the date of death

- i . Funeral expenses
- ii . General damages for the pain and suffering up to the date of death
- iv. Damages for loss of expectation of life
- v. Damages under fatal accident act

**General damages in case of death proposed in Motor Vehicle (Amendment) Bill, 2007 are given below:**

- i. Pain and suffering up to Rs. 5,000
- ii . Loss of consortium, if beneficiary is the spouse up to Rs. 10,000
- iii . Loss of estate up to Rs. 5,000
- iv. Medical expenses incurred before the death not exceeding Rs. 50,000 duly supported by bills/ vouchers.

## **7. Quantum and the Concept of Justness**

Section 168 of MV Act, 1988 envisages 'Just Compensation'. The word quantum is incapable of any precise definition. Justness would depend upon the facts and circumstances of each case. The Supreme Court had ruled that assessment of compensation should be liberal not niggardly [(Concord of India Insurance Co. Ltd., Vs. Nirmala Devi) 1980 ACJ 55]. It was also ruled that Justness was not related to the claim made, but in terms of the evidence adduced and assessment made by Court. This meant that awards in excess of the claim could also be made [(Nagappa vs. Gurudayal Singh) 2003 ACJ 12 (SC)].

While it was held that award should be liberal not niggardly, it has also been held that it ought not to be a bonanza as well. A middle path must be struck in the search for Justness. It is an admitted position of law that there is no one formula for assessment. Inevitably therefore an element of guesswork or estimation enters the arena [(Ashwani Kumar Mishra vs. Muniam Babu) AIR 1999 SC 2260]. But such guesswork or estimation should not be based on conjecture, speculation or whim or fancy. It should be grounded in reality and relatable as a fact.

## 8. Selection of Multiplier

Admittedly, there is no one straitjacket formula for assessment. But the introduction of the Second Schedule and multiplier factor meant that there was scope for an element of uniformity or consistency at least with regard to the multiplier to be adopted. However, the Second Schedule brought into force from 14/11/2004 was replete with arithmetical errors [(Uttar Pradesh State Transport Corpn., vs. Trilok Chandra) 1996 ACJ 831 (SC)] notwithstanding such mistakes; it is now settled law that reference to the Schedule to fix the multiplier is the rule. As for multiplier as a concept of application, it is now accepted that it is the most scientific and refined system which has stood the test of time.

But in the choice of multipliers, there are again varying decisions. In Trilok Chandra case supra while referring to the anomalies, it was pointed out that in a case where the deceased was a bachelor, the multiplier cannot be related to age of the victim but shall be related to the age of the dependents.

### a) Fatal Claims Rule of Thumb

However, as for the choice of the multiplier, the Schedule shall only be a guide and not a ready reckoner. Though there is restriction on the maximum multiplier permissible at 18, there was discretion vested with the courts in choosing it. The Court can consider the ages of the victim, claimants, longevity in the family etc. and arrive at an appropriate multiplier. For a 50 year old, notwithstanding superannuation, a multiplier of 15 was fixed. The Supreme Court ruled that multiplier need not be as per Schedule [(United India Insurance Co. Ltd., Vs. Patricia Jean Mahajan) - 2002 ACJ 1441].

In a case where the deceased was a foreign citizen and his earnings, say, in USA were substantial, assessment of compensation payable in India has to necessarily take note of the Indian economic and social conditions. The compensation payable shall have to take note of the differing economic conditions in the countries and accordingly reduce the multiplier to lesser than the Schedule figure. Thus, it would appear that in the choice of multiplier, the Courts are not duty bound to fix it as per Schedule figure alone to a tee.

### Important

The Court has the discretion to adopt a suitable multiplier, be it higher than the schedule or lesser than it, for good and valid reasons, but shall, however, not exceed 18 at the maximum.

The age of the victim or dependents and the earnings of the deceased would be relevant factors for consideration. It will all be a matter of evaluating the evidence adduced by the claimants. The multiplier shall be chosen in conformity with the age of the victim, claimants and due regard to longevity in the family. As for the multiplicand it would be in relation to the proven earnings of the deceased.

On introduction of the Second Schedule the concept of notional income came into being. As per Second Schedule it was pegged at Rs. 15,000/- p.a. as on 14/11/94. The Courts appear to go by:

- i. Cost of living,
- i . Number of dependents,
- i . Nature of avocation and so on

In fact the Supreme Court has pointed out that the notional income fixed way back in 1994 [(Deepal Girishbai Sonis case) - 2004 ACJ 934] may require an upward revision with due regard to increased cost of living.

#### **b) Net Pay Concept**

One significant development was with regard to the —net pay conceptll introduced by the Supreme Court in [(Asha Vs. United India Insurance Co. Ltd.) - 2004 ACJ 448]. From and out of the gross pay if there are deductions, then the nature of deductions have to be examined. The deductions could be investments or savings of the deceased and, therefore, eschewing them from the zone of consideration would be unjust and improper.

It is a fact of life that in many a case the employee may have provided for the rainy day and suffered deductions by way of LIC premium, Housing Loan advance, Public provident Fund contributions etc. These constitute savings of the deceased and treating the net pay would be unfair to the claimants. In effect, the fervent plea would be to apply [(Asha Vs. United India Insurance Co. Ltd.) case supra, in proper perspective with due regard to the nature of deductions and thereby arrive at a meaningful net pay for dependency rather than mechanically going by the numbers.

#### **c) Future Increase in Income**

While fixing the dependency of the deceased, the Courts have to examine the income of the deceased. But while fixing such income as on date of death, there are a number of decisions suggesting that the income should not be as on date of accident / death. The Courts have to bear in mind the nature of vocation or employment, scope for increased earnings from proportion etc. and also the inflationary impact on the Rupee and duly project the earnings and fix the dependency thereafter. Such a ready and roughshod method may not always be correct in application.



The Court should have before it the evidence regarding future prospects of increase of income in the course of employment or business or profession, as the case may be. That is what has now been clarified in the recent judgment of the Supreme Court reported in [(Bijoy Kumar Dugar Vs. Bidyadhar Dutta) 2006 (3) CTC 122] wherein it has been held that Courts cannot read into the present earnings, projected increases, without the benefit of actual evidence on record for it.

Hence, it would appear that things may stabilise to the effect that while fixing the dependency, relevance could be had to future increases in income but it shall however be based on concrete evidence adduced before the Court and not on mere conjecture or speculation.

#### **d) Property Damage Claims**

The assessment of property damage claim is based on cost of repair or cost of replacement of the property so that it is restored to its original position. If the property is fully destroyed, the damages would be equal to the value of the property on the date of loss including reasonable consequential losses too. If the property is damaged the value will be cost of repairs subject to depreciation in its value and cost of hiring alternative property or loss of use or loss of profit earned during the period of repairs.

For example, in case of damage to tiller 10 years old, application of 50% depreciation may be proper [2008 (1) TN MAC 361 (Mad)]. Loss of income is not sustainable in a property damage claim [2008 (1) MLJ 640]. Loss of income, Revenue Loss is disallowed [2008 (1) TN MAC 95 (Mad)].

### **9. Award of Rate of Interest**

The Section 171 of 1988 Act empowers tribunal to grant interest from the date of claim at simple interest at such rates as it deems reasonable. Compensation is an amount paid in advance for any loss of life or loss of dependency or loss of earnings. It is not a debt. Therefore, the interest to be awarded under Section 110 CC of Motor Vehicles Act could only be 6% per annum. For grant of higher interest sufficient reasons are to be given by the Claims Tribunal.

So far as the higher rate of interest stipulation is concerned, it is to be noted that grant of interest under Section 171 of the Motor Vehicles Act, 1988 is discretionary. The purpose for award of interest is to put pressure on the relevant person not to delay in making the payment and, to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of payment of interest.



In determining the quantum of interest awardable under the relevant Section 171, the Claims Tribunal acting under Section 166 of the 1988 Act can derive direct guidance from Section 34 of the Code of Civil Procedure, 1908. In fact, the provision requires payment of interest in addition to compensation already determined. Even though the expression 'may' is used, a duty is laid on the Claims Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The provision is discretionary and is not and cannot be bound by rules.

#### **a) Duty and discretion in awarding interest**

A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be discretion, whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but discretion how to act. Discretion may thus be coupled with duties.

#### **b) Judicial Discretion vs. Responsibility**

The word discretion standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently, therefore, discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility.

If a certain latitude or liberty is accorded by statute or rules to a judge, as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters, which should regulate the exercise of discretion, have been stated by eminent judges in somewhat different forms of words but with substantial similarity. When a statute gives judge discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet.

**c) No scope for retrospective enhancement in case of default**

Though Section 171 of the 1988 Act confers discretion on the Claims Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the light of the above background, it is to be judged whether the Claims Tribunal can impose a stipulation for higher rate of interest in case of default. Once the discretion has been exercised by the Claims Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation.

No express or implied power in this regard can be culled out from Section 171 of the 1988 Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty, which is not statutorily envisaged and prescribed. [Appeal (civil) 399 of 2004 National Insurance Co. Ltd. vs. Keshav Bahadur and Ors. date of judgment: 20/01/2004]

**d) Rate of interest offered by Nationalised Banks on FDs / annum**

In [(Kaushuma Begum vs. New India Assurance) 2001 ACJ 428 (SC)] the Supreme Court observed in Para 23 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 may be specified in this behalf. Earlier interest @ 12% was found to be reasonable rate of simple interest, but with a change in economy and policy of the Reserve Bank of India the interest rate has been lowered.

The Nationalised banks are now granting interest @ 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed herein before shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The rate of Interest [2002 (10) ACJ 1814 Karnataka] to be awarded in all motor accident claims shall normally be the **rate of interest offered by Nationalised Banks on fixed deposits for one year.**

## Test Yourself 6

Three basic principles govern the determination of compensation in injury disablement claims. In case of grave injury, where the brain suffers massive impairment, it is difficult to arrive at a fair compensation in terms of money. The \_\_\_\_\_ envisages that the award must basically be a 'conventional figure' derived from experience.

- I. Principle of Assessability
- II. Principle of Uniformity
- III. Principle of Predictability
- IV. None of the above

## G. Defenses available to Insurers

### 1. Limited Defenses available to Insurer

Parliament had consciously restricted the defences of the insurer. The insurer may be prejudiced by such a restricted defence mechanism, but cannot traverse beyond the permitted defenses under Section 149 (2). Of course, the benefit of Section 110-C (2A) then and now Section 170 is to contest on merits by obtaining specific permission of the Court to do so. This rule of law has stood the test of time [(Shankarayya vs. United India Insurance Co. Ltd. [AIR 1998 (SC) p 2968], Nicolletta et al )]. Hence, what matters would be the defenses open under Section 149 (2) and not the terms and conditions under the contract of insurance, until the courts start appreciating the fact that the insurance companies are not charitable institutions and are there to protect the contractual liability taken up by them by virtue of payment of premium by the insured for the risk of insured.

### 2. Changing Approach of the Apex Court

A combined reading of the above said legal position, in succinct terms has meant that insurer's foundational defense on Section 64-VB of Insurance Act, 1938, has also suffered a dent. Section 64-VB of Insurance Act, 1938 is an embargo placed on the insurers not to issue covers without receiving premium in advance. Payment of premium by cheque is permissible. If the insurer chooses to obtain the cheque and issues a cover, and if the cheque is dishonoured, the consequences thereof, cannot befall on the innocent Third Party victim of accident, as the statutory protection afforded to him in law vide Section 146 MV Act, 1988 would take away the right to claim compensation.

Insurer cannot rely upon Section 64-VB and contend that as consideration for the contract, a basis required as per the Indian Contract Act, 1872, was not received; hence there was no valid and enforceable contract against them.

The Supreme Court has negated such a defense and ruled in Sunitha Rathi, Rula etc. that even if the cheque had been dishonoured, the insurer may still have to meet the Third Party claim. They would however, be entitled to proceed against their insured for recovery of the statutory liability met out by them on the insured behalf.

In respect of Third Party claims the dishonour of the cheque for premium would not be a valid defense. In respect of OD claims, it would be a valid defense and the insured cannot enforce his claim (Laxmi Narain Dutts case). However, the Supreme Court has suggested that if the cancellation of the cover had taken place prior to occurrence of accident and the insured was put on notice of such cancellation, then they might be entitled for avoidance of liability. It appears to be a saving grace for the insurers.

### 3. Defenses Available to Insurer

The insurer takes up statutory defenses available and pleads as well as submits evidences to protect its insured's legal liability as well as statutory liability to pay and recover due to benevolent nature of legislation. Where there are no defenses, filing of written statement is of secondary importance and the insurers should give greater emphasis on settlement of liability through compromise.

#### a) Pleadings

But where defenses are available, pleadings assume significance, since Claims Tribunals are inclined to treat the litigation as application for claimants and as civil suit for opponents.

Each and every allegation made in the claims petition should be dealt with specifically, either by admission or denial. It may be noted that simply writing „**Not admitted**“ in the written statement is no denial. Further mentioning „**No knowledge**“ is worse than „**Not admitted**“. No Knowledge is not the denial by implication. Bare denial does not serve any purpose where an allegation of fact needs to be specifically denied. The averments in the claim petition, which have not been specifically denied, have to be accepted as true in the absence of any circumstances indicating collusion.

The Motor Accident Claims Tribunal has evolved as a separate and independent branch, where applicability of „**The Evidence Act**“ to Claims Tribunal has not been accepted as a right and the same trend still continues. In order to defend Third Party cases effectively:

(A) The insurance company must collect all relevant documents through investigator relating to:

**(a) Accident site details**

- i. Vehicle(s) involved,
- i . Sketch of site of accident,
- i . Extent of property damage,
- iv. Number of injured / dead,
- v. Primary treatment taken, by deceased / injured, and the place of treatment
- vi. Witnesses at the site / passengers, if any

**(b) Contact with insured**

- i. Insured's policy documents;
- i . Drivers address and whereabouts
- i i. Copy of driving licence
- iv. Manner in which the alleged accident occurred
- v. Copies of vehicular documents

- ✓ Extract of Registration Certificate
- ✓ Extract of Driving Licence of the driver
- ✓ Extract of Loading Challan
- ✓ Extract of permit

**(c) Contact with Driver**

- i. Information of the alleged accident
- i . Number of persons died or injured
- ii. . Inform driver to make him available to establish negligence aspect (either contributory or composite) by giving evidence

**(d) Contact with claimants / deceased representative's / friends, neighbours / colleagues**

- i. Deceased / insured's age, occupation, income, status, and related evidence / proof of them
- i . Details of family members including minor children, dependents, other earning members, legal representative.
- i . Post Mortem report,
- iv. Relevant material / documents with regard to employment of the deceased or injured, if matter relates to E.C. Act 1923
- v. Medical Leave certificate of injured
- vi. Whether two or more claims by different dependents
- vi . Whether claim at any other MACT also

**(e) Police Papers**

- i. F.I.R.
- i . Charge Sheet
- i . MVI report, sketch of site,
- iv. Form 54
- v. Panchnama

**(f) RTO Papers**

- i. Verification of RC book, Permit, Load Challan
- i . Verification of driving licences validity and effectiveness

**(g) Medical Papers**

- i. Bed side ticket,
- i . Prescription and bills
- i i. Disability certificate

- (B) Besides procuring documents, if any important aspect of accident is brought out by the investigator, it should also be brought to the notice of Claims Tribunal and if necessary the investigator should be asked to give evidence personally and prove through notarised affidavits obtained from relevant witnesses / persons giving statements. The written statements are to be carefully studied and redrafted, if necessary to lead defences by the insurance company.

#### **b) Specific Plea**

Specific rules of pleadings as contained in the Code of Civil Procedure, 1908 need not be adhered to, but it is necessary for claimants to lead evidence for each item for which the compensation is sought. It is the duty of the panel advocate to see that specific pleas are framed as issues.

#### **c) Evidence, an Exhibit**

- i. The executives of Insurance Company should give evidence especially in case of violation of policy condition, as it is not enough to take the plea in written statement. One should mark the policy as an 'exhibit', and evidence should be given.

- i . Similarly in the case of fake Driving license, Registration certificate, where company undertakes the plea that the class of vehicle used is for the purpose other than indicated in Registration Certificate. RTA may be summoned to give evidence.

- i . Attending Doctor may be called to give evidence in case of disability.

- iv. Highway Authorities may be called to give evidence for over-loading etc.

It should also be seen that the Policy copy is filed as evidence in all the cases at the commencement of the proceedings. This is particularly important when violation of Policy condition as to 'limitation to use', is involved.

### **4. Ground to Contest**

An insurer can contest the proceedings before the Claims Tribunal only on any of the grounds prescribed under Section 149 (2) of the 1988 Act. The insurer cannot contest the case on grounds other than those mentioned in Section 149 (2) of the 1988 Act and unless specific permission is granted by the Claims Tribunal under Section 170 of the 1988 Act.



## 5. Notice through the Court to Insurer

Section 149 (2) stipulates that no sum shall be payable by an insurer under Section 149 (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :

(A) That there has been a breach of specified condition of the policy, it being one of the following conditions, namely:

**(a) A condition excluding the use of the vehicle**

- i. For hire or reward, where the vehicle is on the date of the contract of insurance, a vehicle not covered by a permit to ply for hire or reward, or
- ii. For organised racing and speed testing, or
- iii. For a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
- iv. Without side-car being attached where the vehicle is a motor cycle; or

**(b) A condition excluding driving by a named person** or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

**(c) A condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion, or**

(B) That the policy was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

If a policy is cancelled and the Certificate of Insurance is returned to the insurer before the occurrence of the accident, it was a valid ground of defence in the old 1939 Act, but the same was deleted from the 1988 Act. The Apex courts in [(Deddappa & Ors Appeal vs. National Insurance Co. Ltd.) (CA) 5829 of 2007 dt.12/12/2007)] has expressed the view that if all concerned have been informed, **mainly RTO and insured**, by registered post A. D. & all the proof made available at the time of the evidence, and if the contract of insurance has been cancelled, the insurance company would not be liable to satisfy the claim as held.

### a) Insured's Collusion vs. Insurers Right to Proceedings

The insurance company can contest the claim preferred before the Claims Tribunal only on the statutory grounds prescribed under Section 149(2) of the Act, but, if there is collusion between the petitioner making the claim and the insured resisting the claim or if the insured against whom the claim is made has failed to contest the claim, the insurance company can step in and seek permission of the Claims Tribunal by making a prayer for getting itself impleaded as a party to the proceeding and the insurer so impleaded can then contest the proceeding on grounds other than the grounds enumerated in Section 149 (2) of the 1988 Act.

### b) Reasoned Order under Section 170

The insurer's interest is adversely placed due to the following factors:

- i. **Primary category:** The insured / owner remains ex-parte despite service of summons.
- ii. **Second category:** Insured / owner never come forward to contest the claim effectively, even though appearance is made.
- iii. **Third category:** Even after filing of Written Statement on their behalf, neither any persuasion is done nor are any evidences produced to support the defence contentions of the insurance company.

In such circumstances in the absence of an application u/s 170 of the Motor Vehicle Act 1988 (as amended) and for not obtaining of suitable order from the Tribunal, the insurance company is precluded from contesting the claim on merit or beyond the grounds stipulated under the statute under Section 149(2) of the Motor Vehicle Act 1988.

The insurance company is precluded from pursuing appeal before the High Court in the absence of application u/s 170 of the Motor Vehicle Act, 1988 for not obtaining order towards ineffective participation of the insured. There are several rulings that without the order of the Claims Tribunal no advantage can be given to the insurance company to contest the claim on merits of the case.

**Section 170 of the Motor Vehicles Act, 1988:** The section impleads insurer in certain cases, where in the course of any inquiry the Claims Tribunal is satisfied that:

- i. There is collusion between the person making the claim and the person against whom the claim is made, or

- i . 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 impleaded shall thereupon have, without prejudice to the provisions contained in Section 149(2), 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.

## 6. Conditions Precedent

Supreme Court in [(Shankarayya vs. United India Insurance Co. Ltd) AIR 1998 (SC) p 2968)] decided on 16th Jan 1998 making it mandatory for insurance companies to file an application under Section 170 in the Lower Court in case they wish to file an appeal on quantum without the co-operation of the insured. An oral submission will not do. An application has to be filed by panel advocate in the MACT under Section 170.

The Court may accept or reject the application. However, this order of the Court should be a written order. A certified copy of this order should also be obtained, to be filed in High Court in case appeal is preferred. In case the application under Section 170 is rejected by the MACT, an appeal should be filed in the High Court immediately (not after the pronouncement of judgment) for consideration of the appeal. Appeals filed with delay are not admitted at the High Court.

### a) Recording of fact is sufficient under Section 170

In [(United India Insurance Co. Ltd. vs. Jyotsnaben Sudhirbhai Patel & Ors)] the driver and the owner of the offending vehicle appeared before the Claims Tribunal, but did not file any written statement refuting the allegations made in the petition. The Claims Tribunal stated that these respondents did not step into the witness box, to explain the circumstances and the manner, in which the actual mishap took place. It was further stated that in view of this, the Claims Tribunal was compelled to draw an adverse inference against the respondents. This case arising out of SLP[C] No. 13002 of 2002, appeal under Section 170 before Gujarat High Court was found not maintainable, especially in view of the observations made by the Supreme Court [(Shankarayya vs. United India Insurance Co. Ltd.) AIR 1998 SC p 2968] and the appeal preferred by the appellant was dismissed.

The Supreme Court in this case [in (United India Insurance Co. Ltd. vs. Jyotsnaben Sudhirbhai Patel & Ors) {Appeal (civil) 6295 of 2003 (Arising out of SLP[C] No. 13002 of 2002) Date of judgment 11/08/2003}] held that the Claims Tribunal could have merely recorded that fact while allowing the application. In a situation contemplated by Clause (b) of Section 170, nothing more was required than recording that indisputable fact. For failure to do so, the appellant shall not suffer prejudice.

Therefore, the Appellant (insurance company) was justified in contesting the proceedings on the grounds other than those enumerated under Section 149 (2) of the Act, pursuant to the permission granted by Court.

#### **b) Appeal for rejection of permission u/s 170**

The tribunal may accept or reject the application; however, the order of the court must be a written order. A certified copy of the order must be obtained for filing in the High Court, in case an appeal against Section 170 Order is required to be preferred. The appeal should be filed in the High Court immediately, not after the pronouncement of judgment for consideration of appeal.

#### **c) No fresh or additional evidence**

It should be borne in mind that High Courts do not accept any fresh evidence or any additional evidence later. In [(United India Insurance Company Ltd. vs. Rajendra Singh & Ors) 2000 ACJ p1032)] claimants claimed compensation for injuries alleged to have been sustained by them in accident of Motor Cycle they were riding and a Car. Claims Tribunal passed the award against the insurance company. Subsequently insurance company came to know that the claimants sustained injuries when their Tractor slipped into a pit and they played a fraud against the insurance company. The following questions were answered by the Apex Court.

- i. Would the appeal by the insurance company against the award on the fresh plea of fraud be maintainable?

Apex Court in [2000 ACJ p 1032 (Para 14)] held that the consideration of appeal would be limited to issues formulated from the pleadings.

- i . Should the High Court have considered the grievances of the insurance company?

Apex Court in [2000 ACJ p 1032 (Para 10 &11)] held that the writ jurisdiction is almost plenary for which no statutory constrictions could possibly be imposed. A party to an order of court later discovering that it was obtained by fraud should have some legal remedy.

- i . Must the claim be allowed to be resisted on grounds of fraud now alleged by the insurance company?

The Apex Court held that no Court or Tribunal can be regarded as powerless to review its order if it is convinced that the order was wrangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim, as it would lead to serious miscarriage of justice, so the claim is remitted to Tribunal for afresh consideration.

**d) No right of appeal under Section 173**

Very often the question has arisen as to whether an insurer is entitled to file an appeal under Section 173 of 1988 Act on the grounds available to the insured, when either there is a collusion between the claimants and the insured or when the insured has not filed an appeal before the High Court questioning the quantum of compensation.

The consistent view had been that the insurer has no right to file an appeal to challenge the quantum of compensation or the finding of the Claims Tribunal as regards the negligence or contributory negligence of offending vehicle.

**e) Right of appeal not an inherent right**

In [(National Insurance Co. Ltd. vs. Nicolletta Rohtagi & Ors.) (2002) 7 SCC 456], the Supreme Court held that the right of appeal is not an inherent right and as the Insurance Company is permitted to contest only on the grounds stated in Section 149(2) of the Motor Vehicles Act 1988, the insurer cannot file an appeal on any other ground, except in accordance with the procedure prescribed under Section 170 of the 1988 Act. While recommending cases for appeal the following aspects should be borne in mind:

- i. Our liability is in question even though the award amount is less.
- i . Such defence has been taken in our written statement.
- ii. . If defence was taken, whether the same has been substantiated by any documentary or oral evidence.
- iv. If files are referred on quantum only, then insured's Vakalathnama should be sent along with the claim papers.
- v. if insured remains ex-parte throughout the Lower Court proceedings, then the Vakalathnama is not necessary for filing appeal on quantum. An application u/s 170 can be filed.

The legal position is now contained in [(Nicolletta Rohtagi Vs. National Insurance Co. Ltd.) AIR 2002 SC 3350: 2002 (7) SCC 456: 2002 (6) Supreme 362: 2002 ACJ 1950], that no insurer can contest a claim on merits except after obtaining permission from the Court by a reasoned order to do so. There is now a semblance of certainty on the pre-condition to obtain relief under Section 170 for an insurer.

## 7. Insurer is to be made a Party

Fundamentally, it is the liability of the insured that is indemnified by the insurer. No insurer can be held liable without the insured being liable in the first place [(Oriental Insurance Co. Ltd., Vs. Sunitha Rani) - 1998 ACJ 121 (SC)]. The relationship between the insured and insurer is contained in the contract of insurance. Under Section 149 (1) of MV Act, 1988 ....., there is no need or compulsion for the insurer to be made a party to the proceedings.

The insured alone can be made a party and contest it. The insured after such contest and an award can seek to enforce his right to indemnity under the policy of insurance. On production of vehicular records, the insurer if satisfied that no defence under Section 149 (2) arose has to satisfy the award. Hence the starting premise is that the insurer need not be a party to the claim petition in original proceeding.

### a) When Insurer is to be Impleaded

Under Section 170, the insurer is entitled to avail impleading, if he was not a party earlier, and upon such impleading (which is the vital missing link remaining unaddressed for its importance) be entitled to seek to contest the claim on all grounds, that would be available to the insured. The crucial phrase is **"upon such impleading"**. So it is only in such of those cases where insurers were not already party and they got themselves impleaded, that they are required to seek permission to contest on merits under Section 170 of the MV Act 1988. This, however, gives rise to another question whether Section 170 relief need not be invoked in cases where the insurers were already parties?

### b) Whether permission to contest is mandatory?

#### Authors note

The legal position needs clarification by the Apex Court. It needs to be made clear that permission under Section 170 of the Act of 1988 was not mandatory in cases where the insurer was already a party. Where insurer was made a party and the insured fails to contest, by remaining ex-parte, the insurer must be automatically held entitled to contest on merits, without any need for such application. Only in cases where the insurer was not originally a party and they got impleaded afterwards, there was a need for seeking permission by an application under Section 170 of the Act of 1988 to contest on merits.



### c) Whether Insurers obligation to defend is contractual and legal?

Fundamentally, the insurer has a duty to contest on behalf of the insured, under the policy of insurance. If the vehicular records are in order and there is no conflict of interest, then the insurer has an obligation to contest on behalf of the insured as they have agreed to do so. Insurer also bear's the litigation costs involved. This being so, insurers are entitled to contest along with the insured. When they so contest before the Tribunal equally, they ought to be held entitled to prefer an appeal as contesting parties.

The appeal may be filed by the insured, transposing the insurer as a respondent. Ultimately, it is the insurer who foots the bill. The insurer has reserved the right to contest on behalf of insured in the policy of insurance. More importantly, the insurer has a solemn obligation to contest on behalf of the insured.

In fact, the insurer cannot be seen to be forsaking the interests of his insured. The insured and the insurer can legitimately contest before the Tribunal and they can well maintain an appeal on merits. There is no earthly possibility of the insurer canvassing a grievance under Section 149 (2) and still be joining forces with the insured on merits.

In (Mannarkatti case supra) an appeal filed by the insured along with the insurer was not sustainable for the reason that the insurer, not having filed an application under Section 170, cannot be seen to be challenging an appeal on merits. In that case the insured had remained ex-parte. The insurer alone had contested the proceedings.

A person suffering an ex-parte award, such as the insured, is entitled to file the appeal against it. When joining forces with the insurer, it is an expression of commitment by the insurer to contest on his behalf. Ignoring all these aspects on the sole premise that no petition under Section 170 was filed, it has been ruled that the appeal is not sustainable.

### d) Insurer ignoring to contest

**Bhusan Sachdeva Case:** This imposition of the burden of Section 170 on the insurer, even in cases where they were already made parties, has resulted in the insurer refraining from contesting on behalf of the insured. Even in cases where the insured come forward to co-operate with the insurer to contest, the insurers quietly ignore the request and would rather await the insured to fail to contest, because then the insurer can safely invoke the remedy under Section 170.



In [(United India Insurance Co. Ltd., Vs. Bhusan Sachdeva) 2002 (2) SCC 265 : 2002 ACJ 333 : AIR 2002 SC 662 : 2002 (1) Supreme 177] it has taken note of the fundamental aspect of the insurer being an aggrieved, as they were the paymasters and in the absence of contest by the insured, they must be deemed to have taken over the defenses and the Claims Tribunal having permitted a contest too. It is only that Bhusan Sachdeva case supra can be better explained by reference to the aspects as the requirement in Section 149 (1), a clause in the policy providing for insurers to take over the defences of insured etc.

#### **e) Failure of Tribunal to Pass Reasoned Order**

As per pre-condition of Section 170, the insurers tend to mechanically obtain the permission even at the time of submitting written statement and contest the claims. They disregard the interests of the insured or actual contest by the insured and would rather much have them remain ex-parte.

The requirement that relief under Section 170 should be by way of reasoned order [(Shanakarayya Vs. United India Insurance Co. Ltd.,) - 1998 ACJ 513] **has been dispensed with** by the Apex Court [(United India Insurance Co. Ltd., Vs. Jyotsnaben Sudhirbhai Patel) 2003 ACJ 2107: 2003 (7) SCC 212: 2003 (5) Supreme 529] by holding that if the Tribunal fails to pass a reasoned order; the insurer cannot be penalised on that count.

Authors Note: Section 170 has become a mere formality to be accomplished for the record and nothing more. It is time the apex court adverted to it and pronounced on it for a wholesome verdict to clear the confusion.

#### **f) Insurer's remedy in Statutory Appeal**

There may be instances of the insured remaining ex-parte and the insurer not taking out an application under Section 170. The need for a statutory appeal cannot be ignored through the Article 227 route or revision petition under Section 115 CPC to circumvent the need for Section 170. (Nicolletas Case supra)

If so, in the face of grossly disproportionate and unfair award, the insurer has to acquiesce in it. The insurer must be deemed to have the right to file an appeal along with the insured or even seek the relief under Section 170 in appeal, as it is a continuation of the proceedings. Otherwise it would be a case of the statute perpetrating an unjust set of circumstances, which can never be said to be the basic purpose behind the legislative intent.

**i. Insured's refusal to file an appeal for disproportionate income**

If the insured is contesting on its own, the insurer may be unable to prove a case of collusion. In fact it could be a friendly contest and upon an award of disproportionate extent, the insured may refuse to file an appeal on behalf of the insurer. Can the insurer be expected to acquiesce in and meekly pay up? The legislative intent cannot be read in this manner. In such eventualities the insurer must be deemed to have the right to seek the remedy of failure to contest or collusion even in the appeal proceedings. Otherwise, the remedy under Section 170 would be a harmful provision rather than an enabling provision for a meaningful defence.

**ii. Uncertainty prevailing u/s 170**

The bottom-line is that Section 170 is not necessary where the insured is already a party. Only in cases where they were not already a party and get themselves impleaded, upon such impleading permission under Section 170 will become necessary. Further, the insurer has a solemn duty to contest on behalf of the insured as a solemn contractual obligation. If so, they must be seen to have the concomitant right to contest on behalf of the insured in appeal.

Ultimately, the requirement under Section 170 has to be seen and appreciated for what it is. It is not a minor hurdle to be overcome for the insurer, but is a provision with meaning and substance since the insurer need not be a party in the first place under Section 149 (1). The Supreme Court would be required to consider Section 170 from the context of the phraseology upon such impleading and pronounce on it as well, clarifying its purport and also on the sustainability of appeals of insurer along with insured.

**Test Yourself 7**

Motor insurance cover is compulsory as per \_\_\_\_\_ of the Motor Insurance Act.

- I. Section 170
  - II. Section 163
  - III. Section 146
  - IV. Section 64 VB
-

## H. Defences for Insurance Companies

The defence for insurance companies can be categorised under following heads:

### 1. Breach of Policy Conditions

The breach of policy conditions which have no nexus to the loss or damage are interpreted leniently permitting contract to be set right at the option of the insurance company for liabilities arising in future, but the breach of material policy condition leave the Policy contract void. Section 64 VB of Insurance Act, 1938 for advance payment of premium makes contract void ab initio.

Though the policy of insurance was issued to commence from 4/5/96, the Court ruled that since the premium was received in cash on 2/5/96, the insurer would be liable to the Third Party victim for the accident dated 2/5/96 at 6 P.M. [(Oriental Insurance Co. Ltd. vs. Sheela Bai) 2007 ACJ 798 (MP)]. This judgment is contrary to the verdict of the Supreme Court in 1997 ACJ 351 (SC). Therefore, this section has been a matter of contest and differing judgments by the Apex Court.

The availability of insurance policy and particulars has been held to be the burden on insurer [2008 (1) TLNJ 225 (Civil)]. It was held that when the claimants failed to furnish particulars of insurance policy, it would suffice for the insurer to deny the factum of insurance. The burden would be on the claimants to furnish particulars to impose an obligation on the insurer to adduce evidence that there was no insurance cover granted [(The Oriental Insurance Co. Ltd. vs. Karthikesan) 2007 (2) TN MAC 188 (Mad)]. If no Insurance Policy, burden of Proof discussed [in {2008 (2) TLNJ 57 (Civil)} relying on {2004 ACJ 727} (contra view)].

### 2. Who is a Third Party?

The very nomenclature third party would pre-suppose the existence of two other parties. The insured or owner of the vehicle would be The First Party and the insurer would be Second Party. All others would appear to come within the ambit of the expression Third Party.

Under Section 147 MV Act, 1988 there is stipulation of mandatory cover to be provided to third parties. But in the context of the statute it is not every claimant who would come within the scope of a third party. The driver, passengers in any class of vehicle, though commonly known as third parties come outside the scope of Third Party under the 1988 Act. They are required to be covered under Section 147 as driver, occupants or passengers separately.

**Important**

Third Party is confined to those persons who are victims and not travelling on the vehicle but are outside the vehicle.

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**3. Liability of insurer for driver of vehicle**

The driver of a vehicle is required to be covered under Section 147 of Act 1988. But as per the provision it is not any and every driver of a vehicle, who is required to be covered. It is only such of those drivers who are engaged to drive, who are required to be covered.

In effect, employed drivers alone are required to be covered. When the owner of the vehicle was driving the vehicle, he obviously cannot file a claim for himself, though he is driver in the literal sense of the meaning [(Dhanraj vs. New India Assurance Co. Ltd. - 2005 ACJ 1 (SC)]. The insurer has offered cover for the liability of the owner to third parties does not entitle him.

Equally, if a friend of the owner of the vehicle was driving a private car, then he too would not be covered under the policy of insurance. *Such friend or any person, other than a driver engaged to drive would be entitled to claim under Section 140 MV Act, 1988.* As for entitlement to claim under Section 163-A if such driver was himself at fault, he would not be entitled to pursue the remedy. If the driver was a workman, then notwithstanding the requirement to establish negligence before a Claims Tribunal, the law has to accept a claim for such driver / workman under EC Act, 1923 before MACT itself.

It is not that drivers of all classes of vehicles irrespective of their status as drivers are required to be covered. It is only persons engaged as paid drivers who are required to be covered. Such drivers, unless workmen, when not insured, would be entitled to no more than 'no fault liability' amount payable under Section 140 [(Oriental Insurance Co. Ltd., vs. Krishnan) - 2004 ACJ 1790 (Mad)].

One further aspect that needs to be highlighted is that the liability to such drivers would be restricted as per EC Act, 1923 under Liability Only Policy [National Insurance Co. Ltd. vs. Prembhai Patel 2005 (3) Supreme 587].

#### 4. Dishonour of Cheque

##### a) Public Policy to prevail

The question of dishonour of cheque came up for consideration in *Oriental Insurance Co. Ltd. vs. Inderjit Kaur and Ors* [(1998) 1 SCC 371] wherein, it was stated that a policy of insurance, which is issued in public interest would prevail over the interest of the insurance company. Having regard to the underlying public policy behind the statutory scheme in respect of insurance as evidenced by Sections 147 and Section 149 of the Motor Vehicle Act 1988, and in particular having regard to the fact that policy of insurance was issued to cover the vehicle without receiving the premium, the Court held that the insurance company was liable to indemnify the insured.

The said decision proceeded on the basis that the insurance company was responsible for placing itself in the said predicament as it had issued a policy of insurance upon receipt of a Cheque towards the consideration, in contravention of the provisions of Section 64-VB of the Insurance Act 1938. Applying the principle of estoppel, the Court held that, the public interest in a situation of that nature would prevail over the interest of the insurance company.

##### b) Insured to restore the advantage

Section 25 of the Indian Contract Act, 1872 states, that when a contract becomes void, the person who has received any advantage under such contract is bound to restore it to the person from whom he received it. Therefore, even though the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to reimbursement of the money so received.

However, if the insured pays the premium even after the cheque was dishonoured, but before the date of accident, it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such if event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents.

A contract is based on reciprocal promise by the parties which is a condition precedents for a valid contract. A contract furthermore must be for consideration. In today's world, payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.

### c) Section 64 VB

In terms of Section 147 (5) and Section 149 (1) of the Act, the Insurance Company became liable to satisfy awards of compensation, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium had not been honoured. The dicta laid down clarifies that if on the date of the accident a policy subsists, then the third party would be entitled to avail benefit. The decision was analysed in the light of Section 64-VB of the 1938 Act in [(National Insurance Co. Ltd. vs. Seema Malhotra and Ors.) (2001) 3 SCC 151].

The time of commencement of cover is an important issue in fixing liability on insurers. An accident had occurred at 8.15 a.m. It was found that the insurance coverage was availed on the same day and only from 10.30 a.m. as mentioned in the contract of insurance. Following the verdict [in (National Insurance Co. Ltd. vs. N. Ponnaiyan) reported in 2005 ACJ 1103 (Mad)] it was held that the insurer was not liable for the claim and the owner of the vehicle has to answer the liability. [(New India Assurance Co. Ltd. vs. L. Sunderrajan 2007 (3) TLNJ 367 (Civil): 2007 (2) TN MAC 128].

### d) Post-accident cover

The policy having been issued from 1/8/96 w.e.f. 09.00 a.m. the coverage would be only from that date and time and would not cover an accident dated 31/7/96. Relevant decisions on this aspect were considered. [in (NIC vs. Mangalakshmi) 2008 (4) LW 488].

### e) Policy was not produced

Where the insurer has pleaded expiry of the policy prior to accident and the same was not renewed, but did not produce the insurance policy, the insurer was held liable for the claim for absence of proof. [(UIIC vs. Kandan) 2008 (7) MLJ 123 (Mad) (referring to 2007 (1) MLJ 234, 2003 (1) MLJ 268)].

In another case the previous policy of insurance had expired on 29/6/94. The subsequent policy was availed on and from 20/7/94 and the time of commencement of cover was mentioned as 2 P.M. The accident had occurred on 9.15 A.M. It was observed that in the face of the documented factum of the policy commencing from 2 P.M. no liability could have been fastened on the insurer. The appeal was allowed exonerating the insurer of any liability. [(National Insurance Co. Ltd. vs. Sobina Lakai) 2007 (2) TN MAC 37 (SC)}. {2007 ACJ 2043 (SC)} {2007 (4) TAC 19} :{ 2007 (3) ACC 1} {2007 (5) CTC 892}]. [(National Insurance Co. Ltd. vs. Lakhi Devi) 2007 (3) T A C 814 (Jhar)].



### f) Notice of Dishonour of Cheque

The premium cheque was dishonoured for lack of adequate funds in the account of the insured; consequently the insurance company cancelled the Policy contract. However, Insurance Company failed to intimate Road Transport Authority. As the fact of no balance in the account was within the knowledge of the insured, therefore, no special notice was necessary and hence the liability of the insurance company was extinguished.

Following the verdicts of the Apex Court in [(Oriental Insurance Co. Ltd. vs. Inderjit Kaur) 1998 ACJ 123 (SC)] and [(New India Assurance Co. Ltd. vs. Rula) in 2004 ACJ 630 (SC)], it was held that if it was found that notices of cancellation of the covers were not intimated to the insured, the insurer cannot avoid liability and their remedy may only be to seek recovery from the insured.

The cancellation of Policy earlier to the date of accident on account of dishonour of premium cheque exonerates the insurance company from Third Party Liability. The owner of the vehicle was driving it. The insurer sent communications to the insured and the RTO about cancellation of the policy of insurance. The accident had occurred after such cancellation. The Supreme Court ruled that the insurer couldn't be held liable for the claim in a case where the policy was cancelled by the time the accident occurred. **The inference is that the insurer can avoid liability in such cases where the cancellation took place prior to the occurrence of the accident.**

### g) Insured can't claim performance

In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque on presentation would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker.

### Definition

A bill of exchange is an instrument in writing containing an unconditional order, directing a certain person to pay a certain sum of money to a certain person.

It involves a promise that such money would be paid. Therefore, if the insured fails to pay the premium promised, or the bank concerned returns the cheque issued by him towards the premium dishonoured, the insurer need not perform their part of the promise. Under Section 25 of the Indian Contract Act, 1872, an agreement made without consideration is void. The corollary is that the insured cannot claim performance from the insurer in such a situation.



### **h) Limited obligation of Insurer under E.C. Act, 1923**

In case of a claim for compensation to a third party arising under the Employee's Compensation Act, 1923, the obligation of the insurance company clearly stands limited, and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. The Supreme Court in [(New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya and Anr)-2006 (5) SCC 192], held that unlike the scheme of the Motor Vehicles Act, 1988; the Employee's Compensation Act, 1923 does not confer a right on the claimant for compensation to claim the payment of compensation in its entirety from the insurer himself.

The law relating to contracts of insurance is part of the general law of contract. It was approved by Lord Wilberforce in [(Reardon Smith vs. Hansen-Tangen) All ER p. 576 h] said: It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law. A contract of insurance is to be construed in the first place from the terms used in it, which terms are to be understood in their primary, natural, ordinary, and popular sense.

A policy of insurance has to be construed like any other legal contract. On construction of the contract, 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 among other things under the Employees Compensation Act 1923. Unless one is in a position to avoid the exclusion clause concerning liability for interest and penalty, imposed on the insured on account of his failure to comply with the requirements of the Employees Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.

### **i) Statutory liability vis-a-vis a Third Party of Insurer**

The Supreme Court in [(Deddappa & Ors vs. National Insurance Co. Ltd) [Appeal (Civil) 5829 of 2007]] arising out of SLP (C) NO.7746 of 2006 held that they were not oblivious of the distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 and 149 of the 1988 Act and its liabilities in other cases.

But the liabilities arising under the contract of insurance would have to be met, if the contract is valid and subsisting. If the contract of insurance has been cancelled and all concerned have been intimated, we are of the opinion the insurance company would not be liable to satisfy the claim.

## 5. Valid Driving Licence

To avoid liability of the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding 'use of vehicle' by a duly licensed driver or one who was not disqualified to drive at the relevant time. It was not open to the insurer to dispute the validity of the driving licence in the execution proceedings, when the issue had reached its finality in the trial proceedings itself. [(United India Insurance Co. Ltd. vs. Gulzar Singh) 2007 ACJ 1265 (P&H)]

The driver was not holding a valid driving licence to drive an auto rickshaw / transport vehicle. The owner was also contesting the claim. In a rare decision of its kind, after advertent to a catena of decisions, the High Court ruled that the insurer could avoid liability in toto. The question of directing the insurer to pay and seek recovery would not arise.

The decision of the Supreme Court in [(Kusum Rai in 2006 (4) SCC 250:2006 (1) TN MAC 9] elaborated further by pointing out that in the said decision discretion under Article 136 was exercised, as the claimants were poor and the insured was not found to be contesting [(Oriental Insurance Co. Ltd. vs. Sivammal) 2007 (2) TN MAC 216 (Mad)] . However, at the instance of the insured, no right of recovery can be claimed against the insurer. [2008 (1) TN MAC 15 (Jha)]

### Author's Note

The author feels that Insurance Company should not be directed to perform charity, where they have no liability at all. Legislature may commit such liability to be met through solatium fund to meet out uninsured liabilities, instead of fastening the liability on insurers, who are otherwise also required to serve the poor customers and bear the consequences of such investment, where the probability of recovery is remote?

The following sections of the Motor Vehicle Act, 1988, govern the main provisions relating to driving licence.

- a) Section 2 (10) defines the term driving licence
- b) Section 3 (1) deals with the necessity for driving licence. It states that no person shall drive a motor vehicle in a public place unless he holds an effective driving licence.
- c) Section 4 deals with the age limit
- d) Section 4 (2) where it is stated that no person under the age of 20 years can drive a transport vehicle.

- e) Section 2 (19) defines the term Learning Licence.
- f) Section 7 deals with the restriction on the granting of Learners Licence for certain vehicles. It states that to hold a Learners Licence to drive Transport Vehicles, one should have held driving licence for at least one year. (The provision is being made more stringent by raising the limit to 2 years in the proposed Motor Vehicle (amendment) Bill 2007)
- g) Section 9 (3) (a i/ii/ii) the words DL to drive such class of vehicle, is used.
- h) Section 10 deals with the form and contents of driving licence. It elaborates classification of vehicles and the endorsements, which can be passed by RTO
- i) Section 11 (i) authorizes the licensing authority to add such other class or designation of motor vehicle to the driving licence.
- j) Section 14 deals with the currency of licenses to drive the motor vehicle
  - i. Learners Licence to be effective for 6 months from the date of issue.
  - i . Transport Vehicle licence is to be effective for 3 years from the date of issue. Explanation: Transport vehicle carrying dangerous / hazardous goods: the licence is effective for only one year.
  - ii. . All the other licenses are to be effective for 20 years from the date of issue of licence or 50 years whichever is earlier.

PROVIDED that every driving licence shall, notwithstanding the expiry under the sub section continue to be effective for a period of thirty days from such expiry.
- k) Section 15 deals with the renewal of licences: Any expired licence will have the grace period and will be effective from the date of expiry till expiry of thirty days. If the renewal is obtained within 30 days of its expiry, the licence will be renewed retrospectively from the date of its expired date, if not the renewal will have only prospective effect, i.e. from the date of its renewal.

As per the 1988 Act and in conjunction with the Central Motor Vehicle Rules and the State Motor Vehicles Rules, the following type of licences are required to be given to different class of vehicle.

The effective driving licence means a valid licence both as regard to period and type of vehicle [2002 ACJ p 319 (SC)]. On the other hand any fake driving licence if renewed subsequently cannot become legally valid [2001 SCW p 1340 (SC)].

The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Section 149(2)(a)(ii), has to be proved to have been committed by the insured, for avoiding liability by the insurer by adopting following procedure:

- (a) A specific plea should be taken in the written statement and the Claims Tribunal should also frame an issue.
- (b) Extract of DL from the concerned RTO should be produced in the Tribunal to prove the plea.
- (c) Insurance company officials can also mark the extract of DL. Evidence has to be let in by summoning the concerned RTO officials who have given the extract of the DL through the Tribunal.

The burden lies on the insurer to plead and prove the case. Even then, unless there was breach by the insured, the insurer cannot avoid liability. They may have to pay and seek recovery from the insured.

**a) Cases where DL particulars are not known**

Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or third parties. The insurance company should plead and lead with evidence and on failure, seek permission to avail all defences for non-cooperation by the insured / driver under Section 170 by a separate application moved in the Tribunal.

- i. An investigator should be appointed to contact insured and driver at the given address to obtain driving licence particulars.
- ii. The insurer must seek information by Registered AD Post from the concerned RTO, where the driver normally resides as per address given in the petitioners copy or revealed by the investigator.
- iii. Reply of RTO for non-issue of licence is to be carefully preserved.

The outcome of both (i) & (ii) is produced as evidence in Claims Tribunal to show that the Insurance Company has taken all steps to find out the validity of driving licence

- iv. The panel Advocate should examine Insurance Company official on the aspect of driving licence and that the particular person who was driving the vehicle at the material time of accident. This may be carried out on the basis of documents like FIR, Charge sheet, Form 54, and injury report of the driver.

- v. Any other eyewitness, who could be passengers of the vehicle if any or the Doctor of the hospital who had given first aid etc. can also be examined.

The provision of Section 3 deals with the necessity for driving licence & Section 10 deals with the form and contents of driving licence of the Motor Vehicle Act, 1988. Therefore, appreciation of driving licence on the part of Apex Courts declarations, still appears to be pay and recover in view of Supreme Court observations in [2004 ACJ 843] & [2007 ACJ 1067] & [2008 ACJ 776].

### **b) Fake Licence**

In the case of fake driving licence, the question of indemnity from insurer would be available only in case of a Third Party claim. Only for Third Party victims (not where owner or passengers were involved), insurer can be asked to pay and recover [(NIC Vs. Kaushalaya Devi) 2008 (4) Supreme 441]. The own damage claim being contractual liability would not be on the same footing and insurer would be entitled to refuse indemnity [(National Insurance Co. Ltd. vs. Laxmi Narain Dutt) 2007 (II) ACC 28 (SC)] .

If the DL is fake, the insurer would not be liable, but has to pay and recover. But such pay and recover award would be applicable only in Third Party claims, meaning victims of the road and not persons such as passengers. [(NIC vs. Geetha Bhat) in CA No. 2257/2008 dt.31/3/2008 can avail the benefit. The insurer can avoid liability to pay only, if they prove that the owner was aware of the fake nature of DL and still entrusted the vehicle to such driver.

The inference is that the right of recovery is only in case of Third Party victims, not where the victims are passengers; also insurer is exonerated from OD liability. Where the DL is fake, the insurer is not liable and any amount paid by way of interim orders can be recovered from the insured. For Balance amount the claimants have to proceed against owner / driver only [2008 (1) TN MAC 115 (SC) (Prem Kumari vs. Prahlad Dev)].

Once the DL is fake, its renewal cannot confer validity. [OIC vs. Prithiviraj 2008 (2) MLJ 913 (SC)]. It is the ratio in [Davinder Singh) 2008 (2) LW 10 (SC)]: [(UIIC vs. Davinder Singh) 2008 ACJ 1].

Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit, albeit the fact those other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it was genuine. Once a licence is found fake, its renewal cannot take away the effect of a fake licence. It was observed in Kamla case [SC p. 347, Para 12] and Section 15 of the 1988 Act only empowers any licensing authority to renew a driving licence issued under the provisions of this Act, with effect from the date of its expiry.

No licensing authority has the power to renew a fake licence, therefore, a renewal if at all made, cannot transform a fake licence into a genuine one. The whole protection provided by Chapter XI of the 1988 Act is against third party risk [Oriental Insurance Company Limited vs. Meena Variyal and Ors. [2007 (5) SCALE 269].

Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to the ratio in [(National Insurance Co. Ltd. vs. Swaran Singh and Other) (2004) 3 SCC 297].

### c) Effective Driving Licence

The defences open to the insurer are circumscribed by Section 149 (2). One of the major defences that come within its ambit is the absence of an effective driving licence to the driver of the insured vehicle. The burden is squarely on the insurer to plead and prove that the driver did not hold an effective driving license [(Narcinva V. Kamat vs Alfredo Antonio Doe Martins) - 1985 ACJ 397 (SC)].

To begin with, in such claims the driver was also a party. But it is now well settled that the driver is not a necessary party to the proceedings. The insurer was expected to send notices to the insured and the driver to produce the driving licence, summon the records from RTA, if particulars were available, and also produce the Criminal court records on whether the driver and / or owner were also prosecuted, examine their officials and mark the insurance policy to draw the attention of the Court to the relevant clause in the policy of insurance.

Such burden cast on the insurer was very heavy and any lapse, thereof, worked to the benefit of the claimants. Then came a line of decisions suggesting that the insurer was even obliged to summon the driver and examine him to prove their case [(Rukmani vs The New India Assurance Co. Ltd.) 1998 (9) SCC 160].

In a case where the driving licence had expired, the insurer was held to be not liable [(New India Assurance Co. Ltd. vs. Sudesh Kumari)]. The burden is squarely on the insurer to plead and prove absence of driving licence. If the insurer took necessary steps to discharge the burden and the insured kept silent, then adverse inference shall be drawn against the owner of the vehicle. The insurer would then be entitled to seek right of recovery from the insured. [(National Insurance Co. Ltd. vs. Krishnammal) 2007 (5) MLJ 1038 (Mad)].

If the Driving Licence was not valid to drive a commercial vehicle, the suit for own damage claim is to be dismissed in [(M. Chidambaram vs. UIIC Ltd) 2008 (5) MLJ 193].



A Motorcycle rider was not possessing valid Driving Licence being a statutory risk cover the insurer was held liable to pay and seek recovery [2008 (6) MLJ 99]. However, it was held that without particulars of Driving Licence, the insurer cannot search all the RTOs to adduce evidence. [2008 1 TN MAC 191 (Ma)]

**d) Disqualified from holding or obtaining a licence only where driver held a licence**

The insurers were thus compelled to satisfy these requirements without any relief. The Courts found that on such satisfaction of the burden by the insurers, under the dispensation under MV Act, 1939, the insurers could avoid liability. The lot of the claimants was placed in a tricky position. Therefore, on closer examination of the relevant clause in the policy of insurance, it was found that there was a phrase reading and is not disqualified from holding or obtaining driving licence.

In a case where the driver was prosecuted under Section 3 and owner under Section 5 and both had been convicted on admission of guilt, the insurer could be set to have discharged the burden cast on them by adducing such proof and marking the policy of insurance to avoid liability. Hence, the High Court of Madras ruled in [(The New India Assurance Co. Ltd. vs C. B. Shankar) 1986 ACJ 82 (Mad)] that mere proof of absence of driving licence would not suffice for the insurer.

They had undertaken the burden of not proving absence of driving licence but also the disqualification of the driver to hold or obtain driving licence. There was no evidence adduced by insurer to demonstrate that the driver was so disqualified from holding or obtaining a licence and therefore insurer cannot avoid liability. Even in a case where the driver never held a licence, this disqualification was held against the insurer. It was obviously erroneous.

Disqualification ought to be construed as pre-supposing the existence of a valid licence prior to point of time in question. This was clarified in [(National Insurance Co. Ltd., Vs. Thulasi) -1994 (1) LW 567]. In a case where the driver obtained the licence after the accident and it was argued that the fact the driver had obtained the licence subsequent to accident must be held as proof that the driver was not disqualified. The insurer was held not liable as the driver held no licence at all prior to the date of the accident. Hence it can now be taken that disqualification aspect would come into play only where the driver held a licence before the accident.



### e) Deliberate, willful and intentional act of Insured owner

- i. A person drove a vehicle without a driving licence, but was found to be not the regular driver of the insured.
- i . The insured had entrusted the vehicle to his regular driver and the driver in course of journey chose to entrust the vehicle to another person, say cleaner as in [(Skandia Insurances case) 1987 ACJ 411 (SC)] and the cleaner held no licence, the insurers prayer for exoneration was rejected by the Supreme Court explaining the expression **breach as used in the statute as well as the policy of insurance.**
- i . It was held that breach cannot be so easily attached on the insured. Obviously, the insured had done his bit when he entrusted the vehicle to a regular, licensed driver. If in the course of the journey, such driver chose to entrust the vehicle, without the knowledge and authority of insured, to a cleaner who was unlicensed, such breach cannot be attached on the insured. [(New India Assurance Co. Ltd. vs. Mohinder Singh) 2007 ACJ 936 (P&H)]: [2007 (II) ACC 866]: [(National Insurance Co. Ltd. vs. Salinder Kumar) 2007 ACJ 1181 (P&H)]: [(New India Assurance Co. Ltd. vs. Ratibai) 2007 ACJ 1119 (MP)]: [(United India Insurance Co. Ltd. vs. Shakuntala Sharma) 2007 ACJ 1134 (Raj)]:
- iv. A minor aged 15 years is driving the Motor Vehicle. The insurer is not liable. [2008 (1) CTC 50].

The breach to enable the insurer to avoid liability, must therefore, be deliberate, willful and intentional, meaning thereby, the insured was aware that his driver was unlicensed and still chose to entrust the vehicle to him. Hence the burden of proof placed on the insurer was put on a higher pedestal, making it thereby, virtually impossible for the insurers to avoid liability.

In a series of judgments it was made clear by various High Courts that such construction of the statute was only in keeping with the mandate of Parliament to ensure that the victims were provided compensation by the insurer, rather than be left to the fate of seeking enforcement from owner of vehicle. The slant of the courts was evident and it was made clear as well that compulsory motor insurance was to provide relief to victims and if so, the courts have to necessarily lean in favour of this mandate.

### f) Absence of Driving Licence

- i. Where the driver admitted the absence of driving licence, the insurer was held liable to pay, but declared entitled for recovery from the insured. [(Hans Raj vs. Anil Sachdeva) 2007 (4) TAC 179 (P&H)]; [(National Insurance Co. Ltd. vs. Sarala Pasayat) 2007 (4) TAC 591 (Ori)].
- i . However, in another case, the insurer was denied the defence that the driver did not possess a valid driving licence to drive the bus, since it was found that there was no pleading made by him even to prosecute the defence. [(Akhilesh Gupta vs. Arvind Kumar) 2007 ACJ2477 (MP)].
- i . In a most recent case absence of driving licence for tractor was held sufficient to exonerate insurer from liability. [(Sardari vs. Sushil Kumar) 2008 (2) Supreme 451]; [2008 (1) TN MAC 294].

### g) Expired Driving Licence

In the specific case of persons holding expired licences, it was found that the under the then India Motor Tariff regime, the insurers had used the expression **"has held"** in the licence clause. This was interpreted to mean that in the experience of the insurers, holding a permanent licence, even if expired would suffice. Such drivers must be deemed to be competent as well. Mere expiry of licence, therefore, would not enable insurers to avoid liability [(Srinivasa Roadways Vs. Saroja) 1975 ACJ 265: AIR 1975 (Mad) 126: 88 LW 144 : 1974 (2) MLJ 364].

With MV Act, 1988 coming into force the India Motor Tariff provisions were also amended. The expression has held was removed from the policy purview. As per Form 51 of Central Motor Vehicles Rules, 1989 the expression now used is **"holds"** in the present continuous and not past participle. If so, the insurer claimed that under the new dispensation they can no longer be held liable if the licence had expired.

This argument was held hollow in the face of the use of conjunction and in the licence clause including and is not disqualified from holding or obtaining. The driving licence was not renewed in time, within the stipulated 30 days. It was held that insurer cannot avoid liability, more so, when the occurrence of accident was unrelated to the cause vide [2004 ACJ 1 (SC). [(National Insurance Co. Ltd. vs. Sushil Kumar) 2007 ACJ 2230 (P&H)]. Also read [(New India Assurance Co. Ltd. vs. Phelisha Bakai) 2007 ACJ 2388 (Gau)] for a contra view.

If the accident occurs within 30 days of the expiry of Driving Licence; the Driving Licence could have been renewed and, therefore, is deemed to be valid and effective [(Ram Babu Tiwari vs. UIIC Ltd) 2008 (3) TLNJ 312].

Where the driving licence had expired and renewal was not availed within 30 days provided, then the insurer would not be liable. [(New India Assurance Co. Ltd. vs. Sudesh Kumari) 2007 (II) ACC 386 (HP)]. Where the owner himself was the driver and the driving licence had expired and not renewed in time, it was held that exoneration of insurance company was proper. [(Dhirendra Singh Sengar vs. Gopi Singh Kalicharan) 2007 (3) TAC 755 (MP)].

Therefore, except in cases where the drivers never held a licence, it was evident that insurers cannot escape liability. For one reason or another factual matrix was held against the insurer.

In a case where the licence had expired prior to accident and was renewed afterwards, it was held that the fact that the driver had got his licence renewed was proof that he was not disqualified from holding or obtaining one. Hence, the insurer was held obliged to not only prove absence of effective licence but also that the driver was disqualified in [(Oriental Insurance Co. Ltd., Vs. Indrani) 1995 ACJ 703: 1995 (1) MLJ 82] which position of law has since been affirmed by the apex court also in 2004 ACJ 1 (Swaran Singhs Case).

On expiry of Driving Licence the Insurer is not liable. [(Ram Babu Tewari vs. UIIC Ltd) 2008 (6) MLJ 1056 (SC)]. [(NIC vs. Vidhyadhar Mahariwala) 2008 (7) Supreme 89] also is to the same effect.

#### **h) Learner's Licence**

Holding a **Learner's Licence** LLR itself is no ground to refuse indemnity for the insurer. [(Daulat Ram vs. Kuri) 2007 ACJ 1449 (Raj)]: The insurer cannot avoid liability on the ground that the driver held only LLR driving licence. [(National Insurance Co. Ltd. vs. Chakali Rangaiah) 2007 (4) TAC 650 (AP)].

The owner / rider of the 2-wheeler held a LLR and the pillion rider did not hold a driving licence. It was held that the insurer was not liable in such circumstances, since the LLR holder shall have to be accompanied by an instructor holding a valid driving licence. Therefore, the insurer was granted the right of recovery.

The distinction may be relevant in certain cases where such LLR holder may not carry a pillion rider. In such cases, there would be no contravention of Rule 3 of CMV Rules, 1989, since in the case of 2-wheelers the second proviso to the said Rule contemplates an exception. A LLR holder of a 2-wheeler can ride himself and if a pillion rider accompanies him then such pillion rider shall have to hold a permanent driving licence. It is only in the case of 4-wheelers that the LLR holder cannot drive without an instructor in tow.

However even under the earlier dispensation LLR holder was competent to claim indemnity from insurer, except in cases where the LLR itself was not current and valid on the date of accident. It was also made clear by insurers by circulars that in view of the use of the parentheses in the licence clause (other than a learners licence) in contra-distinction to permanent licence, the insurer would be liable, even where the driver held a LLR. They would escape liability in cases where the LLR had expired prior to accident and no permanent licence was also obtained. This distinction has been missed out by almost every judgment relating to LLR, including in Tambes case [(New India Assurance Co. Ltd., Vs. Mandhar Madhav Tambe) AIR 1996 SC 1150: 1996 (2) SCC 328: 1996 (1) ACC 392: 1996 ACJ 253] the Supreme Court ruled that the insurer can escape liability in a case where the driver possessed only a LLR.

In the specific case of learners licence the Supreme Court, did not note the specific clause in the policy properly. In that case the LLR had actually expired prior to date of accident.

#### i) Effective Driving Licence

Under the 1939 Act on proof of breach by the insured, the insurer could avoid liability. Section 96 (3) and 96 (4) though provided for a recovery right to insurer and also under the policies of insurers vide Important Conditions, the insurer could avoid liability on proof of a defence under Section 96 (2). But under the present dispensation ushered in as of 1/7/89, Sections 149 (3) and 149 (4) though seemingly of the same language have led to completely and dramatically different construction. A simple carry forward from the earlier era without realising the different classification of the provisions has led to this remarkable benefit to the community of victims. Parliament, of course, is deemed to have applied its mind in passing any legislation.

In view of the changed situation under Sections 149 (3) and (4) it is the stated legal position that notwithstanding **proof of absence of effective licence** for the driver; the insurer would have to pay. As for recovery, the insurer has to establish that the insured was in deliberate breach and the accident was caused by such absence of driving licence etc. The authoritative pronouncement in this regard is in Swaran Singhs case supra.

A careful reading of the said decision would disclose that the Learned Judges were convinced that it was their solemn duty to ensure that the insurers shall be made to pay as otherwise the direction to pay would be meaningless to the victims. They were well supported by earlier decisions and therefore they concluded that for the insurer avoiding liability was next to impossible. And even for recovery, the degree of proof for the insurer was pegged very high.

Thus the lot of accident victims have been well protected to ensure that irrespective of the nature of proof/evidence of the insurer on absence of driving licence, the claimants would still be entitled for the relief and the insurer after all the labouring would only be entitled to the elusive remedy of right of recovery from the insured. So be it.

#### **j) Licence for Transport Vehicles**

Let us consider Section 10 of MV Act, 1988 as amended on 14/11/94. The said provision relates to Form and Contents of driving licences. The sub clauses (e) to (h) from 10 (2) were deleted as of 14/11/94 removing the classifications as Heavy Goods Vehicle, Heavy Passenger Vehicle, Medium Goods Vehicle and Medium Passenger Vehicle and introducing one omnibus clause in Transport Vehicle.

This necessarily meant that a person having an endorsement to drive a Transport Vehicle would be entitled to drive all classes of transport vehicles. All the different classes of transport vehicles having come under one fold, they ought to be read so.

In fact the RTAs themselves would not be entitled to mention any more than Transport Vehicle and this meant that a person's entitled to drive on such endorsement, can drive all classes of transport vehicles. This interpretation was also so accepted by the State Consumer Disputes Redressal Commission, Chennai in [(New India Assurance Co. Ltd., Vs. Ambika) 2003 (3) CPJ 155].

#### **i. Competency for class or type of Vehicle**

However, one conundrum needs detailed explaining. Under Section 9 (5) a person's competence has to be tested in a particular class or type of vehicle. The driver held driving licence of LMV but did not have an endorsement to drive HGV. The insurer was not liable. It has been made clear that pay and recover was permissible only for third party claimants, namely those on the road and outside the vehicle. [(NIC vs. Kaushalya Devi) CA No.9910/2006 dt.13/5/2008].

In Annappas case the Supreme Court has held that LMV holder can drive HGV also. [2008 (1) TN MAC 200 (SC).] : [2008 (3) SCC 464]. If so, he can be held competent only in that category. While so, the licence granted to him shall read one common transport vehicle. There is no type of vehicle as transport. Within transport vehicle it could be HGV, HPV or whatever. If so, a person testing for competence in a specific vehicle as HGV or HPV was now deemed authorised and competent to drive any other class of transport vehicle or all of them as the case may be.



In a case, where Driving Licence was valid and effective to drive 3-wheeler, but the vehicle involved in accident was a Goods Vehicle, the insurer was held not liable. [(NIA vs. Roshanben Rahemansha Fakir) in CA No. 3496/2008 dt.12/5/2008]: [2008 (4) Supreme 396].

## ii. Lack of authorisation to drive appropriate vehicle

In the absence of endorsement to drive a 2-wheeler, the insurer is not liable. [(OIC vs. Amma ponnu) 2008 (3) TLNJ 215 (Civil)]. In (CA No. 3055/2008 dt.29/4/2008) in [(OIC vs. Zaharulnisha) [2008 (1) TN MAC 123 (Mad)]]. In the absence of **Badge to drive auto rickshaw**, it was held that examination of RTO official was not necessary. The insurer was held not liable but was directed to pay and seek recovery.

The driver held a LMV driving licence and only subsequent to accident, obtained an endorsement to drive a HGV and it was held that the insured's father cannot be said to be unaware of the absence of requisite valid driving licence for his son and the insurer would not be liable for the claim. But in the circumstances of this case insurer was directed to pay and seek recovery from the insured. [(Oriental Insurance Co. Ltd. vs. Syed Ibrahim) 2007 (6) Supreme 574]: [2007 (4) LW 782; 2007 (4) TAC 385].

The driver possessed a driving licence for LMV, while he was found driving Commercial Jeep carrying passengers. The lack of authorisation to drive a Taxi was held a breach, but it was held that the insurer would have to pay and seek recovery. [(Radhabai vs. H K Siddiqui) 2007 ACJ 991 (MP)]: [(Darshan Singh vs. National Insurance Co. Ltd) 2007 ACJ 2001 (P&H)]: [(United India Insurance Co. Ltd. vs. Dhulipalla Prameela Devi) 2007 ACJ 2321 (AP)]: [(Malkiat Singh vs. Mohinder Singh) 2007 ACJ 2370 (P&H)].

In another case the driver possessed LMV driving licence with authority to drive Maxi Cab. The argument that he was not authorized to drive a Tourist Taxi was negated. [(National Insurance Co. Ltd. vs. Kanakammal) 2007 (4) LW 994 (Mad): 2008 (1) TLNJ 93 (Civil)].

However, in a case holding a LMV driving licence was not found sufficient, if the vehicle involved was a Commercial / Transport vehicle. The insurer in this case was exonerated from liability. [(The Oriental Insurance Co. Ltd. vs. Sivammal) 2007 (3) TLNJ 487 (Civil)]: [2007 (6) MLJ 384] & [(Oriental Insurance Co. Ltd. vs. Bhimala Pavan Kumar) 2007 (3) T A C 989 (AP)]. The Supreme Court has now categorically ruled that mere possession of LMV driving licence would not suffice, if the vehicle in question was registered as a Transport Vehicle. In the absence of any endorsement in the driving licence to drive the said class of vehicle, the insurer would not be liable to meet the Own Damage claims. [(New India Assurance Co. Ltd. vs. Prabhu Lal) 2007 (8) Supreme 343]: [2008 (1) TN MAC 97].

As the driver had held a driving licence to drive a Public Service Vehicle and a Heavy Transport Vehicle, he was held entitled to drive a Heavy Goods vehicle as well as Heavy Passenger Vehicle. The insurer was denied the right to avoid liability and as such the right of recovery granted to the insurer was set aside. [(National Insurance Co. Ltd. vs. Om Prakash) 2007 ACJ 2634 (J&K)].

Where the vehicle was LMV and the driver possessed a driving licence to drive a Heavy Vehicle, the insurer could not to dispute liability. [Sanjay vs. Akhilesh 2007 ACJ 771 (MP): [(United India Insurance Co. Ltd. vs. Joseph Rochunga) 2007 (II) ACC 562 (Gau)]: [(National Insurance Co. Ltd. vs. Nalini U. Mallya) 2007 (3) ACC 185 (Kant)].

The driver possessed authorisation to drive a Heavy Goods Vehicle but did not possess endorsement to drive such a vehicle carrying dangerous and hazardous goods as required by CMV Rules, 1989. It was held that its absence was not material since it did not affect the competence of the drive and did not prove that the accident was traceable to its absence. [(Baghelkhan Filling Station vs. Brijbhan Prasad) 2007 (II) ACC 457 (MP)].

The driver held a driving licence to drive HGV, but did not hold the driving licence to ride 2- wheeler. The insurer was held not liable but asked to pay and recover. It was made clear that such recovery was only for third party victims and not for those inside the vehicle as passengers.

### Author Note

The legislators need to explain the implications of type of Transport vehicles for clarity of provisions. Section 10(2) of MV Act has been amended as of 14/11/94, and the corresponding Form in the CMV Rules, 1989 was amended from 2001. Significantly though even now Medium Passenger Vehicle finds a mention in the Form under the Rules.

## 6. Motor Vehicle requisitioned by the Statutory Authority

The motor vehicle insured with an insurer was requisitioned during assembly election by SDM through appropriate authority and was under the possession and control of the said officer. The death of a third party was caused by the officer, which led to a claim under Section 166 of 1988 Act impleading the SDM and the State.

In the above case, save and except for the legal ownership, for all intent and purposes, the registered owner of the vehicle lost control over the vehicle due to requisition made by the SDM in exercise of power conferred upon him under the Peoples Representation Act.



Since the owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle, he does not exercise any control while the vehicle remains under requisition. The driver may still be the employee of the owner of the vehicle, but he has to drive it as per the direction of the officer of the State who is put in charge of it.

The Apex Court in [(National Insurance company vs. Deepa Devi) (2008) 1 SCC 414)]; having regard to definition of owner as contained in Section 2(30) of the 1988 Act, and to the fact that the vehicle in question was not used for the purpose for which the contract of insurance was entered into, held that the State shall be liable to pay compensation and not the registered owner of the vehicle and consequently not the insurer.

## **7. Passengers carried in Goods Vehicle**

Section 147 of the 1988 Act purports to insure person or classes of persons under Act only policy as follows:

- i. In case of the goods vehicles, Policy covers the driver and employees carried in the vehicle (up to EC Act liability only) employed in connection with the operation and maintenance of the vehicle, owner of goods or his authorised representatives, and persons outside the vehicle.
- i . In case of the public service vehicles, Policy covers the passengers and persons outside the vehicle under Act only Policy. It also covers Workmen's Compensation liability of employed driver, conductor and ticket examiner.

In case of private vehicle (2 or 4-wheeler) Policy covers the driver (up to Employees Compensation Act liability only), and persons outside the vehicle.

The restricted insurance coverage applies only when insured opts for the Act only / Liability policy. If the insured is prepared to pay extra premium, the liability is covered as per the Indian Motor Tariff guidelines for Comprehensive / Package policy of two wheeler and Private Car, as inbuilt coverage for occupants of the vehicle (not carried for hire or reward) up to the limit of seating capacity of the vehicle. The non-fare paying or fare paying passengers / gratuitous passengers can be covered by paying extra premium up to the limit of liability chosen by the insured under Personal Accident cover.

However, in case of excess carrying of passengers, or passengers carried in goods vehicle, MACT has been doling out adverse verdicts against the insurance companies, keeping in view the Policy contract terms and conditions vis-vis provisions of Motor Vehicle Act, 1988, permitting passengers in various type of vehicles, specified numbers of passengers permitted to travel in certain type of vehicles and specified persons authorised to drive such vehicles.

It is a fact that it is a common practice on our highways Heavy Vehicle drivers, solicit carriage of persons stranded or looking for transport for a price or even offer to carry them gratuitously. The number of accidents involving such vehicles is also very large. Also, accidents leave behind a trail of destruction in host of victims, making it difficult for the insurers to defend their interest.

#### a) Who is a Gratuitous Passenger?

Gratuitous Passenger is the person carried in a vehicle for the ride without paying fare i.e., a Nishulk Yatri. Such occupants of the vehicle may or may not be known to the owner-insured of the vehicle.

#### Example

For example, the pillion rider of two wheeler, occupants of the private car, occupants of goods carriage other than those employed as driver and workmen in connection with the operation and maintenance of the vehicle, person other than the passengers, employed as driver, conductor, ticket examiner carried in public service vehicles.

Under Section 147 of MV Act 1988, no statutory liability has been enjoined on the owners to get vehicles insured for such class of persons under the Act only policy issued in compliance to the Motor Vehicle Act, 1988, despite existence of Section 147-(1) (b) (i) including any person. The words „**any person**“ as used in Section 147 of the Motor Vehicles Act, 1988, would not include passengers or occupants of the vehicle, but would rather be confined to the legislative intent to provide for third party risk outside the insured vehicle.

In [(Ramshrey vs. New India Assurance Co. Ltd) date of judgement 22.07.03] where a cleaner of the bus died in the accident, the Supreme Court held that as no premium for cleaner was paid, and premium payment was for only 1 driver and 13 passengers, under Section-147 of the MV Act 1988, the cleaner of the bus is not statutorily covered.

#### b) Obligation of insurers

In [(National Insurance Co. Ltd. vs. Baljit Kaur and Others) date of judgement 06/01/2004] it was held that the word „**any person**“ in Section 147(1) (b) (i) was not intended by the legislature to include passengers, who are gratuitous or otherwise present in the goods carriage, but is intended to address third parties, that is why separate amendment of 1994 was made to include owner of the goods or its authorised representatives.

**c) „Any person“ is not every person**

If the word ‘any person’ had included ‘every person’ in the vehicle, then there was no need to include owner of the goods or his representative separately in goods carriage by an amendment. The corollary is that the owner of the vehicle is not enjoined with any responsibility under Section 147 of the 1988 Act to take coverage for the gratuitous passengers, and the insurer is not under any obligation to indemnify the insured for the death or injury to any gratuitous passenger.

It has been repeatedly held that under 1939 Act, the insurer was not liable for gratuitous occupants, fare paying passengers and owner or representative of owner of goods carried in a goods vehicle. [(Oriental Insurance Co. Ltd. vs. Thukarama Adappa) 2007 ACJ 1497 (Kant)]. It has been made clear that only those persons who are workmen are required to be covered and no one else is visualised under statutory coverage.

**i. Position until 14/11/94**

The legal position as enunciated therein is good law under MV Act, 1988 too, except to the limited extent of extending it to owners or representatives of owners of goods also as of 14/11/94 as confirmed in a recent judgement that the expression any person in a Goods Vehicle would refer only to owner of goods or authorised representative. As per Section 147 of Motor Vehicle Act 1988, representative or owner of the goods carrying vehicle cannot travel in the Goods carriage in terms of the definition of Goods carriage given in 1988 Act. However, as per 14-11-1994 amendments to Motor Vehicle Act 1988, the representative or owner of the goods is allowed to travel in goods carriage, and the insurance company is liable to pay compensation.

**ii. „Any person and vehicle“ a generic expression**

Even while advertng to the fact that as of 14/11/94 owners or representative of owners of goods, were contemplated for statutory coverage, a curious but significant fact on record had hitherto gone unnoticed. Under MV Act, 1939, persons carried in a goods vehicle were not required to be covered. Calls went out that considering the notorious fact of such carriage of persons Parliament introduced Act 54 of 1994 with an amending clause to Section 147 (1). Now, sub-section (1) of Section 147 is in relation to ‘any person and vehicle’ a generic expression and it does not relate to Goods Vehicle alone but to every class of vehicle.

If so, it appears that a clever argument can be mounted that in any class of vehicle if a person was travelling as owner of the vehicle or as representative of owner of the vehicle then statutory coverage was offered.

This may help the cause of victims who are travelling as pillion riders or gratuitous occupants in a private car, who are now held not covered under an Act Policy vide the recent decision of Supreme Court in [(Tilak Singh's case) 2006 (2) CTC 661].

A clever argument can be built since the phraseology of owner or representative of owner of goods is not incorporated in a sub-section, which is confined in its application to Goods Vehicle; it would be held applicable to all classes of vehicles. The statute is silent as to how it is confined to Goods Vehicle.

The applicability of doctrine of pay and recover in this arena ought to be restricted to those judgments which were rendered until 3/12/2002 (Asha Rani Case supra) and in respect of judgments after 3/12/2002 the insurer ought to be exonerated completely.

In the absence of proof that the occupant had paid hire for his carriage in the goods vehicle, he would be a gratuitous occupant and a third party within the meaning of Sec.145 (g) and entitled to compensation. [(New India Assurance Co. Ltd. vs. Girvarnath) 2007 (II) ACC 493 (MP)]

#### **d) Binding Case Law on the subject \*\*\*\*\***

Fundamentally, pay and recover, as a theme of action has to be in cases where the insurer is otherwise liable. In a case where the insurer has not covered the risk of the kind sought for, there is no scope for liability to be fastened on them. If so, to direct the payment against insurer and seek recovery from the insured would be improper.

An insurance company is on strong grounds in taking the stand against passengers in a goods carriage as it amounts to breach of condition of Goods Carriage. Passengers carried in Goods carriage, be it for hire or reward or gratuitous passengers, contravenes definition of Goods carriage as per Section 2 (14) of 1988 Act and amounts to use for a purpose other than for which permit was issued.

In a case where the victim was carried in a goods vehicle on 1/6/91, the date of accident, it was held that statutorily there was no cover for the insurer. The insurer was held not liable to meet the claim. It was held elsewhere, that the date of accident would be relevant to fix the law applicable, and the insurer would not be liable for passengers carried in a Goods Vehicle [(Cholletti Bharatham 2008 (2) LW 1 (SC): 2008 (2) TN MAC 29 (SC)].

As on date, the binding case law on the subject would be [(Asharanis Case) 2003 ACJ 1 (SC)] in respect of accidents occurring under MV Act, 1988. As per [(Thokchom Ongbi Sangeeta and another vs. Oriental Insurance Company Ltd & Ors.) 2008 ACJ 6 (SC)], the insurer is not liable to pay and recover, where provisions of the 1988 Act do not enjoin any statutory liability on owner to get his vehicle insured for passengers travelling in Goods Carriage.

The Insurance Company must take specific plea in the written statement quoting the aforesaid provision and Thokchom Ongbi Sangeeta case (supra) to exonerate company's liability absolutely. To substantiate the insurer's plea, positive evidence should be adduced like summoning through Claims Tribunal, of the investigating officer who has prepared the charge sheet. The insurance company has to produce FIR, Charge sheet and the same should be marked through independent witness or company official. The company official may be asked to prove Section 2(14) and its purport, in the light of the case of Thokchom Ongbi Sangeeta (supra).

There was no requirement to cover the risk to passengers carried in a goods vehicle. [(New India Assurance Co. Ltd. vs. Vedwati) 2007 ACJ 1043 (SC)]. In [(NIC vs. Kaushalaya Devi) 2008 (4) Supreme 441] it was held that the insurer was not liable to pay for a passenger in Goods Vehicle.

In a motor accident case, the employees of the owner were being transported in the goods vehicle from their place of work. The claim was held not tenable against the insurer since the employees had nothing to do with the operation of the vehicle and had to be construed as unauthorised occupants only under the Act policy.

Where the deceased was the son of the Owner of the Truck and there was no proof that he was accompanying with the goods, he was held to be a gratuitous occupant in the goods vehicle and the insurer was exonerated from liability.

Where the victim touched a goods vehicle touching an electric pole and was electrocuted, the finding was that he was not a passenger and only a third party and therefore, entitled to the claim from insurer.

Where the gratuitous occupant was alighting from the goods vehicle and had got down, he ceased to be an occupant and would only be a third party victim

The liability to a passenger in a goods vehicle was held to be non-existent under the MV Act, following the earlier decisions, unless such occupant was a workman whose liability was restricted under EC Act, 1923. Although the insurer was held not liable, it was held by Apex Court that if the amount was already withdrawn the decision shall not be interfered with. However, if the amount was not withdrawn the insurance company was allowed to withdraw the deposit [(NIC vs Bhukya Tara) 2008 (4) Supreme 203].

In a case the insurer denied liability for an unauthorised occupant carried in the goods vehicle. However, the insurer having failed to produce the policy of insurance and establish their defence were held liable but with liberty to seek recovery from the insured.

#### **e) Passengers in Tractor**

In [(Oriental Insurance Co. Ltd vs Brij Mohan) decided on 15.05.07] the Supreme Court observed that the injured-claimant was merely a passenger travelling on the trolley attached to the tractor and the tractor is not even a goods vehicle or vehicle for carrying passengers. The Supreme Court, therefore, considered claimant as unauthorised or gratuitous passenger.

In respect of gratuitous passengers, there are various other classes of vehicles involved. In particular, persons travelling on a tractor are a class by themselves. It is submitted that even if such persons were workmen carried on a tractor, legally, the insurer would not be liable for such persons, when they were travelling on the tractor.[( National Insurance Co. Ltd. vs. Chinnamma)-2004 (4) CTC 459 (SC)].

The Registration certificate permits seating capacity for only one person, namely driver. There is no physical space provided for carriage of any other person, other than the driver. If so, the insurer cannot be expected to cover any person other than the driver. As for coverage granted by the insurer to workmen associated with the tractor, it would mean that such workmen, when engaged in loading or unloading, when the vehicle was stationary would alone be covered. When the vehicle is in motion there is no scope or provision for coverage for such persons.

#### **f) Workman on Stationary Tractor**

If the insurance policy has contemplated cover for workmen in addition to driver, it can only be seen as covered when the workmen were engaged in loading and unloading, while the vehicle was stationary.

#### **i. Gratuitous Passengers in Tractor-Trailer**

The insurer is not liable for persons carried on tractor-trailer, being a passenger not covered [2008 (2) LW 19 (SC)]. When the tractor-trailer was used other than for agricultural purpose it was held that the insurer has to pay and recover the amount. In a case where the labourer was carried in a tractor-trailer, the trailer was not insured, and the purpose of carriage was for digging of mud for brick kiln, not an agricultural purpose. It was held that such person was not covered under the contract of insurance.



But in exercise of discretion under Art.136 the insurer was directed to pay and recover [(Oriental Insurance Co. Ltd. vs. Brij Mohan) 2007 ACJ 1909 (SC)]. In another case the claim for a coolie carried in a tractor, the owner of the vehicle was held liable to meet the claim, on the grounds that risk to such person's was not required to be covered. In another case a person was carried in a tractor-trailer, with the trailer un-insured, the insurer was exonerated of the liability

Even though the tractor-trailer would be construed as a goods carriage, but the fact remains that there is no physical space for carrying persons, as such coverage to such persons may not arise. This decision should be seen in the light of the applicability of the judgment [in (Asha Ranis Case) 2003 ACJ 1 (SC)] exonerating the insurer completely in view of no statutory liability enjoyed by him by the act of legislature.

#### **g) Number of persons covered as gratuitous passenger**

As to the number of such persons who could be carried in a goods vehicle, which also is breached more often than not, one has to refer to the seating capacity in the Registration Certificate. The insurer's liability would be restricted to such number of persons permitted, to be carried in the vehicle. The relevant Rules in each State provides for number of persons that can be carried in a goods vehicle. The liability of insurer would be restricted to such number only.

The insurer would be liable only for the permitted number carried in Goods Vehicle. They would be liable for the highest of the 6 award amounts as held [in (NIA vs. Prabhu 2008 (7) MLJ 229)]. All claims in excess thereof would have to be borne by the insured. The liability for 6 persons claims was fixed as being first six, chronologically in the absence of any other methodology available. This may not be the best solution but no other equitable solution appears possible in law.

Although overloading is not a defence available to the insurer, they are entitled to restrict their liability to the permitted number. If so, it may be possible to conclude that the insurer may have to pay for all the claimants and seek recovery in respect of those claims in excess of 6 persons and that being decided chronologically, subject to the fact that the persons so carried are entitled to coverage in the first place.

#### **h) Third Party and not Gratuitous Passenger**

The persons going to pick up empty boxes are not passengers accompanying goods, therefore, insurer was not liable [in (NIC vs. Kaushalya Devi)-CA No. 9910/2006 date of judgement. 13/5/2008].



Where labourers were travelling along with logs of woods the claim was held tenable. In a case of a claim for the death of an owner of household articles being carried in the goods vehicle, it was held sustainable, as the insurer had failed to prove that the victim was only a gratuitous occupant [in (P. Annamma vs. N. N. A. Patrick) 2007 ACJ 830 (AP)].

In another case, mere carriage of a bag or two of grains in a goods vehicle would not amount to carriage goods. Such occupant has to be construed as gratuitous occupant only, not entitled for statutory cover under the contract of insurance [in (United India Insurance Co. Ltd. vs. Smt. Lalithbai) 2007 AIHC 2063 (Kant); 2007 ACJ 2342 (Kant)].

The insurer having failed to establish that the victims were gratuitous occupants, as against the pleading that they were accompanying the fertilizer, they were held liable for the claims [in (National Insurance Co. Ltd. vs. Lakhuben Punabhai Vaghari) 2007 ACJ 2253 (Guj)].

#### **i) Pay and Recover for Gratuitous Passenger risk in Goods Carriage**

It has been clearly held that the power to direct pay and recover was exercisable by the Supreme Court only as held [in (NIA vs. Vinayaga Moorthi) 2008 (7) MLJ 588]. In one case a person was carried in goods vehicle but the insurer was held not liable (for claim).

However, the claimant was permitted to retain the amount already withdrawn and for the balance of award the claimant was allowed to proceed against the owner [in (NIC vs. Chennaiammal) 2008 (4) LW 495)].

In another case a person was travelling on the mudguard of a tractor belonging to 3 brothers, while the son of one of the brothers was driving the tractor, without having a driving licence.

The Apex Court invoked its discretion under Art.142 and the insurer was asked to pay and recover [in (2008) (2) Supreme 144 Darshana Devi]: [2008 (3) LW 28; 2008 (1) TN MAC 322].

#### **j) Gratuitous passenger in a Private Car**

The High Court of Gujarat decided that the insurance company was not liable to meet the claim for gratuitous occupant carried in a private car or as a pillion rider on a 2-wheeler unless the insured had paid additional premium for such coverage in [2008 ACJ 61 (Guj)], it was ruled that payment of additional premium alone was the criteria to cast liability for such persons on the insurer. [(Mathew Joseph vs. Janaki) 2007 ACJ 912 (Ker); 2007 (II) ACC 140 (Ker) (FB)]; [(United India Insurance Co. Ltd. vs. Bhagyalakshmi) 2007 ACJ 1676 (Kant)].

The scope of Act Liability only policy is restrictive as per Section 147 (b) (i), and does not cover occupants of the vehicle, although passengers are not carried for hire or reward. The word any person in the section has been differentiated connoting restrictive meaning, as compared to word third party in relation to damage to any property.

The wording in Section II (a) relating to Third Party in Package Policy covering Own damage and Third Party Liability has, however, been amended by the TAC to include Occupants carried in the Motor car provided that such occupants are not carried for Hire or reward, thereby, covering the occupants whether with or without knowledge of the insured.

In a case where the victim was travelling in the private car in his capacity as Regional Manager of the employer/owner of the vehicle, it was held that there was no coverage for such a victim under the contract of insurance. The claim was not sustainable on the private car insurance policy, as the risk was not required to be covered and not covered also. [(Oriental Insurance Co. Ltd. vs. Meena Variyal) 2007 ACJ 1284 (SC)].

On a reading of the terms of the contract of insurance, a comprehensive policy, that insurer had offered cover to occupants carried in or upon the private car except those carried for hire or reward and in the absence of proof that the victim was carried for hire or reward, it was held that the insurer was liable to meet the occupants claim. [(Oriental Insurance Co. Ltd. vs. Nakirikanti Narendra Babu) 2007 ACJ 2069 (AP)]. In 2008 ACJ 61 (Guj) the risk to such persons under a comprehensive policy was considered and the insurer was held liable.

The claim was preferred in respect of a fare-paying passenger carried in a private vehicle, where such carriage was not permitted. The defence of the insurer that such claim was not tenable more so under the contractual Personal Accident liability was not maintainable before the Tribunal and was rejected as being technical. The risk to passengers carried having been covered the insurer was directed to pay. [(United India Insurance Co. Ltd. vs. Keludappa) 2007 ACJ 1241 (Kant)].

#### **k) No cover for Pillion Rider or Gratuitous Occupants**

The liability of insurer to a pillion rider as a gratuitous occupant would depend upon the cover granted by the insurer whether under Act Policy or Package Policy. In respect of an Act Policy such persons are not required to be covered. It is only under a Package policy that such persons are covered by the Contract of Insurance. Following the decision of the Supreme Court in [(United India Insurance Co. Ltd. vs. Tilak Singh) 2006 ACJ 1441: 2006 (2) ACC 1], it was held that the insurer would not be liable to a pillion rider under an Act Policy.

In case of death of a pillion rider under Section 163A defence of the insurer that the risk to such persons was not required to be covered, was rejected on the premise that for liability under Section 163-A it was irrelevant to determine about the status of the deceased as pillion rider or a third party etc. [(National Insurance Co. Ltd. vs. Rukshanaben Salimbai Vora)]. Section 163-A does not take away the right of insurer to dispute liability under the contract of insurance, and it is not as if notwithstanding provision of cover insurer would still have to pay. Section 163-A only precludes a contest on negligence, if any.

### l) Personal Accident liability to Owner and other Occupants

The claim for insured-owner of the vehicle in [(The Oriental Insurance Co. Ltd. vs. Chopri Devi) AIR 2007 Uttarakhand 62]: [2007 (4) TAC 303], while driving the motor vehicle, was held not sustainable under the contract of insurance. However, a sum of Rs. 200,000/- contemplated under the contractual Personal Accident cover was held tenable and directed to be paid to the claimants. In [(United India Insurance Co. Ltd. vs. Sunanda) 2007 ACJ 1715 (Bom)], where the deceased was owner- driver of the 2 wheeler, the Personal Accident cover of Rs.1,00,000/- was held liable under the contract of insurance.

#### i. Position as per TAC provisions

By reason of the decision in [(Pushpabai's Case) 1977 ACJ 343] delivered on 25/3/77 the insurers were held not liable for gratuitous occupants carried in a private vehicle under a Policy.

The Tariff Advisory Committee in its wisdom deemed it fit to issue a Circular dated 17/3/78 to the effect that insurers shall offer cover to gratuitous occupants carried in a private car, which shall take effect from 25/3/77; the date on which Supreme Court delivered its verdict. It was made clear that such cover was available under Comprehensive Policies of insurance [in (Minor Harshvardhatiya Rudradithya vs. Jyotindra Chimanlal Parikh) 1981 ACJ 277 (Guj)]. Subsequently in respect of pillion riders also the Tariff Advisory Committee issued a circular dated 1/6/96 that persons carried in or upon pillion, except those carried for hire or reward for inclusion for coverage under a Comprehensive Policy of Motor Insurance will be covered.

Hence the insurers, under the present dispensation, be it the MV Act, 1988 or the new Tariff regime from 1/7/2002, have been consistent in projecting that under an Act Policy they have not offered cover to pillion riders or gratuitous occupants in a private car. **They have, however, offered cover to such persons under a Comprehensive cover.** This position of law has been vindicated in the most recent decision.

However, it is eminently possible that the Courts may continue to hold that notwithstanding the absence of such liability, the insurer may still have to pay and seek recovery only. However, it would be erroneous, since there is no statutory liability attaching to the insurer and so it cannot be considered akin to a Breach of Condition of Policy.

## 8. Limit of Liability

When there is limit of liability, the insurer cannot be asked to pay and seek recovery. In a case where the victim was a Third Party to a goods vehicle, and no additional premium was paid, it was held that the insurers liability was as per 1939 Act only. [(The Oriental Insurance Co. Ltd. vs. Jeevan Janga) 2007 AIHC 2483 (All)]. In respect of an accident occurring on 22/6/87 involving a goods vehicle, it was held that the liability of the insurer was restricted to Rs. 1,50,000/- only under the insurance cover, but the insurer was directed to pay and seek recovery of the excess from the insured.

The Act policy of insurance was brought on record, but *no official was examined to prove the same*. Thereby, benefit of doubt was made available to the Third Party and the insurer was directed to bear the entire liability and not the contractual limit thereof. [(New India Assurance Co. Ltd. vs. Smt.Nirmala Devi) 2007 (3) TAC 414 (Del)]; [(Rajesh Kumar vs. Gurnam Kaur) 2007 (3) TAC 501 (P&H)]. Therefore, it is a must to prove the insurance documents for limited liabilities.

### Test Yourself 8

As per Section 14 that deals with the currency of driving licences, a Learners Licence is effective for                     .

- I. Three months from the date of application
  - II. Three months from the date of issue
  - III. Six months from the date of application
  - IV. Six months from the date of issue
-

## Summary

- a) In England the Motor Insurance Bureau takes on responsibility to compensate Third Parties for motor accidents involving vehicles that are uninsured, or untraced.
- b) In India, motor insurance is mandatory vide Section 146 MV Act, 1988.
- c) Motor Vehicle Act is a benevolent legislation as far as compensation is payable towards third party liability.
- d) It is generally understood that the person seeking insurance must have a legal right to insure the subject matter of insurance. Therefore, insurers insist on the Registration Certificate of the vehicle being in the name of the insured, at the time of availing cover.
- e) In practice, subrogation has been modified by Knock for Knock agreement between insurers in case of liability arising out of physical damage to vehicles involved and respective insurers meet full liability of vehicles insured by them.
- f) Section 146 is amended by Amendment Act 1994 to cast an additional duty that the owner of the vehicle carrying dangerous or hazardous goods shall also go in for a policy of insurance under the –Public Liability Insurance Act, 1991.
- g) All motor policies contain a clause called –Avoidance of certain terms and right of recovery.
- h) The provisions relating to compulsory third party insurance do not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.
- i) Section 150 Motor Vehicles Act, 1988 provides for the rights of third parties in the event of the insolvency of the insured or in the event of winding up when the insured is a Company.
- j) Section 155 of 1988 Act provides that if the insured person dies after incurring third party liability, then the cause of action survives against the insured's estate, or legal heirs or against the insurer.
- k) Section 163 (A) contains special provision as to payment of compensation on –structural formula basis.

- l) The following persons can prefer claims for death or disability due to negligence of the driver of a vehicle:
- i. Pedestrians
  - ii. Fare paying passengers
  - iii. Non-fare paying passengers
  - iv. Persons travelling in other vehicles
  - v. Children
- m) An allegation of negligence may be rebutted by the following defences:
- i. Volenti Non-fit injuria
  - ii. Inevitable accident
  - iii. Act of God
  - iv. Emergency
- n) Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence but a case of injury by composite negligence.
- o) Principle of Apportionment for passenger vehicles: Where a passenger vehicle is found overloaded and the number of claimants exceeds the seating capacity of the vehicle as per R.C. Book, the insurers are required to pay to the extent of permitted seating capacity, by choosing the highest awarded amounts of claims, which is distributed amongst all the cases equally.
- p) Option to move EC Commissioner or Motor Accident Claims Tribunal: As per Section 167 of MV Act, 1988 it is open to the workman to exercise an option to move MACT or go before the EC Commissioner.
- q) Motor Accidents Claims Tribunals (MACT): For the speedy disposal of third party claims and at a minimum cost, the Claims Tribunals have been constituted by different State Governments, under Section 110 of Motor Vehicles Act, 1939.
- r) Section 173 provides for provision of filing Appeal for a person aggrieved by an award of MACT. However, there is a bar on filing appeal for an award of a Claims Tribunal if the amount in dispute is less than ten thousand rupees.
- s) The Tribunals have all the powers and trappings of a Civil Court. One important adjunct of the power of a Civil Court being available to the MACT is the power in relation to review or recall of an award against the insurer in case fraud is established later.



- t) Pay and Recover for victims on the road only: Supreme Court has clarified that in the absence of driving licence per se, the insurer cannot be asked to pay and recover.
- u) Alternate methods of settlement include:
  - i. Conciliatory Committee
  - i . Joint Compromise Petition
  - i i. Jald Rahat Yojna
  - iv. Consensual Adjudication
  - v. Lok Adalat
  - vi. Permanent Lok Adalat for ‘Insurance Service’
  - vi . Solatium Fund
- v) Three basic principles governing determination of compensation in injury disablement claims:
  - i. Principle of Assessability
  - i . Principle of Uniformity
  - ii. . Principle of Predictability
- w) Kinds of damages include pecuniary damages and non-pecuniary damages.
- x) The Court has the discretion to adopt a suitable multiplier, be it higher than the schedule or lesser than it for good and valid reasons, but shall, however, not exceed 18 at the maximum.
- y) In order to defend Motor Third Party liability cases effectively the insurance company must collect all relevant documents through investigator relating to:
  - i. Accident site details
  - i . Contact with insured
  - i i. Contact with driver
  - iv. Contact with claimants / deceased representatives / friends and neighbours / colleagues
  - v. Police Papers
  - vi. RTO Papers
  - vi . Medical Papers
- z) An insurer can contest the proceedings before the Claims Tribunal only on any of the grounds prescribed under Section 149 (2) of the 1988 Act, and unless specific permission is granted by the Claims Tribunal under Section 170 of the 1988 Act, the insurer cannot contest the case on grounds other than those mentioned in Section 149 (2) of the 1988 Act.



- aa) Section 64 VB of Insurance Act, 1938 for advance payment of premium renders contract void ab initio but the fact of dishonor of cheque must be communicated to insured and RTA effectively to exonerate from statutory liability of payment by Insurer.
  - bb) To avoid liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not been disqualified to drive at the relevant time.
  - cc) When there is limit of liability, the insurer cannot be asked to pay and seek recovery.
- 



**Answers to Test Yourself****Answer 1**

The correct answer is III.

In Germany, in case of death of a person, the maximum lumpsum amount that can be paid under Motor Third Party insurance is Euro 6,00,000.

**Answer 2**

The correct option is I.

As per the 'limits of liability' specified in the MV Act, in respect of damage to any property of a third party out of one accident, the limit is Rs. 6,000.

**Answer 3**

The correct option is II.

Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is a case of injury by composite negligence.

**Answer 4**

The correct option is II.

Claims for compensation for liability under the Motor vehicles Act arise out of negligence and fall under the law of torts.

**Answer 5**

The correct option is IV.

The present revised limit of financial authority of Divisional-in-house Conciliatory Committee (DICC) for Motor TP claims is Rs. 10,00,000/-.

**Answer 6**

The correct option is I.

Three basic principles govern the determination of compensation in injury disablement claims. In case of grave injury, where the brain suffers massive impairment, it is difficult to arrive at a fair compensation in terms of money. The principle of assessability envisages that the award must basically be a 'conventional figure' derived from experience.

**Answer 7**

The correct option is III.

Motor insurance cover is compulsory as per Section 146 of the Motor Insurance Act.

**Answer 8**

The correct option is IV.

As per Section 14 that deals with the currency of driving licences, a Learners Licence is effective for six months from the date of issue.

**Self-Examination Questions****Question 1**

In \_\_\_\_\_, unidentified and uninsured vehicles victims are compensated from the Guarantee Fund (Fonds de Garantie).

- I. Portugal
- II. Spain
- III. France
- IV. Italy

**Question 2**

As per Section 161, in respect of the death of any person resulting from a hit and run motor accident, the compensation payable is fixed at \_\_\_\_\_.

- I. Rs. 12,500
- II. Rs. 25,000
- III. Rs. 37,500
- IV. Rs. 50,000

**Question 3**

As per Section 173, no appeal can be filed against the award of the Claims Tribunal if the amount in dispute is \_\_\_\_\_.

- I. Less than Rs. 10,000
- II. More than Rs. 10,000
- III. Less than Rs. 25,000
- IV. More than Rs. 25,000

**Answers to Self-Examination Questions****Answer 1**

The correct option is III.

In France, unidentified and uninsured vehicles victims are compensated from the Guarantee Fund (Fonds de Garantie).

**Answer 2**

The correct option is IV.

As per Section 161, in respect of the death of any person resulting from a hit and run motor accident, the compensation payable is fixed at Rs. 50,000/-.

**Answer 3**

The correct option is I.

As per Section 173, no appeal can be filed against the award of the Claims Tribunal if the amount in dispute is less than Rs.10,000/-

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# CHAPTER 9

## PROCEDURES FOR FILING AND DEFENDING

### Chapter Introduction

In this chapter you will learn about the procedures and powers of claims tribunals, procedure for filing and defending third party claims and steps to be taken in third party motor accident cases.

### Learning Outcomes

- A. Legal Provisions and Jurisdiction of Civil Courts
- B. Procedure for Filing & Defending and Steps for Third Party Motor Accident Cases



## A. Legal Provisions and Jurisdiction of Civil Courts

### 1. Procedures and Powers of Claims Tribunals

**Section 169 (1)** of Motor Vehicle Act 1988 stipulates that the Tribunal can in the exercise of own decision grant adjournment.

**Section 169 (2):** Tribunal can recall and re-examine the witness. In the absence of rules providing for the applicability of Or 18 of the Civil Procedure Code (hearing of the suit and examination of the witness) to acclaim application the Claims Tribunal, can adopt as per the circumstances of a case its own procedure to attain the ends of justice and pass orders for re-examination of fitness of both parties (AIR 1977).

**Section 169 (3) Minor claimant:** When any compromise is made on behalf of the minor in a claim, the safe guard provided in Or 323, Rule 7, CPC will apply, (AIR 1975).

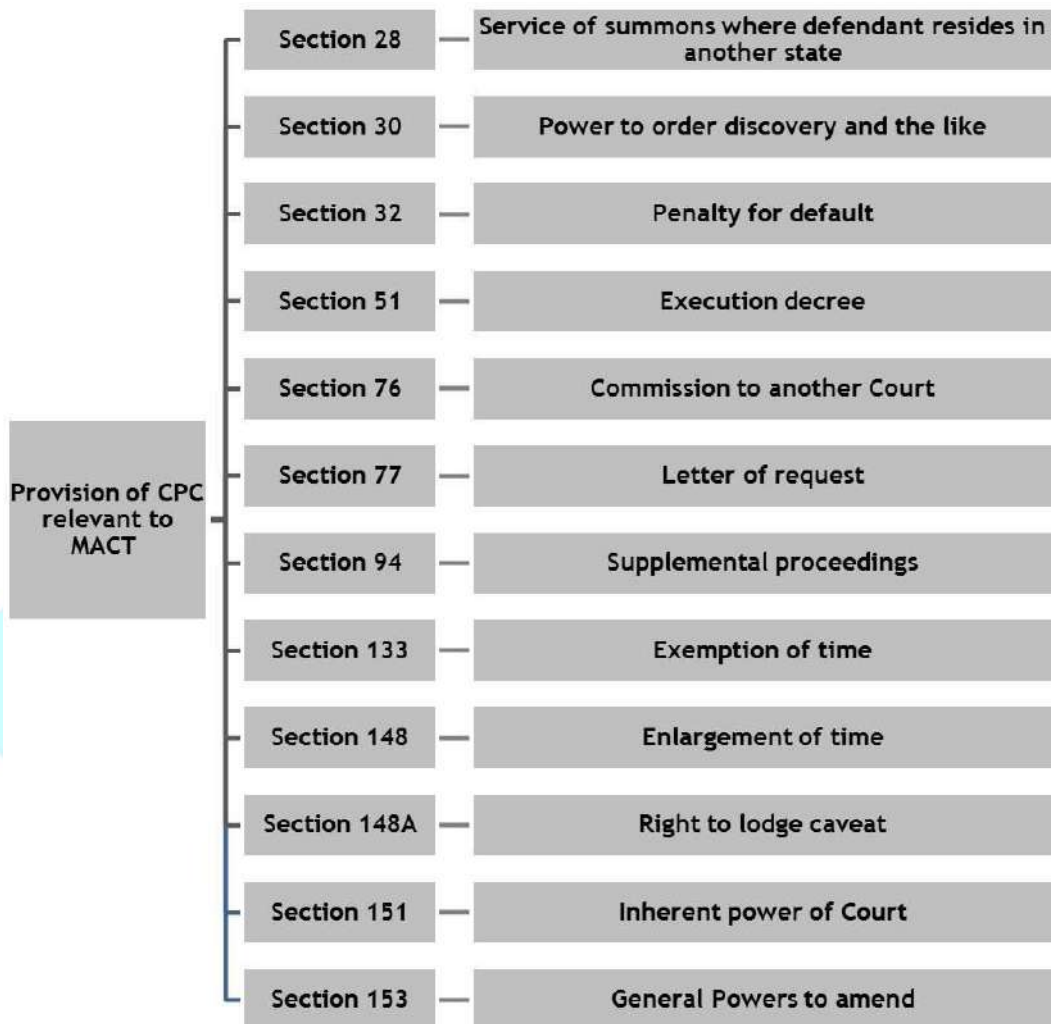
Under Sec. 169 (2) of the MV Act 1988, MACT shall have all the powers of a Civil Court for the purpose of taking evidence, enforcing attendance of witness, and compelling the discovery and production of documents etc.

The Claims Tribunal is deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973. Therefore, one should be familiar with some of the important Sections of Code of Civil Procedure 1908, which governs the powers of the Civil Courts.

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## a) Provision of CPC relevant to MACT

Diagram 1: Provision of CPC relevant to MACT



- i. **Section 28: Service of summons:** The Court may issue summons to another state where the defendant resides.
- ii. **Section 30: Power to order discovery:** Court on application of any party may make orders, delivery, answering, admission, of documents and facts, return of documents, inspection, discovery, issue of summons, order any fact to be proved by affidavit.
- iii. **Section 32: Penalty for default:** Court may compel the attendance of any person, can issue warrants, attach or sell his property, impose fine, not exceeding Rs. 500/- to furnish security, in default commit him to civil prison.



- iv. **Section 35 A: Compensatory Cost.** The compensatory cost shall not exceed Rs. 3,000/- or exceeding the limit of its pecuniary jurisdiction, whichever amount is less in respect of false or vexatious claims or defence excluding appeal or a revision.
- v. **Section 51: Execution decree:** The Court may on the application of the decree holder order execution of the decree:
  - (a) By delivery of any property specifically decreed; and
  - (b) By attachment and sale or by sale without attachment etc.
- vi. **Section 75: Power of Courts to issue commission:** to examine any person, local investigation, to examine or adjust a/c, to make partition, hold technical or expert investigation, sale of property subject to natural decay, any ministerial act.
- vii. **Section 76: Commission to another Court:** Where the person is a resident beyond the local limit of its jurisdiction, the Court may issue commission to another Court.
- viii. **Section 77: Letter of request:** In lieu of commission the Court may issue letter of request to examine the witness residing at any place not within India.
- ix. **Section 94: Supplemental proceedings:** In order to prevent the ends of justice from being defeated the Court may issue warrant to arrest, direct defendant to furnish security, grant a temporary injunction, appoint a receiver, and make such other interlocutory orders.
- x. **Section 95: Compensation for obtaining arrest, attachment or injunction on insufficient grounds** such amount not exceeding Rs. 1,000/- or subject to the limit of pecuniary jurisdiction of the Court.
- xi. **Section 132: Exemption of certain woman:** from personal appearance where according to custom a country woman cannot to be compelled to make personal appearance.
- xii. **Section 133:: Exemption of time** is permitted to President of India, and Vice- President of India.
- xiii. **Section 148: Extension of time:** The court may in its own discretion extend the time fixed by it for doing any act under this Civil Procedure Code, even though the period originally fixed by the court may have expired.

- xiv. Section 148A: Right to lodge caveat:** An application is made or one appears before the court on the hearing of such application: he may lodge a caveat in respect thereof. The caveat shall not remain in force after 90 days from the date of filing. A caveat is an application requesting the court to give the notice of any proceedings against the applicant before deciding the matter. Caveat makes it mandatory for the court to serve notice to a caveat or before passing any order.
- xv. Section 151: Inherent powers of Court:** The court may make such orders to achieve the ends of justice.
- xvi. Section 153: General Powers to amend:** The court for any purpose of determining the real question or issue may amend any defect or error in any proceeding.

<b>Order 1</b>	Non-joinder of necessary party
<b>Order 6</b>	Amendment petition can be filed
<b>Order 8</b>	Defines written statement
<b>Order 13</b>	Production, impounding and return of documents
<b>Order 16</b>	Summoning and attendance of witness
<b>Order 18</b>	Hearing of the suit and examination of the witness
<b>Order 21</b>	Execution of decrees and orders
<b>Order 41</b>	Appeals from original decrees. Additional evidence can be produced at the appellate stage

The proceedings in the Motor Accidents Claims Tribunal are summary in nature, without following technicalities of Code of Civil Procedure or strict compliance of Evidence Act. Therefore it is necessary to know the stages in MACT claims proceedings.

## 2. Procedure for Filing of Claim

First the applicant inwards the claim application in Registry for availing compensation as envisaged under Motor Vehicle Act 1988. The registrar of Claims Tribunal after making initial scrutiny allots the Court for admission hearing. The date of in-warding the application determines when the application was filed.

### a) Notice / Summons

The Claims Tribunal to whom the claim is allotted, passes the order of issue notice i.e., issues summons to the opponent. All supporting documents produced by the applicant are required to be accompanied with the summons. If the requirement as per rule 254 is not received, a letter should be written to MACT Judge. Therefore, before the matter is listed for hearing, the petitioners advocate should prepare his own short notes, which would be helpful to him in narrating the facts.

The points, which are to be urged at the Bar should be jotted down precisely and the strongest point should be argued first.

#### **b) Appearance of defendant**

The opponent has to appear on the schedule date personally or through his advocate. The panel advocate's primary role is to use his professional skills to protect the interest of insurance company, besides protecting insurance company from the apathy of insured owner / driver and at times collusion by insured owner / driver with the Third Party claimants.

The advocate is required to initially move an application to obtain comprehensive 'search report' after having details of documents filed by petitioner. The copies of such documents are given to the insurer to trace insurance particulars and expedite the process of satisfying the liability of the insured as envisaged in Motor Vehicle Act, 1988.

On submission of search report by the Advocate and on the basis of confirmation of the insurance and coverage for insured vehicle in the said accident, the panel advocate submits a „Say Report" to registrar. In case insurance is not accepted or not confirmed „No Say Report" is submitted.

#### **c) Regarding Negligence**

The defence of contributory negligence and composite negligence also needs to be verified before finalising written statement. If there is no statutory defence available, the defence of negligence is helpful in reducing quantum. The contributory negligence is the negligence wherein victim is also contributing to the occurrence of the accident, and this fact can be adjudged by spot, panchnama and statement of witnesses.

The investigator has to forward the statement of the driver, if recorded, to help in defending the case. The composite negligence is negligence where the victim is not directly contributing to the accident i.e., death or injury is caused due to no fault of the victim e.g., if there is a collision of two vehicles, an occupant in a car or pillion rider of a two wheeler is not contributing to the accident, but is a victim in that accident. Hence, before finalizing written statement one has to verify under which category of negligence the case is to be pleaded.

#### **d) Regarding quantum**

The information regarding quantum is also to be obtained through the investigator. The Income tax return, salary slip etc. are helpful in reducing the quantum or at least conclusion can be drawn regarding genuineness of the claim. Therefore, written statement is the only document where in all the defences are to be pleaded without fail.

Necessary care should be taken that pleading in written statement without proving and establishing defence is of no use.

#### **e) Claims under structured formula**

Section 163 A is based on statutory structured formula, wherein negligence is not to be pleaded i.e., the claim is to be contested on, income and age of the deceased. Thus when u/s 163 a claim is awarded one has to take care about the income of deceased and his age, without pleading negligence.

#### **f) Filing of Written Statement by Insurer**

There are normally two types of defenses:

- i. One is statutory defence provided in the statute itself whereas
- i . Other is factual defence which is made out in a written statement

If a case is fit to contest, the written statement is a crucial document for pleading in court by the opponent. The purpose of written statement is to let petitioner know the defenses pleaded by the contesting defendant insurer. Pleadings taken by panel advocate in written statement should be precise and adequate. Written Statement (Order 8 Rule 1 CPC)

The Order 8 of CPC defines written statement. The written statement is required to be filed either by admitting or denying liability within 90 days from the date of service of summons. However, considering the procedure before Claims Tribunal, the aforesaid rule is not meticulously followed. The written Statement should not be filed on general denial basis. The denial should be specific and not evasive. The following measures are to be taken while scrutinising the written statement:

- i. There must be specific pleading in the written statement, either denying or accepting liability.
- i . Defence points and new facts must be pleaded specifically.
- i . Insurance Company must deal specifically with each allegation of fact which it does not admit.
- iv. Not admitted is no denial and no knowledge is worse than not admitted and these words should be avoided in the Written Statement.
- v. It is legally necessary to file the documents along with written statement on which the defence relies, before the Tribunal Court.

- vi. Written Statement is to be filed before the first hearing, and the insurance company should cause no undue delay in filing the written statement.

**i. Non-joinder of necessary party (Order 1 Rule 9 and 10 of CPC)**

In the Third Party liability cases the insured owner, driver of the insured vehicle, as well as owner, driver and the insurer of the other vehicle; in case of collision are generally necessary parties to the proceedings. Further, all legal heirs of the victim are also necessary parties. Wherever, such necessary parties are not impleaded in the proceedings, a contention can be made in the written statement that the suit is bad for non-joinder of necessary parties.

**ii. Owner is not a Third Party**

Where an applicant himself was driving the vehicle, and was hurt in the accident, he cannot be accepted as a third party as he is a joint tortfeasor. See [(Oriental Insurance Co. Ltd. vs. Hansraj Kodala & others) 2001 (5) ACJ 827 (SC)]. The Gujarat High Court has laid down a principle that application under Section 140 of MV Act 1988 alone is not maintainable. The applicant must file an application under Section 166 also.

As the application for no fault liability under Section 140 is a part of application u/s 166, for fault liability. The Section 166 requires the person at fault to pay compensation. How one can claim compensation for his own fault?

The driver is not entitled to get relief under Section 140 for his own negligence. The definition of liability under Section 146 includes Section 140 also. When the insurer is not liable to pay compensation under Section 166 how can liability under Section 140 be passed on to insurance company?

**iii. Driver is not a Third Party**

A driver cannot claim compensation in MACT for his own negligence because he is liable to pay compensation. [2001 (7) ACJ 1329 (MP)]

In TNSRTC vs. Natrajan & others, [II (2003) ACC 1 (SC)] the claimant himself was driver of TNSRTC Bus and he was found negligent to the extent of 50%. The Corporation was held vicariously liable for negligence of claimant himself. In [2001 (5) ACJ 998] it was held that owner is liable to pay compensation to the third party and the driver is not a third party.

#### **iv. Mis-joinder of necessary party**

In other situation, wherever a person who is not a necessary party but has been made as a party, contention can be made in the written statement to the effect that the suit is bad for mis-joinder of necessary parties viz. GIC does not issue Motor Policy, GIC has been made a party hence there is mis-joinder of necessary party. In a case where the widow filed a claim application, though the deceased left behind six children, it was non-joinder of necessary parties.

#### **v. Right to file Additional Written Statement before hearing**

It is necessary to reserve the right for filing additional written statement as and when fresh facts come to our notice at a subsequent stage. Additional written statement can be filed before commencement of the hearing. Our written statement should incorporate one paragraph reserving our right to file additional written statement. The Tribunal has inherent power to permit the procedure for putting forward ground of law in defence by way of an additional written statement (1967 ACJ 153).

#### **vi. Amendment to Written Statement (Order 6 Rule 17)**

It is essential that on receipt of the written statement concerned insurance company's officer should scrutinise it properly before signing the same. At the time of scrutiny it is necessary to ensure that frivolous pleas and pleas of general nature are avoided.

The Written Statement can be amended as per the above provision of the CPC at any stage before completion of evidence. If it is necessary to amend a particular contention in the written statement, an amendment petition can be filed under Order 6 Rule 17 of CPC seeking amendment. This provision can be invoked to amend particular contentions on receipt of fresh facts or contrary facts based on documentary evidence.

#### **vii. Leading Defence by Insurers**

Section 147 of 1988 Act provides for the mandatory Motor Policy. The Policy is a basic document; hence the defences available on Motor Policy are especially on the issue of third party liability, and limit of liability for third party property damage. When these types of defence pleas are used in a case, the respondent must submit Policy terms and conditions, other details regarding time of Policy, period of policy, registration number of vehicle etc. If the defence of Policy is pleaded, then the dealing advocate should be instructed specifically regarding limits of liability in the Policy, premium cheque dishonour if any, and additional premium, if paid.



Section 149(2) of 1988 Act provides defence which statute has provided. Therefore, these two sections are crucial while finalising the written statement; pleading, proving and establishment.

There is ample difference in the three concepts of pleading, proving and establishing i.e.

- (a) Before proving defence one has to **plead** the defence,
- (b) After pleading defense, efforts should be made to explore how it can be **proved** by way of documents.
- (c) After providing proof of the document, one has to satisfy the court that defence is **established**.

### Example

If defence for non-holding of licence by the driver is pleaded, we have to:

- i. First **plead** about the non-holding of licence,
- i . As a next step, parties to **prove** in charge sheet Section 3(18) of MV Act 1988 whether it is leveled or not. To prove said fact, the Insurer has to submit copy of notice issued through insurance company to produce driving license, certified copy of charge sheet to get driving licence exhibited, arrange summons against driver at the time of leading evidence on behalf of Insurance company, examination of investigator and finally to submit and get exhibited Policy terms and conditions.
- i . When all these documents have been proved by way of evidence, then only we can say that the defence is **established** and proved.

### viii. Filing of No-Fault Liability application

For filing no-fault liability application, the applicant has to undertake compliance of Rule 255 of Motor Vehicle Rules. If the insurance company admits insurance, No-Fault Liability order is passed and, thereafter, matter is posted for framing issues. Section 140 is retrospectively applicable to pending claim [1992 ACJ 977].

### g) Out of Court or Compromise Settlement

The investigation report helps in determining merits of the claim for compromise settlement or to take a decision to contest the case. When the claim is admitted based on documentary evidences and no statutory defenses are available to the company to contest, adequate efforts should be made to reach a compromise on the claims through alternative forum like DICC/RICC/Conciliatory panels or as per individual Financial Authority according to the merit of each case.



### i. Framing of Issues

Basically, issues are the points on which Court decides the case and arrive at the conclusion. Issues are of two types, i.e., issues on:

- ✓ facts, and
- ✓ law

Generally, issues are framed on material proposition of fact or law averred by one party and denied by the other party. The issue means the points to be proved by the opponents who are contesting. When there are rival contentions, the issues are framed to facilitate adjudication. The contesting parties accordingly have to lead and prove said facts.

**Need to frame Issues (Order 14 Rule 16 CPC):** After the filing of written statement, Claims Tribunal proceeds for trial on deciding the points involved. Accordingly issues are framed on the vital disputed points requiring decision. From the insurers point of view it is important to ensure that the issues on the vital defence points are framed, so that the existing Court / Appellate court would become bound to decide on those points on analysis of evidence. If issues on vital defence points are framed and decided in respect of production and proving of evidence, then the Insurance Company will be in a better position to file appeal challenging that point.

The panel advocates are required to be briefed about framing of issues and in this regard necessary instructions are issued. The date fixed for framing of issues should be intimated to the dealing Office, so that officer / representative can attend the Court, if necessary. The issues framed in a particular case should be intimated to the office concerned by the advocate.

### ii. Leading Evidence in Claims Tribunal

The defenses available to insurers are limited as per Section 149(2) of the 1988 Act (as amended). Therefore, the insurance company contests the claim on very limited grounds as envisaged under the statutory provision.

Wherever, the insured and / or driver remain ex-parte or do not contest or do not appear even after filing of written statement or there is collusion between the claimants and the insured, the provision u/s 170 of 1988 Act can be invoked and an application can be filed before the Tribunal, seeking to take over all the defenses available to the insured / driver so that insurance company may contest the claim on merits beyond the statutory provision. In these circumstances insurance company can even challenge the quantum of compensation all alone.

The applicant has to produce evidence in order to prove his case and now a day's examination in chief is filed by way of affidavit, after which the opponents advocate has to cross examine the applicant. The said cross examination has to be conducted on the basis of pleadings made in the written statement. Thus the cross-examination has to be conducted as per defence raised in written statement.

### iii. Evidence by Opponent Insurers

**Production and proving of documentary evidence:** Pleas taken in the written statement, issues framed on defence points of documents, require each and every document to be filed in support of defence, to be proved by production and proving of documents. Each and every document filed in support of defence plea has to be proved; otherwise plea taken but not proved will not have any evidential value in the eyes of law as per the provision of the Evidence Act.

It is a settled position of law that pleas taken, but not proved have no evidential value as per the provisions of the Indian Evidence Act. Therefore, it is of utmost importance to **prove the documents** on which our defence relies, by summoning the concerned persons, who have issued the documents; e.g., when we take the plea regarding fake driving licence and also breach of specified policy conditions, it is required that concerned RTO should appear before the Claims Tribunal to prove the validity of driving licence while policy conditions should be proved through insurance company's representatives.

### iv. Compelling Discovery & Production of Documents

Wherever certain documents are in possession of the other party and in spite of our best efforts the same could not be procured, Section 169(2) of the M.V. Act 1988 may be invoked compelling discovery and production of documents; e.g., for production of driving licence particulars this provision will be of help. The opponent has to lead evidence as per stand / defence pleaded in written statement and thereafter, defence of opponent if any has to be adduced and evidence gets proved.

### v. Appointment of Local Commission for Obtaining Evidence

Wherever the concerned Road Transport Authority (RTA) is situated far away or in other States or beyond 300 KM from the place of trial, and inspite of the repeated attempts the attendance of RTA is difficult for adducing evidence, application may be filed for examination of RTA through Local Commission. Accordingly the courts appoint commission who visits the RTA and records his statement, and such reports of the commission are admissible as evidence.

## vi. Evidential value of Investigation Report

Generally much credence is not given by the Claims Tribunals to the investigation report obtained through Insurance Company's investigator. It is, therefore, necessary that the investigation report should corroborate facts along with other evidences to make it acceptable in the Court.

The investigators should be specifically advised to submit the investigation report along with supporting documents / evidences. Mere detailing of facts and circumstance in the investigation is not enough for being admitted as evidence.

**Revision Petition for interim orders (Section 115 CPC):** Claims Tribunal is a court subordinate to High Court and a revision under Section 115 CPC is maintainable [1991 ACJ 150(SC)]. The provision is for filing revision petition challenging interim or introductory order if any.

### Example

In case of rejection of any amendment petition, or petition for additional evidence or of suggestive issues by the Tribunal, revision can be filed challenging that particular rejection order before the High Court.

## h) Arguments during Proceedings

The arguments are advanced on the basis of pleadings, exhibited / proved documents, and on the basis of admissions in cross-examination. Where the case requires that an Advocate must present his point, he should not give up merely because of an unfavorable expression of opinion by the Judges. The business of an advocate is to convince or persuade the Judge to his point of view. Therefore, unless the advocate combines tact with knowledge of law and facts, he cannot succeed in the case.

**i. Citation of Case Laws:** During arguments, case laws are to be referred to and then comes the last stage, the pronouncement of judgment. Selected citation of the cases, which lay down the law in support of the contentions of an advocate, is more effective.

### Test Yourself 1

The written statement is required to be filed by the insurer either by admitting or denying liability within \_\_\_\_\_ from the date of service of summons.

- I. 30 days
- II. 60 days
- III. 90 days
- IV. 120 days

**B. Procedure for Filing & Defending and Steps for Third Party claims****1. Procedure for Filing and Defending****a) Award by the Claims Tribunal**

After the evidence is completed, the court passes an award deciding on each issue involved on the basis of issues so framed. As per Section 168 (2) a copy of the award can be delivered to the parties concerned within a period of 15 days from the date of award and as per Section 168(3) the award should be satisfied within 30 days from the date of award unless it merits appeal.

**i. Intimation of Judgement and deposit of award**

The Honourable court delivers judgement on the basis of available evidence and documents. The Supreme Court in [ (Rajasthan State Road Transport Corporation. vs. Poonam Pahwa & others) CA no. 435/97] held that mere deposit of the amount is not enough. It has to be intimated to the decree holder by the judgement debtor so as not to attract further interest liability. Therefore, it is necessary to intimate to the claimants regarding satisfaction of awards in compliance of the Apex Court decision.

**ii. Review of Order**

The claims tribunal was held to have all the trappings of a Civil Court by virtue of Sec.169 (2) also and in order to do justice it could invoke such powers. While following the decision in [(1997 ACJ 778 (Ker)] the decision in [2005 ACJ 1563 (Ker)] was overturned in [(Asmath Khan vs. Chadrahasa Bangara) 2007 ACJ 1071 (Ker)]: [(Parashram Mahadev Divate vs. United India Insurance Co. Ltd) 2007 ACJ 1438 (Kant)].

- (a) In the context of IT Act, 1961 in [2008 (6) Supreme 653], it has been held that passing an order in ignorance of a High Court judgment would be apparent error on the face of record.
- (b) The Tribunal cannot stretch its inherent power so as to include the power of reviewing its own order [1967 ACJ192] except when fraud is detected later.

**iii. Appeal against award**

If the aggrieved party desires, it can file an appeal. The petitioner has to take due care in awarding the application for obtaining a certified copy of the award, so as to avoid delay and other complications at the time of preferring appeal.

An appeal can be filed within 90 days from the date of award, if the awarded amount is excessive, inappropriate to age, income status of the victims and any other point of law is involved. At the time of filing of appeal, 50% of the awarded amount or Rs.2, 500/- whichever is less has to be deposited in the manner directed by the High Court.

#### **iv. Additional evidence in appeal (Order 41 Rule - 27 CPC)**

In case, certain important / vital evidence in support of our defence plea could not be produced before the Trial Court in spite of reasonable efforts, additional evidence can be produced at the appellate stage under ORDER 41 Rule 27 of CPC. Here the burden lies on the insurance company to explain non-production of the evidence at the Tribunal / Trial stage.

In the case of National Insurance Company Ltd vs. Jugal Kishore, Policy copy in support of limited liability contention was admitted at the Supreme Court stage.

#### **v. Revision Petition at High Court**

In a case, where the insurer had satisfied the interim award under protest, and the claim petition came to be withdrawn after compromise with the owner of the vehicle. But the insurer subsequently challenged the same by a writ petition, as there was collusion and fraud. The High Court allowed the relief and remitted the matter for disposal on merits. [(National Insurance Co. Ltd. vs. Mohan) 2007 ACJ 1321 (Raj)]. In a case where a claim was laid under Sec.166 and converted into a claim under Sec.163-A, the challenge to this order was scotched in appeal, as not illegal. [(Ravinder v Subash Chand) 2007 ACJ 1365 (P&H)].

To compute the amount in dispute for considering maintainability of the appeal, interest, costs, compensatory costs etc. have to be included in arriving at the sum. It was held in [1984 ACJ 408 (Ker)]. [(Ajesh Alex vs. John) 2007 ACJ 1481 (Ker)] that, the debtor having to pay the entire liability the amount in dispute would include all the said sums.

In [(National Insurance Co Ltd vs. Duwas Ram Yadav) 2007 ACJ 763 (P&H)] it was held that when no appeal was provided for under Sec.173 as the amount in dispute was less than Rs. 10,000/-, a revision cannot be introduced.

A revision under Article 227 were also held not maintainable in [(Jabir vs. MACT) 2007 ACJ 885 (All)]. See [(New India Assurance Co. Ltd. vs. Charubala Das) 2007 ACJ 1146 (Gau)] in which it was held that since the Tribunal had committed a jurisdictional error the insurer could seek correction of the same in revision. In another case it was held that a revision under Sec.115 CPC would not lie [(Oriental Insurance Co. Ltd. vs. Manju) 2007 ACJ 1538 (All)].

The insurer had not availed permission under Sec.170 of MV Act, 1988. In its absence, they sought to file a revision petition against the award. It was held that such revision was not tenable, as it would enable them to circumvent the statutory obligation and make the provisions thereto nugatory. It was so decided in [(Oriental Insurance Co. Ltd. vs. Liansangpuii) 2007 ACJ 801 (Gau)]: [(Calcutta State Transport Corporation vs. Sudama Ghosh) 2007 (3) T A C 793 (Cal)] relying primarily on [(Sadhana Lodh vs. National Insurance Co. Ltd.) 2003 ACJ 505 (SC)].

#### **b) First Appeal (Single Judge)**

In the first place, an appeal is generally heard by a Single Judge which is called the first appeal. On disposal of the first appeal there is a provision for filing of appeal before the Division Bench.

#### **c) Letters Patent Appeal (LPA)**

The appeal before the Division Bench challenging the order of the Single Judge is called the Letters Patent Appeal (LPA). The Letters Patent Appeal can be considered meticulously and very carefully at the RO level. Letters Patent Appeal challenging an order passed by a single judge of the High Court under Section 140 of the act is maintainable. Refer Chandra Kant Sinha vs. Oriental Insurance company Ltd and others [2002 ACJ 210 (SC)]

Section 100 A of the Code of Civil Procedure (inserted by Amendment Act 22 of 2002) The full bench of Andhra Pradesh High Court held that the right of appeal available under Letters Patent has been taken away by Section 100 A of the code of Civil Procedure (inserted by amendment Act 22 of 2002) in respect of matters arising under the special enactment or other instruments having the force of law. {Gasndla Pannala Bhulaxmi vs. Managing Director A.P. SRTC & ors [2003 ACJ 2004]} {P.S. Sathappan (dead) by LRs vs. Andhra Bank Ltd., [2005 1-LW 218 (SC CB)]}

#### **d) Special Leave Petition (SLP)**

There is a provision to file Special Leave Petition before the Supreme Court within 90 days from the date of Judgement challenging the order of the Division Bench as and when necessary depending on the merit of the case.

It may be noted that all appeals have to be considered at the Regional Office level and all SLPs have to be considered at Head Office level irrespective of the amount involved.

The insurance company nowadays instructs the advocate to add the pleadings regarding Section 170 of 1988 Act. However, Sec. 170 is a matter of procedure wherein application is made if insured fails to contest the claim, hence S. 170 can't be a part of pleadings as such in anticipation.



## 2. Steps to be taken in Third Party Motor Accident Cases

### a) Third Party Claims (Fatal and Non-fatal)

Intimation about an accident resulting into third party claim is received through insured either directly or by mentioning while lodging own damage claim or by Claimant directly or by MACT / Courts by notice or through accident report from Police in Form-54 prescribed under Central Motor Vehicles Rules 1989.

#### i. Appointment of Investigator

An investigation about the accident is carried out to collect the relevant data to quantify reasonable and just compensation in respect of all Third Party Claims. The companies should ensure that this investigation helps them in finalising out of court settlement at the earliest. If necessary, on receipt of notice from the MACT a competent Advocate from the panel may be appointed.

The relevant documents and information should be given to him immediately to enable him to draft written statement on behalf of the Company and ensure that proper defence is taken where necessary, and no frivolous statements are made. He is also provided with a duly certified true copy of the complete policy with the relevant clauses and endorsements as actually attached with the original policy issued to cover the vehicle at the material time of accident.

#### ii. Drivers Licence

In case, it is observed that driver was not duly licensed, the necessary information should be given to the advocate. Though under Section 149 (2) of the MV Act, 1988, insurance company has no liability, if the driver is not duly licensed, the onus to prove that the driver was not holding a licence rests on insurance company and this obligation is required to be discharged fully to the satisfaction of the court.

If a breach of a policy condition has been observed, it should be brought to the notice of the Advocate to enable him to take proper defense. Written Statement on behalf of insurance company incorporating all defences available as enumerated under Section 149 (2) of M.V. Act, 1988 should be properly filed. Wherever necessary, when there is collusion between the insured and the claimants or when the insured fails to defend the claim, the Company's Advocate must be instructed to obtain the MACT's permission under Section 170 of the Motor Vehicle Act to defend the claim on merits.



### **iii. Receipts of summon**

All the intimations received from the owners, immediately after the accident, should be properly kept in a separate file and the same should be tagged with the file as and when summon is received from the court.

In case if it comes to the notice that there is a reference of third party claim at the time of settlement of any own damage claim, then all the papers including photo copies of Driving Licence, Claim form, Survey report, Registration book, Permit, Load Challan etc. should be kept in a separate file so that it can easily be located when the summon from the court for the third party is served on the company. If the owner submits the summons to office then a Vakalatnama should be obtained from him along with Driving Licence and documents related to the vehicle.

### **iv. Appointment of Advocate**

On receipt of summon from the MACT, a competent Advocate from the panel of advocates, should be engaged immediately and the claim should be entered into the claim intimation Register and a file to be opened. In case multiple claims arise out of one accident, the dealing office should entrust all cases to the same advocate to defend all the cases so that one file is created for all cases.

In case policy relates to other office, the copy of the claim petition along with the name of the Advocate appointed should be sent to the policy issuing office to enable them to maintain outstanding provision for the case in their books and the copy of the policy should be collected from them along with confirmation of Sec. 64 VB compliance.

### **v. Submission of documents by insured**

The insured should be asked in person or a registered A/D letter should be sent to him requesting him to furnish all the vehicular documents viz.

- ✓ RC,
- ✓ Route permit,
- ✓ Load Challan and details of cause accident,
- ✓ Driver's particulars along with copy of DL, FIR,
- ✓ Details of criminal prosecution of driver, if initiated

If the policy particulars have been disclosed in the claim petition then the policy should be immediately collected and the same should be forwarded to the Advocate after retaining a photo copy in the file along with Sec. 64 VB compliance confirmation. In case policy particulars have not been disclosed in the claim petition an endeavour should be made to contact the alleged owner of the vehicle, through registered letter and followed by a personal call to ascertain the insurance particulars.

If the above endeavour is not successful then the dealing lawyer should be advised to move an application for obtaining comprehensive 'search report' after having details of documents filed by petitioner. The copies of such documents are given to the insurer to trace insurance particulars and expedite the process.

On submission of search report by the Advocate and on the basis of confirmation of the insurance and coverage for insured vehicle in the said accident, the panel advocate submits a „**Say Report**“ to registrar. In case insurance is not accepted or not confirmed „**No Say Report**“ is submitted. If the above endeavour is not successful then the dealing lawyer should be advised to file a petition in the Tribunal for disclosing the insurance particulars by the owner of the vehicle.

#### vi. Drafting written statement

Considering the nature of the case the same should be investigated immediately by the dealing officer / investigator and the Investigation Report along with other relevant documents should be sent to the Advocate for drafting Written Statement. The following steps may be taken by the Advocate, as the case may be:

- (a) To seek adjournment for filing written statement.
- (b) To arrange filling disclosure petition if the policy particulars are not available.
- (c) To prepare and submit a draft written statement immediately for approval.
- (d) To file a petition for expunction of the name of the company if the vehicle is not insured with us at the material time of accident.

The company should arrange to file a certified copy of insurance policy along with its defence. The facts, if known, should not be denied in the written statement as defence. The Written Statement should not be prepared on total denial basis as it prejudices the Tribunal against the insurer.

The operating office should be careful to include all specific defenses, such as

- (a) Breach of policy conditions,
- (b) Non-renewal of policy,
- (c) Cancellation of policy due to dishonour of the cheque,
- (d) Driver not holding valid driving licence,
- (e) Defenses available under Section 149(2) in the written statement, as no new facts can be pleaded at time of going in appeal.

On the basis of the Investigation Report and the Lawyer's report if it is found that the liability of the company is not in doubt and the defenses under Section 149(2) of the M.V. Act 1988 are not available, an endeavour should be made to compromise the case as per guide schedule.

Where the insured / driver is set *ex parte*, the company should apply to the Court for taking over the insured's defence also by the company under Sec 170. In case company takes over defense, its liability remains as per Policy Document vis-a-vis not in excess of statutory liability.

#### **vii. Regular follow-up action**

Regular follow-up action should be made with the Advocate and on the dates of important hearing the dealing officer of the company should be present in the Court. The dealing office should advise the Advocate to arrange issuance of summons through Tribunal to Driver, Owner and R.T.A. and any other authority as the case may be.

The Advocate should inform the developments of the case to the appointing office from time to time and in case he fails to do so he should be warned immediately and his indifferent action should be intimated to the controlling Office. After the judgment is delivered by the tribunal, an application for certified copy of judgment and award should be made immediately.

#### **viii. No Fault Liability**

According to the provisions of the M.V. Act 1939 in case of Motor Accident, the owner is only liable for negligence on proof of his vicarious liability for the act of his servants. However, from 1.10.1982 the MV Act was amended and a new section 92A was introduced known as No Fault liability. Currently this amount of No Fault liability is Rs. 50,000/- and Rs. 25,000/- under Sec. 140 of the new MV Act 1988.

For making an award the tribunal has got to only satisfy itself from the materials on record, that the accident has arisen out of the use of the motor vehicle and the accident has resulted in permanent disablement or death of a person where the claim is made against the owner and insurer of the motor vehicle involved in the accident or the claim is made in case of death of the person by his legal heirs.

The no fault liability award being an interim award, should be immediately satisfied if the vehicle was covered during the relevant period and if Sec. 64 VB is complied with.

### **ix. Payment of Fault Liability Claims**

Company must initiate action to settle such claims either through Jald Rahat Yojna or Lok Adalats or Direct negotiations with the claimant through DICC and RICC. Unless conclusive proof of defences are available which would satisfy the Courts there is no point in prolonging the case.

Once an award is passed it should be satisfied immediately on its pronouncement unless of course decision is taken by the competent authority to file an appeal against judgement and award. Before taking a decision it is essential to examine the grounds on which such an appeal can be filed to ensure that a substantial point of law is involved.

### **x. Settlement of Award**

Since the supply of certified copy of the award is delayed by the Tribunals, advocate should be advised to send an uncertified copy of the award along with his opinion so that company may take immediate decision as to filing of appeal or settlement of the award. Moreover, immediate application for certified copy of award and judgment should be filed.

If the dealing advocate opines for filing of an appeal then the Operating Office should send the file to Controlling Office with their recommendation in the prescribed format along with complete file containing claim petition, W/S, judgement, award and other papers. The settlement of the award is to be made expeditiously in order to avoid payment of penal interest.

The competent authority should take appropriate action, if without sufficient reason, penal interest due to delay in satisfaction of the award is paid. The advocate should be advised to apply for the certified copy of the award immediately and on receipt of the same he should send the award forthwith to the dealing office.

If there are any lapses on the part of the advocate in taking expeditious action in this regard it should be immediately brought to the notice of the Regional Office for taking suitable action against the lawyer. Immediately after depositing the awarded amount, Court Satisfaction Order / Information Slip should be obtained confirming the payment made to the Tribunal. The lawyer's fees should also be paid within a reasonable time.

### **xi. Steps to be taken in Execution Cases**

Under Motor Vehicle Accident cases normally award is passed against insurance company, sometimes in a very arbitrary manner. With the enactment of M.V. Act 1988, the liability of the insurer has increased to unlimited one. In such situation the insurer has got a very limited defence available to avoid the enormous amount of award to be saddled upon them.

Appeal is being preferred in lieu of rarest cases by the insurer and even in such situation there is impending danger of execution of award which may get initiated any time. In case appeal is preferred, that step alone, taken by the insurer, does not keep them in an immune position or mere filing of appeal does not construe that the order of the MACT is stayed automatically.

There is no bar to initiate the execution of award unless it is stayed by the appellate court under the procedure prescribed for the purpose. In this connection M.V. Act 1988, Section 174 –Where an amount is due from any person under an award the Claims Tribunal may, on any application made to it by the person entitled to the amount, issue a certificate for amount to the collector and the collector shall proceed to recover the same in the same manner as an arrear of land Revenue.¶

This means that the court passing the decree shall make out a case for execution and direct the Collector to recover as an arrear of Land Revenue. The Act does not permit MACT. to execute its own decision. In most cases it has been experienced that MACT. court goes to the extent of executing its own order in such case the objection can be filed challenging the jurisdiction of the court. Under the spirit of statute prescribed such action amounts to excessive exercise of power not duly vested in them. Although there is contrary verdict expressed by the court, it has been held to the context as under:

–Competence and jurisdiction of Claims Tribunal to function as an executing court to execute and enforce its award according to the procedure as provided for, in order XXI of the Code of Civil Procedure Rule 23 (3) not ultra varies. Section 174 of 1988 Act stipulated that the Tribunal is a court for all intents and purposes and has jurisdiction to execute an award. Award is as executable by the Tribunal as a decree of a civil court.¶

When the matter is referred to Collector under Public Demands Recovery Act, the Certificate Officer will cause the notice to be served upon the Certificate Debtor in prescribed manner along with a copy of the Certificate under Section 7 of the Public Demands Recovery Act.

The moment notice is served upon the insurer; the immediate step to be taken by the Insurance Company is to file an objection under Section 9 of the Act which provides for filing of petition denying liability, for an objection under the act has to be filed in prescribed Form No. 4 appearing in Appendix Form mentioned therein. The said objection has to be filed within one month of receipt of notice.

Very often it has been seen that the lawyers conducting the case at the Certificate state simply seek adjournment on the oft repeated plea that the time be granted for obtaining stay order from the Hon'ble High Court as the appeal has been preferred against the impugned order.

There might have been an appeal pending in the High Court along with a prayer of stay under order 41 Rule of 5 of the code of Civil Procedure, but even in that case to grant or not to grant stay is the prerogative of High Court, which depends on the merit and exigency of the case and it is highly improper to undertake the responsibility of any anticipated order of the highest court of adjudication of the State.

The company should fight the case on merit supported with the averment that the appeal has been filed and stay petition with a prayer to stall the proceeding of execution, since appeal is there to be adjudicated.

#### **xii. Stay of operation of award during the pendency of appeal**

In case stay of operation of order is not been possible to be procured in time from the appellate court the matter should be argued on merit with all defences available on merit. Assuming that the Certificate case has been decided against the certificate debtor the scope of Section 60 of the Act comes as under:

(a) An appeal from any original order made under this Act shall lie:

- ✓ If the order was made by an assistant Collector or a Deputy Collector, or by a Certificate Officer not being the Collector - to the Collector, or
- ✓ If the order was made by the Collector, to the Commissioner,

(b) Every such appeal must be presented in case

- ✓ Within 15 days, or in case
- ✓ Within 30 days, from the date of the order

Section 60 sub-section 5 provides –Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise. Under the aforesaid the Certificate debtor may apply for stay of execution and can have the order accordingly.

Suppose the appeal fails, there is yet another remedy available to the judgement debtor and in such situation the matter can be agitated under Revision jurisdiction of the Act under Section 62: The Collector may revise any order passed by a Certificate officer, Assistant Collector or Deputy Collector under this Act. The Commissioner may revise any order passed by the Collector under the Act, and the Board of Revenue may revise any order passed by a Commissioner under the Act.



There is provision of Review under the Act Section 63 Review: –Any order passed under this Act may, after notice to all persons, interested, be reviewed by the officer who made the order, or by his successor-in office, on account of mistake or error either in the making of the certificate or in the course of any proceeding under the Act.¶

There is yet another alternate and efficacious remedy available under the act under the heading reference to civil court under Section 43 of the Act further provides the certificate debtor may, at any time within six months:

- (a) From the serving upon him of the notice required by Section 7, or
- (b) If he files, in accordance with Section 9, a petition denying liability from the date of the determination of the petition, or,
- (c) If he appeals in accordance with Section 60, from an order passed under Section 10-from the date of the decision of such appeal,

Bring a suit in a civil court to have the Certificate cancelled or modified, and for any further course consequential relief to which he may be entitled. Analysing the various provisions enumerated under the Act there is an elaborate remedy to exhaust in order to seek the redressal of grievances in case any exigency so arises.

If on any occasion the order of attachment of assets has been passed and the operation of such order is on anvil, the judgment debtor can ask for some accommodation as to seek sanction from their higher authority as they might be lacking power to dispose the certificate debt at a time.

Assuming no such accommodation is feasible the judgment debtor can say since the assets belongs to Government of India comprising several valuable securities of public at large so they are not authorised be a party or witness to the execution unless and until they are duly authorised for the purpose by their higher authority. In that case they can refuse to accept or sign over the inventory prepared for the purpose. In case of refusal of the same the executing agent will have to obtain fresh requisite under the circumstances and a new lease of life can be had for the time being to avoid any untoward incident in the matter.

Besides this, the alternative remedy under appellate jurisdiction is there to do needful under the procedure prescribed in law and the same may be pressed with all sense of urgency in warranting conditions.



**Test Yourself 2**

If the aggrieved party desires, it can file an appeal against the award. Which of the below statement is correct with regards to an appeal filed against the award?

- I. At the time of filing of appeal, 25% of the awarded amount or Rs. 2,500/- whichever is less has to be deposited in the manner directed by the High Court.
- II. At the time of filing of appeal, 25% of the awarded amount or Rs. 2,500/- whichever is more has to be deposited in the manner directed by the High Court.
- III. At the time of filing of appeal, 50% of the awarded amount or Rs. 2,500/- whichever is more has to be deposited in the manner directed by the High Court.
- IV. At the time of filing of appeal, 50% of the awarded amount or Rs. 2,500/- whichever is less has to be deposited in the manner directed by the High Court.



## Summary

- a) Section 169 (1) of Motor Vehicle Act 1988 stipulates that the Tribunal can in the exercise of own decision grant adjournment.
- b) Provision of CPC relevant to MACT:
  - i. Section 28: Service of summons where defendant resides in another state
  - i . Section 30: Power to order discovery and the like
  - ii. . Section 32: Penalty for default
  - iv. Section 51: Execution decree
  - v. Section 76: Commission to another Court
  - vi. Section 77: Letter of request
  - vi . Section 94: Supplemental proceedings
  - vi i. Section 133: Exemption of time
  - ix. Section 148: Enlargement of time
  - x. Section 148A: Right to lodge caveat
  - xi. Section 151: Inherent power of Court
  - xi . Section 153: General Powers to amend
- c) Procedure for Filing of Claim: First the applicant inwards the claim application in Registry for availing compensation as envisaged under Motor Vehicle Act 1988. The registrar of Claims Tribunal after making initial scrutiny allots the Court for admission hearing.
- d) Notice / Summons: The Claims Tribunal to whom the claim is allotted, passes the order of issue notice i.e., issues summons to the opponent.
- e) Appearance of defendant: The opponent has to appear on the scheduled date personally or through his advocate.
- f) Regarding Negligence: The defence of contributory negligence and composite negligence also needs to be verified before finalising written statement.
- g) Claims under structured formula: Section 163 A is based on statutory structured formula wherein negligence is not to be pleaded i.e., the claim is to be contested on, income and age of the deceased.
- h) Filing of Written Statement by Insurer: If a case is fit to contest, the written statement is a crucial document for pleading in court by the opponent. The written statement is required to be filed either by admitting or denying liability within 90 days from the date of service of summons.
- i) Owner is not a Third Party: Where an applicant himself was driving the vehicle, and was hurt in the accident, he cannot be accepted as a third party as he is a joint tortfeasor.

- j) Mis-joinder of necessary party: Wherever a person who is not a necessary party but has been made as a party, contention can be made in the written statement to the effect that the suit is bad for mis-joinder of necessary parties.
- k) Amendment to Written Statement (Order 6 Rule 17): The Written Statement can be amended as per the above provision of the CPC at any stage before completion of evidence.
- l) There is ample difference in the three concepts of pleading, proving and establishing i.e.
  - i. Before proving defence one has to plead the defence,
  - i . After pleading defence efforts should be made to explore how it can be proved by way of documents.
  - i . After providing proof of the document, one has to satisfy the court that defence is established.
- m) Filing of No-Fault Liability application: For filing no-fault liability application, the applicant has to undertake compliance of Rule 255 of Motor Vehicle Rules.
- n) Out of Court or Compromise Settlement: When the claim is admitted based on documentary evidences and no statutory defenses are available to the company to contest, adequate efforts should be made to reach a compromise on the claims through alternative forums according to the merit of each case.
- o) Evidence by Opponent Insurers: It is of utmost importance to prove the documents on which our defence relies, by summoning the concerned persons, who have issued the documents.
- p) Compelling Discovery & Production of Documents: Wherever certain documents are in possession of the other party and in spite of our best efforts the same could not be procured, Section 169(2) of the M.V. Act 1988 may be invoked compelling discovery and production of documents
- q) Evidential value of Investigation Report: It is, therefore, necessary that the investigation report should corroborate facts along with other evidences to make it acceptable in the Court.
- r) Arguments during Proceedings: The arguments are advanced on the basis of pleadings, exhibited / proved documents, and on the basis of admissions in cross- examination.

- s) Award by the Claims Tribunal: As per Section 168 (2) a copy of the award can be delivered to the parties concerned within a period of 15 days from the date of award and as per Section 168(3) the award should be satisfied within 30 days from the date of award unless it merits appeal.
  - t) Intimation of Judgement and deposit of award: It is necessary to intimate to the claimants regarding satisfaction of awards in compliance of the Apex Court decision.
  - u) Appeal against award: An appeal can be filed within 90 days from the date of award. At the time of filing of appeal, 50% of the awarded amount or Rs.2, 500/- whichever is less has to be deposited in the manner directed by the High Court.
  - v) Letters Patent Appeal (LPA): The appeal before the Division Bench challenging the order of the Single Judge is called the Letters Patent Appeal (LPA)
  - w) Steps to be taken in Third Party Motor Accident Cases
    - i. Appointment of Investigator
    - i . Drivers Licence: In case, it is observed that driver was not duly licensed, the necessary information should be given to the advocate.
    - i . Receipts of summon
    - iv. Appointment of Advocate
    - v. Submission of documents by insured
    - vi. Drafting written statement
    - vi . Regular follow-up action
    - vii. . Payment of Fault Liability Claims
    - ix. Settlement of Award
    - x. Stay of operation during the pendency of appeal: In case stay of operation of order is not been possible to be procured in time from the appellate court the matter should be argued on merit with all defences available on merit
-

**Answers to Test Yourself****Answer 1**

The correct answer is III.

The written statement is required to be filed by the insurer either by admitting or denying liability within 90 days from the date of service of summons.

**Answer 2**

The correct option is IV.

At the time of filing of appeal, 50% of the awarded amount or Rs. 2,500/- whichever is less has to be deposited in the manner directed by the High Court.

**Self-Examination Questions****Question 1**

Wherever certain documents are in possession of the other party and in spite of our best efforts the same could not be procured, \_\_\_\_\_ of the MV Act, 1988 may be invoked compelling discovery and production of documents.

- I. Section 167(2)
- II. Section 168(2)
- III. Section 169(2)
- IV. Section 170(2)

**Question 2**

As per Section 168(3) the award should be satisfied within \_\_\_\_\_ from the date of award unless it merits appeal.

- I. 30 days
- II. 60 days
- III. 90 days
- IV. 120 days

### Question 3

Under Section 169 (2) of the MV Act 1988, MACT shall have all the powers of a \_\_\_\_\_ for the purpose of taking evidence, enforcing attendance of witnesses, and compelling the discovery and production of documents etc.

- I. District Court
  - II. Civil Court
  - III. High Court
  - IV. District Forum
- 

### Answers to Self-Examination Questions

#### Answer 1

The correct option is III.

Wherever certain documents are in possession of the other party and in spite of our best efforts the same could not be procured, Section 169(2) of the M.V. Act 1988 may be invoked compelling discovery and production of documents.

#### Answer 2

The correct option is I.

As per Section 168(3) the award should be satisfied within 30 days from the date of award unless it merits appeal.

#### Answer 3

The correct option is II.

Under Section 169 (2) of the MV Act 1988, MACT shall have all the powers of a Civil Court for the purpose of taking evidence, enforcing attendance of witnesses, and compelling the discovery and production of documents etc.

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# CHAPTER 10

## QUANTUM FIXATION

### Chapter Introduction

In this chapter you will learn about assessment of compensation, permissible heads, damage to third party property, option to choose jurisdiction, some case studies for damages to non-earning members and treatment of interest.

### Learning Outcomes

- A. Assessment of Compensation and Type of Damages
- B. Option to choose Jurisdiction
- C. Some Case Studies for Damages to Non-earning Members





## A. Assessment of Compensation and Type of Damages

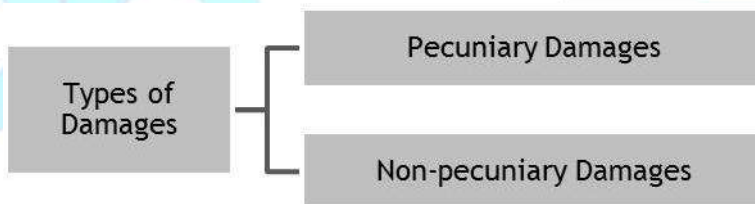
### 1. Assessment of Compensation

The purpose of granting damages in pecuniary terms under the Motor Vehicle Act, 1988 is to provide to the dependents of the victim of motor accident a capital sum, if there had not been an accident by the careless act of the driver of a motor vehicle. The amount has to be sufficient to supply the dependents / representatives with material benefits of the same standard and duration, as would have been provided for them.

Credit is given to the value of any 'material benefit' that would have accrued to them if death or disability had occurred. Specific guidelines have been given for the recovery of pecuniary 'loss to estate' of the deceased for such damages by the Amendment 54 of 1994 in Motor Vehicle Act 1988. Under Section 163(A) 'Structured Compensation schedule' has been appended on No Fault basis. The courts tend to treat it as reference for determining the amount of compensation under Section 166 of the 1988 Act, which takes into account tortious liability.

### 2. Types of Damages

Diagram 1: Types of damages



Law contemplates two sorts of damages:

- i. The one is the **pecuniary 'loss to the estate' of the deceased** resulting from the accident. The damages for the loss caused to the estate are claimed on behalf of the estate and when recovered, form part of the assets of the estate.
- i. The other loss is the pecuniary **'loss sustained by the members'** of the family through the death of the victim. The action for this is brought by the legal representatives not for the estate, but as trustees for the relatives beneficially entitled.

In order to determine an amount of compensation payable to motor accident victim, the damages have to be assessed separately as:

- i. **Pecuniary damages:** The pecuniary damages are those which the victim has actually incurred and which are capable of being quantified in terms of money.  
In [(1995) ACJ 366] Supreme Court had observed that –Whenever compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant are taken into account including his age, the unusual deprivation he has suffered, the effect thereon on his life.
- ii. **Non-pecuniary damages:** The amount for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration.

### Permissible Heads for Assessment

#### a) In case of death

- i. **Loss of dependency:** It is generally notional dependency of legal representatives or the claimants and does not envisage actual proof of dependency.
- i . Loss of expectancy a conventional sum is allowed
- i i. Loss of consortium a conventional sum is allowed
- iv. Funeral expenses a conventional sum is allowed
- v. Medical expenses if deceased was given any treatment prior to fatality

#### b) In case of simple injury

In case of simple injuries the compensation awarded is global compensation and no separate amount is awarded for medical expenses. However, if any X-ray or scanning is done, actual expenses incurred have to be reimbursed in addition to global compensation. Any incidental simple injuries sustained in an accident alongwith grievous injuries, no separate compensation need be granted in respect of simple injuries.

### c) In case of grievous injury

The permissible heads for determination of compensation in case of grievous injury are as given below:

Compensation for pain and suffering is to be granted by awarding for injuries or fractures of different bones e.g.

- ✓ Cranial bones or skull,
- ✓ Cerebral concussion i.e., injury to the brain resulting in unconsciousness,
- ✓ Cerebral contusion i.e., a direct blow to any part of the brain or cerebral edema i.e., swelling resulting in collection of blood within the brain membrane or capillary hemorrhage (bruises)
- ✓ Cerebral laceration leading to multiple neurological deficiencies
- ✓ Eye having damage to optic nerve resulting in loss of vision
- ✓ Facial bones consisting of lower jaw, upper jaw, cheek bone, orbit bone i.e., socket for resting eye ball
- ✓ Nasal bones
- ✓ Loss of tooth
- ✓ Spinal column otherwise called back bone
- ✓ Clavicle (collar) bone
- ✓ Scapular (shoulder girdle) bone
- ✓ Rib fractures (12 in number)
- ✓ Humerus (arm bone)
- ✓ Elbow joint
- ✓ Scaphoid bone (wrist joint and one out of 8 carpal bones)
- ✓ Meta carpal bones 5 in number
- ✓ Pelvic bone consisting of two hip bones situated at lower abdomen
- ✓ Acetabulum bone, Pubic bone fracture may result in rupture of urethra requiring catheters permanently.
- ✓ Splenectomy and removal of spleen does not affect longevity of health of the suffering person
- ✓ Liver, Kidney, Femur (thigh) Bone
- ✓ Fracture of Patella (Knee cap bone)
- ✓ Ligaments (Lateral, Medial, Cruciate anterior/ posterior)
- ✓ Meniscus (medial & lateral cartilages in knee joint)
- ✓ Haemarthrosis (collection of blood into joint)
- ✓ Biceps or calf Muscles (tearing and loss)
- ✓ Tibia & Fibula bones in the leg between knee joint and ankle joint
- ✓ Ankle joint
- ✓ Foot
- ✓ Fracture of Fingers and Toes
- ✓ Avulsion injury resulting in fracture of bones with tendons
- ✓ Nerve Palsy: It is damage to nerves resulting in paralysis of the muscles (Neuropraxia (reversible type of disability), Axotomy (severe injury), Neurotmesis (whole nerve cut))

While assessing compensation for pain and suffering for a person, who has sustained more than one fracture and grievous injury in different parts of the body, the fracture of grievous injury which calls for maximum amount of compensation for pain and agony should be reckoned first and additional fracture of grievous injury for different parts of the body and additional amount for each such distinct injuries is to be added and aggregate of the said amounts is awarded for pain and suffering for all injuries taking into consideration Medical expenses including nursing, attendants and nourishment

**d) Loss of income during the period of treatment**

- i. **Actual or notional wages or salary for the period of treatment** is to be granted. In case the victim had availing sick leave; proportionate salary for the leave period should be allowed to compensate for loss of leave.
- ii. **Loss of future earning capacity on account of permanent disabilities** is computed when there is –functional disability. If the disability does not affect earning capacity or career, no amount need be awarded. The multiplier principle as applicable in case of death is to be adopted to ascertain loss of future earnings.
- iii. **Future medical expenses:** These are expenses incurred for corrective surgeries or replacement of medical aids and provision of equipment essential for having permanent handicaps.
- iv. **Future unhappiness and loss of amenities:** It depends upon nature of lasting disability or disfigurement. It could be amputation of limb, loss of vision of one eye, total impairment of hearing capacity of one year, any ugly visible scar, mal-union of fractures or limping.
- v. **Loss of marital prospects:** It depends upon the gravity of the threat to marital prospects.
- vi. **Loss of academic year in education:** This can be compensated upon proof of the actual expenses incurred for the academic year
- vii. **Shortening of life span as a consequence of injury:** It may attract compensation based on medical opinion regarding shortening of life span on account of injury. In such cases the future earning capacity and future medical expenses shall be computed based on shortened lifespan.

The total compensation payable will be the aggregate of the compensation awarded towards each permissible head.

### 3. Damage to Third Party Property

The term property includes livestock, vehicle, building etc.

- i. In case of **damages to vehicles** minimum ‘idling charges’ depending upon reasonable time for repairs would be payable.
- i. In case of **package policies**, the insurer reimburse the damage to property upon production of proof of actual damage assessed on the basis of bills of repairs etc.
- i. In case of **total loss**, depreciation is taken into account while reimbursing the full value of the property.
- iv. A claim for loss of buffalo would come within the ambit of claim for damage to property. In another claim it was held that an elephant would not come within the ambit of property. [2008 ACJ 14 (Raj)].
- v. The claim for damage to onion carried in the vehicle was not required to be covered under the contract of insurance. [(Jahar Deb vs. National Insurance Co. Ltd.) 2007 ACJ 2169 (Gau)].
- vi. The claim for damage to property based on ‘letter of subrogation’ would be outside the purview of a Claims Tribunal and will lie only before a Civil Court.
- vi. The **Own Damage** claim for vehicles cannot be lodged before MACT. [2008 (1) TN MAC 112]. Also in [2007 (4) ACC 263 (Gau) (DB)].
- vi. A civil suit for damage to a vehicle washed away in floods was opposed as not tenable since Claims Tribunal had exclusive jurisdiction. It was held that Section 175 was not a bar for such suit, as it was a contractual claim by the owner against his insurer. [(Jahar Deb vs. National Insurance Co. Ltd.) 2007 ACJ 2169 (Gau)].
- ix. It was held that Own Damage claim of the owner of the vehicle against his own insurer was not tenable before the Claims Tribunal. The proper forum would be a civil court or a consumer forum. [(State Express Transport Corporation vs. G. Kathamuthu ) 2007 (2) TN MAC 432 (Mad)]. The claim by an owner of a motor vehicle for damages to his vehicle against his own insurer was held not maintainable before the Claims Tribunal since only a Third Party could file such a claim. [(Oriental Insurance Co. Ltd. vs. Pooranlal) 2007 ACJ 1804 (Chati)]
- x. In a case where the Own Damage claim was settled by the insurer, the claim by the owner of vehicle for the disallowed portion against the negligent vehicle was remitted for fresh consideration.

## Test Yourself 1

Under the permissible heads for assessment, in case of death of a person, which of the below will be payable?

- I. Loss of dependency
- II. Loss of expectancy
- III. Funeral expenses
- IV. All of the above

## B. Option to choose Jurisdiction

In a claim for damage to a motor vehicle in an accident, it was held that the sum received by the claimant from his insurer in respect of own damage claim couldn't be deducted from the claim against the tort-feasor. The tort-feasor cannot get the benefit of any such deduction. [(GSRTC vs. Hargovinddas R. Modi) 2007 ACJ 1198 (Guj)].

It was further held in [(GSRTC vs. Hargovinddas R. Modi) 2007 ACJ 1198 (Guj)], that damage arising from non-use of the vehicle being revenue loss could also be laid before the Tribunal.

In another case the claim was for damage to goods carried in the vehicle before the Claims Tribunal. It was held that such a claim would not lie before the Tribunal and appropriate remedy was before a civil court. [(Oriental Fire & General Insurance Co. Ltd. vs. S. Rasheed Ahammad) 2007 ACJ 1433 (Kant)].

### 1. Various Methods

It is amply clear that no amount of compensation can restore the physical frame of the victim in the original shape. The courts have been applying the principle of **"Just Compensation"** and **"multiplier method"** **"statutory formula"** **"Structured Compensation"** in different circumstances depending upon the provisions of law applicable for the victims and being invoked by the claimants.

#### a) Multiplier Method (Lord Wright's formula)

The Multiplier method is also known as **Lord Wright's formula** was enunciated in *Davies vs. Powell*, a famous English case which comprised of multiplying annual dependency amount of that deceased would have spent on the dependents by the commonly accepted multiplier known as **"year purchase factor"**.

$(A-E) * (Y) = \text{Total compensation for loss dependency as well as loss to the estate}$

where:

A = Amount of net wages earned by the deceased

E = Expenditure incurred by the deceased on his own self

Y = Number of years

(A-E) covers the amount of loss of dependency as well as amount of accretion to his estate

(A-E) must be split up to know the separate figures of dependency and accretion to the estate.

In *Davies vs. Powell*; Lord Wright stated that –It is hard matter of pounds, shilling and pence subject to the element of reasonable future probabilities. The starting point is the amount of wages the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum [that] however, has to be taxed down by having due regard to uncertainties for instance, the widow might have remarried and thus ceased to be dependent, and other like matters of speculation and doubt.

This method takes into account not only discount on arriving at lump sum amount of benefit spread over number of years, but also discount for other contingencies and imponderables.

#### **b) Selection of Multiplier**

It is chosen according to the age of the claimant only in fatal cases. The age of the accident victim is to be considered in line with the decision of the Apex Court reported in [(UPSRTC V. Trilok Chandra & Others.) (1996) ACJ 831] The multiplier thereafter, to be applied would be dependent on the age of the deceased or dependent, whichever is higher. Maximum multiplier is fixed at 18 as against 16 as prescribed in *Susamma Thomas* case.

However, selection of multiplier cannot be solely dependent on the age of the deceased in all cases. Age of the parents is also relevant in case of death of a bachelor. If the deceased died without a family and the parents were claimants the appropriate multiplier should be based on the age of the parents and not that of the deceased. [(Municipal Corporation of Greater Bombay vs. Shri Laxman Iyer and another) AIR 2003 SC 4182]

The multiplier prescribed by the Supreme Court is one or two points more than that laid down in Schedule 2 for compensation under Section 163A of the MV Act 1988.



Age of the deceased	Multiplier as per Susamma Thomas Case	Multiplier as per Second schedule	As per present case Sarala Verma
Up to 15 years	-	15	20
16 to 20 Years	16	16	19
21 to 25 years	15	17	18
26 to 30 years	14	18	17
31 to 35 years	13	17	16
36 to 40 years	12	16	15
41 to 45 years	11	15	14
46 to 50 years	10	13	12
51 to 55 years	9	11	10
56 to 60 years	8	8	8
61 to 65 years	6	5	6
Above 65 years	5	5	5

### c) Highest and lowest multiplier

The award can be more than the claim and even without any cross-objections. Multiplier method cannot be applied mechanically. The multiplier in case of a deceased Panchayat President, Agriculturist, aged 61 years, was reduced to 5 and the award accordingly reduced. Earnings of Rs. 500/- p.m. IT return after accident was rejected. The income was fixed at Rs. 7,000/- p.m. in all and adopting a multiplier of 18 an award for Rs. 10,08,072/- was confirmed. Maximum multiplier fixed at 18 as against 16 prescribed in Susamma Thomas case.

### d) Principles for computing compensation

In [(Kerala SRTC vs. Susuma Thomos) 1994 ACJ 1 (SC)] the Apex Court considered method of arriving at proper multiplier on a scientific basis for arriving at a proper multiplicand and multiple in fatal accidents in the light of decided cases in our country, as well as in England and laid down principles for computing compensation in motor vehicle accident cases.

On the question of selection of multiplicand Lord Diplock observed, –The starting point in any estimate of the amount of the dependency is the annual value of the material benefits provided for the dependants out of the earnings of the deceased on the date of his death. But there are many factors, which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or children grew up and became independent; the proportion of his earnings spent on his dependants would have been likely to fall.

### e) Effect of future prospects on **Multiplicand**

The multiplicand to be applied to calculate future prospects would depend on the age of the deceased. Thus an age below 40 would result in 50% loading of present income, age 40 to 50 a 30% loading and age over 50 no loading.

Age Group	Future Income
Below 40	Income + 50% of income
40 to 50	Income + 30% of income
Over 50	Income

### f) **Multiplier for Foreigners / NRI**

The deceased was aged 36 years with a Masters in Business Administration (MBA). She was earning US\$ 2500 in USA. The claimants were husband, daughter and son. The Tribunal construed the income / dependency at US\$ 2000 and arrived at compensation of Rs. 1,14,75,000/- in all.

On appeal, the High Court took the earnings at US\$ 2000, reduced 1/3rd for personal expenses and adopting a multiplier of 13, assessed the compensation payable at Rs. 66,49,000/- in all. [(National Insurance Co. Ltd. vs. Yogeshbhai Ramanbhai Shah) 2007]. For victims employed abroad, foreign exchange rate was held to be effective as on date of judgment.

### g) **Factors for variations in dependency**

there are two factors to be borne in mind for giving effect in award of damages to possible variations in the dependency.

**First** is that the more remote is the anticipated change in the future, the lesser confidence there can be, in the chance of its occurring and smaller the allowance to be made for it in the assessment.

**Second** is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the lesser will be its effect upon the total award of damages.

- i. In case of the deceased being bachelor or spinster, 50% is to be deducted instead of 1/3rd of income towards personal needs and maintenance of the deceased and balance is taken for dependency.
- ii. In case of the deceased leaving behind only Brothers and Sisters or only spouse, 50% is to be deducted towards personal needs and maintenance of the deceased and balance is taken for dependency.

- iii. In case of the deceased being a bachelor leaving behind parents with at least a brother or sister, 1/3rd is to be allowed towards personal needs and maintenance.
- iv. For applying multiplier in case the deceased leaves behind his parents, and brother and sister, the **youngest parent is considered** and not the brother or sister,.
- v. In case the deceased is an agriculturist and owns agriculture land, the computation of income shall be on the basis of normal wages paid towards effective supervisory charges for supervising the agricultural operations irrespective of the yield and income from the agriculture produce. [AIR 1982 Gujarat 260]

## 2. Impact of Interest Rate on Multiplier

As the interest rate is on decline, the multiplier has consequentially to be raised. The use of the correct multiplier for determination of compensation to be awarded to the legal representatives of a victim of a road accident is illustrated in [(U.P. State Road Transport Corporation and others vs. Trilok Chandra & Others) date of judgment: 07/05/1996)].

In fact Trilok Chandra case (supra) is to serve as a guide, but cannot be said to be invariable ready reckoner. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independent earnings and the lowest at 60 to 70 years, which is the normal retirement age.

If the chances of variation in the dependency are to be reflected in the multiplicand of the years purchase is the multiplier, variations in the dependency are not expected to take place until after ten years. It should have a relatively small effect in increasing or diminishing the dependency used for the purpose of assessing the damages.

**Case of Nance:** In the method adopted by Viscount Simon in the case of Nance also, first the annual dependency is worked out and then multiplied is determined by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors have a bearing on the uncertainties of life, such as, premature death of the deceased or the dependent, remarriage, accelerated payment and in increased earning by wise and prudent investments etc.

### 3. Discounting on Various Imponderables - Hybrid Method

It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life span considered. That is the reason why Courts in India as well as England preferred the Davies formula, it being simple and more realistic.

However, as pointed out in *Susamma Thomas* case, usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when Tribunal / Courts began to use a hybrid method of using Nance method without making deductions for Imponderables. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by amendment Act, 54 of 1994.

The most important change introduced by the amendment in so far as it relates to determination of compensation is the insertion of Section 163A and 163B in Chapter XI entitled Insurance of Motor Vehicles against Third Party Risks.

Section 163A begins with a '*non-obstante clause*' and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculating compensation for third party accident injury claims arising out of fatal accidents.

- i. The first column gives the age group of the victims of accident,
- i . The second column indicates the multiplier and
- ii. . The subsequent horizontal figures indicate the quantum of compensation in thousands payable to the heirs of the deceased victim

According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged.

### 4. No Fault Liability

Negligence is a fundamental requirement to sustain a claim before Claims Tribunal. Supreme Court adverted to the absence of '*No Fault Regime*' in [(*State of Haryana Vs. Darshana Devi*) 1979 ACJ 205: AIR 1979 SC 855]; [(*Concord of India Insurance Co. Ltd., Vs. Nirmala Devi*) 1980 ACJ 55] and thereby Parliament was compelled to step in and introduce Act 47 of 1982 as on 1/10/ 82. By virtue of Section 92-A of MV Act, 1939 provision for an interim award was introduced. Sub-section (4) was clear in indicating that a claim under no fault liability shall not be defeated or reduced for any fault on the part of the victim. Parliament had differed from the known path based on tortious liability and provided for relief even where the victim was at fault.

This position of law was corrected by the Supreme Court in [(Nandakumars Case 1996 ACJ 555)] wherein it was held that a victim can sustain a claim under ‘\_No fault Liability’ even where he himself was at fault. The claim for minimum compensation cannot be defeated or reduced for fault or contribution to fault by the victim himself.

## 5. Structured Compensation Method

Section 163A was enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a ‘\_structured formula’ not only having regard to the age of the victim and his income, but also the other relevant factors.

An award made shall be in full and final settlement of the claim, as would appear from the different columns contained in the Second Schedule appended to the Act. The compensation awarded is not interim in nature. The note appended to deal with fatal accident makes the position furthermore clear, stating that from the total amount of compensation one-third part is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself, had he been alive.

This together with the other heads of compensation leaves no iota of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without contesting a protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle. The scheme for payment of compensation under the 1988 Act can be divided as under:

- i. **Section 140** for no-fault liability in case of death or disablement;
- ii. **Section 161:** In case of hit-and-run motor accidents, where the identity of the vehicle cannot be ascertained, compensation amount is Rs. 25,000/- in case of death and Rs. 12,500/- in case of grievous hurt;
- iii. **Section 163A:** Special provisions as to payment of compensation on structured formula basis without establishing or proving any wrongful act or neglect or default of any person;
- iv. **Section 168** for determination of compensation payable in pursuance of any right on the principle of fault liability.

The Claims Tribunal is required to determine the application for payment of compensation either under Section 140 or Section 163A on the principle of no-fault liability and also on the basis of right to receive compensation on the principle of fault liability on the basis of Law of Torts, as modified by the Fatal Accidents Act, 1855 read with Motor Vehicles Act, 1988.

#### a) Whether Award is Final under Section 163-A?

Section 163-A Second Schedule, has been enacted dispensing with the need for claimants to prove fault. Section 163-A appeared to be extension of **No Fault Liability** regime. The question still remained whether a person who was at fault himself can sustain a claim under Section 163-A. It is true that the claimants need not prove negligence. The Supreme Court concluded that an award under Section 163-A was final and not interim.

But it cannot be understood as suggesting that where the claimant was himself at fault, he can sustain the claim under 163-A. As for the Supreme Court's stray observations in [(Deepal Girishbai Sonis case) 2004 ACJ 934] to the effect that Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of, has queered the pitch.

#### b) Legislative intent for Structured Compensation

From the provisions quoted above, it appears that no specific mention is made whether remedy provided under Section 163A is in addition or an alternative to the determination of compensation on the principle of fault liability. Section 163A was not present in the original Act of 1988 and was inserted by an Amendment 54 of 1994. Hence for arriving at the proper conclusion, it would be necessary to cull out legislative intent by referring to the legislative history as well as Objects and Reasons for inserting the said provision.

#### c) Reasons of Structured Compensation

Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representative as the case may be, will be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the death and injury caused in road accident, there has been continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission Chapter VIIA was introduced in the 1939 Act vide Sections 92-A to 92-E of the Act.



#### d) Relief to the victims

The reason for enacting Section 163A is to give earliest relief to the victims of the motor vehicle accidents. It is also apparent that compensation payable under Section 163A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied. In addition to the figure which is arrived at on the basis of said criteria, schedule also provides that amount of compensation shall not be less than Rs. 50,000/-. It provides for fixed amount of general damage in case of death such as:

- i. Rs. 2,000/- for funeral expenses
- i . Rs. 5,000/- for loss of consortium if beneficiary is the spouse
- i i. Rs. 2,400/- for loss of estate
- iv. For medical expenses supported by the bills, voucher not exceeding Rs. 15,000/-.

Similarly, for disability in non-fatal accident Para 5 of the Schedule provides for determination of compensation on the basis of permanent disability. Para 6 provides for notional income for those who had no income prior to accident at Rs. 15,000/- per annum. There is also provision for reduction of 1/3rd amount of compensation on the assumption that the victim would have incurred the said amount towards maintaining himself had he been alive.

**Use of Specific Language in Sections 140, 141, 161 and 163A:** Sections 140 to 143 provide for liability of the owner of the vehicle in case of death or permanent disablement of any person resulting from an accident arising out of use of a motor vehicle to pay compensation without any pleading or establishing that death or permanent disablement was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles.

By way of earliest relief, the victim is entitled to get the amount of compensation of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement. It is further provided that such claim shall not be defeated by reason of any wrongful Act, neglect or default of the person in respect of whose death or permanent disablement has occurred. This is further confirmed by Section 141 which provides that the right to claim compensation under Section 140 is in addition to any other right to claim compensation on the principle of fault liability and specifically excludes the right to claim compensation under the scheme referred to in Section 163A.



## 6. Hit-And-Run Motor Accidents

Similarly, Section 161 provides for payment of compensation in case of hit-and-run motor accidents. Under Section 161(3), in respect of the death of any person resulting from a hit-and-run motor accident, a fixed sum of Rs. 25,000/- is to be paid as compensation and in grievous hurt, the amount fixed is Rs.12,500/-.

### a) Refund of compensation under Section 161

Section 162, the legislature has provided for refund of compensation paid under Section 161 by providing that the payment of compensation under Section 161 shall be subject to the condition that if any compensation is awarded under any other provision of this Act or any other law or otherwise, so much amount as is equal to the compensation paid under Section 161 is required to be adjusted or refunded to the insurer.

As such the claimant is not entitled to have additional compensation but at the same time he can proceed by filing application under Section 166 or under the Employee's Compensation Act 1923 (i.e. other law) and if he gets compensation under either of the said provisions, the amount paid under Section 161 is to be refunded or adjusted. The Legislature has specifically provided scheme of adjustment of compensation under Section 140 read with Section 141 and Section 162 if the claimants get compensation under the Act, while there is no such provision under Section 163A.

### b) Solatium Fund Scheme Section 163 (2)

The scheme made may provide that

- i. A contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;
- i . The powers, functions or duties conferred or imposed on any Officer or Authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such Officer or Authority to any other Officer or Authority;
- i . Any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939, (4 of 1939) as it stood immediately before the commencement of this Act.

## 7. Comparison with Section 166

Section 166 of the Act evidently stands on a different footing. The extent of compensation payable may vary from case to case. Various other factors including

- i. Contributory negligence,
- i . Earning capacity,
- ii. . Extent of negligence on the part of one vehicle or the other, are relevant factors for computation of damages

Loss of property can also be a subject matter of the claim petition.

The compensation payable under Section 163A of the Motor Vehicles Act, 1988 as per the structured formula is in addition or an alternative to the determination of the compensation on the principle of fault liability, after following the procedure prescribed under the Act?

### a) Just Compensation

Section 168 of 1988 Act is required to make an award determining the amount of compensation which is to be in the real sense damages, which in turn appears to it to be just and reasonable.

It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be just and it can neither be a bonanza nor a source of profit; but the same should not be a pittance as well.

The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation, which should be just. What would be just compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations.

It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of just compensation which is the pivotal consideration. Though by use of the expression which appears to it to be just, a wide discretion is vested in the Tribunal. The determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness.

The expression ‘just’ denotes equity, fairness and reasonableness and non-arbitrariness. If it is not so it cannot be just.

**b) Dictionary meaning of compensation**

The word compensation is not defined in the 1988 Act or in the Rules; it is the giving of an equivalent or substitute of equivalent value. Compensation is shown as equivalent in money for a loss sustained; or giving back an equivalent, in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute.

It means when compensation is paid in terms of money, it must represent on the date of ordering such payment, the equivalent value. In this context we may look at Section 168 (1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 164 or 164-A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation for more than once in respect of the same accident.

This means that the party has two alternatives:

- i. One is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provision, and
- i . The other is to apply before the Claims Tribunal under Section 164 or 164-A of the Act.

As the claimant cannot avail himself both the remedies, he has to choose one between the two.

The provisions in Chapter XII of the 1988 Act are intended to provide a speedier remedy to the victims of accidents and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the legislature that the Central Government is alive to the need for prescribing fair and just compensation in the Rules from time to time.

The provisions are not intended to give an advantage to the Railway Administration but they are meant to afford just and reasonable compensation to the victims as a speedier measure. If a person files a suit the amount of compensation will depend upon what the court considers just and reasonable on the date of determination. Hence, when he goes before the Claims Tribunal claiming compensation, the determination of the amount should be as on the date of such determination.

### c) Definition of Income

#### Definition

The term income in Advanced Law Lexicon (3rd Ed.) by P. Ramanatha Aiyars has been defined as the value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture.

Income signifies what comes in. It is as large a word as can be used to denote a person's receipts. Income is not confined to receipts from business only and means periodical receipts from ones work, land, investment, etc.

#### Definition

If the dictionary meaning of the word income is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax; although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g.

- i. the life expectancy of the deceased and the dependants,
- i . the amount that the deceased would have earned during the remainder of his life,
- i . the amount that he would have contributed to the dependants during that period,
- iv. the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy,
- v. the chances that the deceased might have got better employment or income or might have lost his employment or income together

#### d) Net income

The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct there from such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that part of the net income should be capitalised by multiplying it by a figure representing the proper number of years purchase.

Much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case it is the overall picture that matters and the court must try to assess as best as it can to compensate the loss suffered. In [(New India Assurance Co. Ltd. vs. Charlie & Anr) (2005) 10 SCC 720)], the word net income has been used but the same itself would ordinarily mean gross income minus the statutory deductions. The said decision has been followed in [(New India Assurance Co. Ltd. vs. Kalpana (Smt.) & Ors.) (2007) 3 SCC 538].

#### e) Private Sector Approach to Contributory Provident Fund

The private sector companies in place of introducing a Pension Scheme take recourse to payment of contributory provident fund, gratuity and other perks to attract efficient and hard-working people.

The employer may make different offers to an officer; it may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis whereof, the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.

The elements of wages paid to the deceased include:

- i. Basic Pay,
- i . Conveyance Allowance,
- i i. Rent Co Lease,
- iv. Bonus (35% of Basic)

- v. Other entitlements are Contribution to PF 10% of Basic, LTA reimbursement, Medical reimbursement, Superannuation 15% of Basic, Gratuity Contribution @ 5.34% of Basic, Medical policy - self & Family, Education scholarship, payable to his two children directly.

There are three basic features in the aforementioned statement:

- i. Reimbursement of rent to be equivalent to HRA
- i . Bonus is payable as a part of salary; and
- ii. . Contribution to the Provident Fund

Apart from these superannuation benefits, contributions towards gratuity, medical insurance policy for self and family and education scholarship also benefit the members of the family. Medical reimbursement, which provides for a slab and which keeping in view the terminology used, would mean reimbursement for medical expenses on production of medical bills, would not come within the purview of the aforementioned category.

#### **f) Contributions by salaried person are deferred payment**

It was held that Income Tax and Professional Tax which is deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, LIC, other contributions are amounts paid in specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason, such contribution made by the salaried person are deferred payment and are savings.

In view of the settled proposition of law, the Claims Tribunal can make only statutory deductions such as Income Tax and Professional Tax and any other contribution which is not repayable by the employer from the salary of the deceased person, while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, forms part of the salary and it should be included in the monthly income, while computing the dependency compensation.

The claimants are entitled to be compensated for the loss suffered by them, which amount they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less 1/3rd for his personal expenses.

The High Court was in [Asha & Ors. vs. United Indian Insurance Co. Ltd. & Anors. [2004 ACC 533], placed reliance on these points while arguing the case where several perks were included in salary. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, Society charges and HBA etc.



What would be just compensation must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.

The amounts which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income, as that would have been added to his monthly income by way of contribution to the family as contra distinguished to the ones which were for his benefit subject to deduction of the statutory amount of tax payable thereupon must be deducted. [(Oriental Insurance Co. Ltd vs. Syed Ibrahim & Ors Appeal) (Civil) 4308 of 2007]

### Test Yourself 2

Which of the below statement is correct?

- I. In a case where the claim was in excess of Rs. 5,000/- under the 1939 Act, the option to choose the Claims Tribunal or Civil Court lay with the claimant.
- II. In a case where the claim was in excess of Rs. 5,000/- under the 1939 Act, the option to choose the Claims Tribunal or Civil Court lay with the insurance company.
- III. In a case where the claim was in excess of Rs. 2,000/- under the 1939 Act, the option to choose the Claims Tribunal or Civil Court lay with the claimant.
- IV. Irrespective of the claim amount, under the 1939 Act, the option to choose the Claims Tribunal or Civil Court always lay with the insurance company

### C. Some Case Studies for Damages to Non-earning Members

#### 1. Case Studies

##### a) Determination of Damages for a Child or Non-earning Person

The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and / or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.



## b) Compensation for death of an Infant

The House of Lords in [(Taff Vale Rly vs. Jenkins) (1913) AC 1] laid down the principle for compensation in case of the death of an infant. There may have been no actual pecuniary benefit derived by the parents during the child's lifetime, but this will not necessarily bar the parents claim, and prospective loss will find a valid claim provided the parents establish that they had a **reasonable expectation of pecuniary benefit** if the child had survived.

**Lord Atkinson said thus...**"all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact, there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are,

- i. **First** that the deceased earned money in the past, and,
- i . **Second**, that he or she contributed to the support of the plaintiff.

These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them.

## c) Distinction between Various Age Groups

The Supreme Court [in (Lata Wadhwa and Ors. vs. State of Bihar and Ors) - 2001 (8) SCC 197] while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

In cases of **young children of tender age**, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

However, at this juncture it would be relevant to take note of paragraphs 11 and 19 of [(National Insurance Co. Ltd. vs. Kusum Rai and Others) - 2006(4) SCC 250].

#### d) Multiplier for Housewife

For the death of a 27 year old housewife leaving behind her husband and 2 minor children, the court adopted a multiplier of 15 and dependency of Rs. 20,000/-p.a. and reduced the award of Rs. 3,65,000/- to Rs. 3,30,000/- . [(National Insurance Co. Ltd. vs. Mahadevan) 2007 (5) MLJ 129 (Mad)].

The claimants were husband and children of a housewife aged 35 years also engaged in stitching, agriculture and tending to cattle. The compensation of Rs. 50,000/- was raised to Rs. 2,18,500/- .

For mother aged 40 years, as multiplier of 13 was adopted instead of 17. [2008 (2) TLNJ 564 (Civil)].

#### e) Compensation Slab for Disability of Children

For fixing adequate compensation for children injured in road accidents, the Supreme Court in Master Mallikarjun vs National Insurance Co. Ltd {[Civil Appeal No. 7139 of 2013 Arising out of S.L.P.(Civil) No. 1676 of 2012]} has devised a compensation slab between Rs. 3 lakh to Rs. 6 lakh for their disability ranging from 10% to 90%.

"..... that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant etc. should be, if the disability is

- i. Above 10% and up to 30% to the whole body, Rs. 3 lakh;
- i . Up to 60%, Rs. 4 lakh;
- ii. . Up to 90%, Rs. 5 lakh and
- iv. Above 90%, it should be Rs 6 lakh."

After laying down the broad guidelines for computing compensation, the bench said, "For permanent disability up to 10%, it should be Rs. 1 lakh, unless there are exceptional circumstances to take different yardstick."

The difficulty in assessing compensation for children injured in accidents was mainly because they had no income, as in the case of adults, to base the quantification on assumed loss of income owing to disability. Authoring the judgment for the bench, Justice Kurian said, "For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children, there is no income.

"The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs. 15,000 per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and / or to be done, transportation, assistance of attendant, etc.

"The main elements of damages in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability." The bench added, "Appropriate compensation for disability should take care of all non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation etc."

## 2. Treatment of Interest

So far as the higher rate of interest stipulation is concerned, it is to be noted that grant of interest under Section 171 of the Motor Vehicles Act, 1988 is discretionary. The purpose for award of interest is to put pressure on the relevant person not to delay in effecting the payment; and, to compensate the victim or his dependents at least to some extent for such delay as may occur, by way of interest.

In determining the quantum of interest awardable under the relevant Section 171, the Tribunal acting under Section 166 of the 1988 Act, can derive direct guidance from Section 34 of the Code of Civil Procedure, 1908. In fact, the provisions require payment of interest in addition to compensation already determined. Even though the expression may is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. The provision is discretionary and is not and cannot be bound by rules.

In Halsburys Laws of England, 4th Edn., Vol. I, duty and discretion is explained as given below:

—A statutory discretion is not, however, necessarily or, indeed, usually absolute; it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act. Moreover, there may be discretion whether to exercise a power, but no discretion as to the mode of its exercise; or a duty to act when certain conditions are present, but discretion how to act. Discretion may thus be coupled with dutiesll.

**a) Discretion as per Rules of Reason and Justice**

As per Lord Halsbury, L.C., in [(Sharp vs. Wakefield,) (1891) Appeal Cases 173]: When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice; not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. The discretion must be exercised within the limit, to which an honest man, competent to the discharge duty of his office ought to confine himself.

**Test Yourself 3**

Which of the below statement is correct?

- I. Grant of interest under Section 171 of the Motor Vehicles Act, 1988 is discretionary
- II. Grant of interest under Section 171 of the Motor Vehicles Act, 1988 is not discretionary
- III. Grant of interest (above 5%) under Section 171 of the Motor Vehicles Act, 1988 is discretionary
- IV. Grant of interest (above inflation rate) under Section 171 of the Motor Vehicles Act, 1988 is discretionary

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## Summary

- a) The purpose of granting pecuniary award of damages under the Motor Vehicle Act, 1988 is to provide to the dependents of the victim of motor accident a capital sum, if there had not been an accident by the careless act of the driver of a motor vehicle.
- b) Type of Damages: Law contemplates two sets of damages: Pecuniary damages and non-pecuniary damages.
- c) In case of simple injuries the compensation awarded is global compensation and no separate amount is awarded for medical expenses..
- d) In case of grievous injury: Compensation for pain and suffering is to be remunerated by awarding for injuries or fractures of different bones.
- e) Loss of income during the period of treatment
  - i. Actual or notional wages or salary for the period of treatment is to be granted.
  - ii. Loss of future earning capacity on account of permanent disabilities is computed when there is functional disability
  - iii. Future medical expenses include expenses incurred for corrective surgeries or replacement of medical aids and equipment essential for having permanent handicaps.
  - iv. Future unhappiness and loss of amenities depends upon nature of lasting disability or disfigurement.
  - v. Loss of marital prospects depending upon the gravity of the threat to marital prospects
  - vi. Loss of academic year in education can be compensated upon proof of the actual expenses incurred for the academic year
  - vii. Shortening of life span as a consequence of injury may attract compensation based on medical opinion regarding shortening of life span on account of injury
- f) The Multiplier method comprised of multiplying annual dependency amount of what deceased would have spent on the dependents by the commonly accepted multiplier known as ‘\_year purchase factor‘.
- g) The multiplier to be applied would be dependent on the age of the deceased or dependent, whichever is higher. Maximum multiplier fixed at 18 as against 16 prescribed in Susamma Thomas case.
- h) The multiplicand to be applied to calculate future prospects would depend on the age of the deceased.

- i) Impact of Interest Rate on Multiplier: As the interest rate is on the decline, the multiplier has to consequentially be raised. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest at 60 to 70 years, which is the normal retirement age.
- j) Section 163A begins with a 'non-obstante clause' and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be.
- k) The scheme for payment of compensation under the 1988 Act can be divided as under:
  - i. Section 140 for no-fault liability in case of death or disablement;
  - ii. Section 161: In case of hit-and-run motor accidents, where the identity of the vehicle cannot be ascertained, compensation amount is Rs. 25,000/- in case of death and Rs. 12,500/- in case of grievous hurt;
  - iii. Section 163A: Special provisions as to payment of compensation on structured formula basis without establishing or proving any wrongful act or neglect or default of any person;
  - iv. Section 168 for determination of compensation payable in pursuance of any right on the principle of fault liability.
- l) Section 163A provides for fixed amount of general damage in case of death such as:
  - i. Rs. 2,000/- for funeral expenses
  - ii. Rs. 5,000/- for loss of consortium if beneficiary is the spouse
  - iii. Rs. 2,400/- for loss of estate
  - iv. For medical expenses supported by the bills, voucher not exceeding Rs. 15,000/-.
- m) Under Section 161(3), in cases in respect of the death of any person resulting from a hit-and-run motor accident, a fixed sum of Rs. 25,000/- is to be paid as compensation and in case of grievous hurt, the amount fixed is Rs. 12,500/-.
- n) Section 168 of 1988 Act is required to make an award determining the amount of compensation which is to be in the real sense damages, which in turn appears to it to be just and reasonable.
- o) The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables.
- p) Treatment of Interest: Grant of interest under Section 171 of the Motor Vehicles Act, 1988 is discretionary

**Answers to Test Yourself****Answer 1**

The correct answer is IV.

Under the permissible heads for assessment, in case of death of a person, payment is made for:

- i. Loss of dependency
- i . Loss of expectancy
- i i. Loss of consortium
- iv. Funeral expenses
- v. Medical expenses if deceased was given any treatment prior to fatality

**Answer 2**

The correct option is III.

In a case where the claim was in excess of Rs. 2,000/- under the 1939 Act, the option to choose the Claims Tribunal or Civil Court lay with the claimant.

**Answer 3**

The correct option is I.

Grant of interest under Section 171 of the Motor Vehicles Act, 1988 is discretionary.



**Self-Examination Questions****Question 1**

As per the Multiplier Method, for deciding compensation, the maximum multiplier is fixed at \_\_\_\_\_ (as per Second Schedule of the MV Act).

- I. 16
- II. 18
- III. 21
- IV. None of the above, as the Judge can decide any multiplier, without any maximum limit, as per his / her own discretion

**Question 2**

Which of the below statement is correct?

- I. Under Section 161(3), in cases in respect of the death of any person and in case of grievous hurt resulting from a hit-and-run motor accident, a fixed sum of Rs. 25,000/- is to be paid as compensation.
- II. Under Section 161(3), in cases in respect of the death of any person and in case of grievous hurt resulting from a hit-and-run motor accident, a fixed sum of Rs. 12,500/- is to be paid as compensation.
- III. Under Section 161(3), in cases in respect of the death of any person resulting from a hit-and-run motor accident, a fixed sum of Rs. 12,500/- is to be paid as compensation and in case of grievous hurt, the amount fixed is Rs.25,000/-.
- IV. Under Section 161(3), in cases in respect of the death of any person resulting from a hit-and-run motor accident, a fixed sum of Rs. 25,000/- is to be paid as compensation and in case of grievous hurt, the amount fixed is Rs.12,500/-.

**Question 3**

Section 163A provides for fixed amount of general damage in case of death such as \_\_\_\_\_ for funeral expenses.

- I. Rs. 2,000/-
  - II. Rs. 4,000/-
  - III. Rs. 1,000/-
  - IV. Rs. 5,000/-
-

**Answers to Self-Examination Questions****Answer 1**

The correct option is II.

As per the Multiplier Method, for deciding compensation, the maximum multiplier is fixed at 18 (as per Second Schedule of the MV Act).

**Answer 2**

The correct option is IV.

Under Section 161(3), in cases in respect of the death of any person resulting from a hit-and-run motor accident, a fixed sum of Rs. 25,000/- is to be paid as compensation and in case of grievous hurt, the amount fixed is Rs.12,500/-.

**Answer 3**

The correct option is I.

Section 163A provides for fixed amount of general damage in case of death such as Rs. 2,000/- for funeral expenses.

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# CHAPTER 11

## FRAUD MANAGEMENT AND INTERNAL AUDIT

### Chapter Introduction

In this chapter you will learn about frauds in TP claims and frauds in Motor Insurance. You will also know about the types of frauds, how to underwrite frauds and the issues to be audited.

### Learning Outcomes

- A. Frauds in TP Claims and Frauds in Motor Insurance
- B. Underwriting Frauds and Issues to be audited



## A. Frauds in TP Claims and Frauds in Motor Insurance

### 1. Frauds in TP Claims

Third Party claims settlements are a drag on an insurer's profitability. They form the highest amount of claims among all departments. Whilst it is not denied that these settlements are a social obligation, it must also be ensured that individuals / claimants do not take undue advantage of the provisions of the law to enhance personal wealth. The very nature of these claims leaves them open to fraudulent practices.

#### a) Reason for Claims Occurrence

The time span between the date of accident and the filing of the case or receipt of summons from the Court by the insurers renders the information open to manipulation. Section 158(6) of the MV Act 1988 requires the Officer-in-charge of the Police Station to forward the FIR to the insurers and Claims Tribunal having jurisdiction within thirty days. Claimant's lack of knowledge on their entitlement leaves them at the mercy of Advocates and other Agencies. Advocates take up such matters with a —No gain no feel concept and may therefore, be tempted to manipulation.

#### b) Fraud Management

Fraud management is essential to ensure that only genuine claims are settled. Some of the measures that can be adopted are documentary proofs of accident details:

- ✓ Photographs,
  - ✓ Witness statements,
  - ✓ Identities of claimants and witnesses,
  - ✓ Examination of the authorities concerned with the case e.g. doctor treating the accident victim to depose on the nature or extent of injury,
  - ✓ RTA authority to depose on the vehicle and driver's documents,
  - ✓ Identification of claimants by concerned police official
- i. **Appointment of investigator:** It is essential to appoint an investigator to collect facts, probe the documents and details issued by the Hospital in Medico Legal Cases (MLC) where the victim was first admitted / treated.
  - ii. **Photograph of victim:** Preferably, photograph of victim may also be obtained duly certified by the attending doctor.
  - iii. **Panchnama and Seizure report** detailing accident site and cause of accident and the documents taken in the custody by the police viz. Policy copy, Driving Licence, Registration Certificate etc.

- iv. **Identity of witnesses** to accident, PM / Inquest report for date time of accident, age of victim and cause of death.
- v. **The Motor Vehicle Inspectors (MVI) report** on the damages to the vehicle; owner, driver, cause of accident and the charge sheet of involvement should be obtained and studied.

If documents infer fraud they should be provided as evidence and Written Statement (WS) should vigorously pursue the matter. A police complaint of fraud should also be filed to support the contention.

The insurers representing Advocate should be advised to incorporate all defenses to deal with the case and to emphasis these fraudulent aspects. Here it must be emphasised that the insurers must follow-up with the advocate to ensure that the WS is filed as per their instructions and defended by the advocate appropriately.

## 2. Frauds in Motor Insurance

### a) Meaning of Fraud and Legal Provisions

The Webster dictionary provides meaning of fraud as, intentional perversion of truth in order to induce another person to part with something of value or to surrender a legal right. In essence fraud is an act of deceiving or misrepresenting another person dishonestly and / or fraudulently, for achieving a wrongful gain or causing a wrongful loss.

### b) Provisions of Indian Penal Code

Section 2 (23-25) of IPC provide definition of wrongful gain; wrongful loss along with acts committed dishonestly and fraudulently as hereunder:

**Wrongful gain** is the gain by unlawful means, of property, to which the person so gaining is not legally entitled.

**Wrongful loss** is the loss by unlawful means, of property, to which the person losing it is legally entitled.

#### i. Dishonesty

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly.

## ii. Fraudulently

A person is said to do anything fraudulently, if he does that thing with intent to defraud but not otherwise.

## iii. Fraud

Fraud under Section 463 of IPC provides an intention to deceive, whether it is from any expectation of advantage to the party himself or from ill will towards the other, is immaterial.

## iv. Forgery

Forgery under Section 463 of IPC provides that whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery.

### c) Making a False Document

Section 464 of IPC provides that a person is said to make a false document, who dishonestly or fraudulently makes, signs, seals or executes a document or part of document or who, without lawful authority, dishonestly, fraudulently, by cancellation of otherwise, alters a document in any material part thereof or who makes a false document, which dishonestly or fraudulently causes any person to sign, seal, execute or alter.

### d) Fabricating False Evidence

**Section 191** of IPC provides provision for giving false evidence as whoever, being legally bound by oath and express provision of law to state the truth or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true is said to give false evidence. The statement is false whether it was made verbally or otherwise.

**Section 192** of IPC provides provision for fabricating false evidence as whoever, causes any circumstances to exist or makes any false entry, or makes any document containing a false statement may appear in evidence in a judicial proceeding to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding is said to fabricate false evidence.



### e) Provisions of Civil Procedure Code

Sub-section 2 of Section 48 of Civil Procedure Code (CPC) provides certain circumstances of fraud.

### f) Criminal Procedure Code (Cr. PC)

Section 156 of Cr. PC provides that an officer in-charge of a police station may, without the order of Magistrate investigate any cognizable case, which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Ch XIII.

Section 102 provides power to Police Officer, to seize certain property when any offence is committed and provide a seizure memo to be produced before the competent Court.

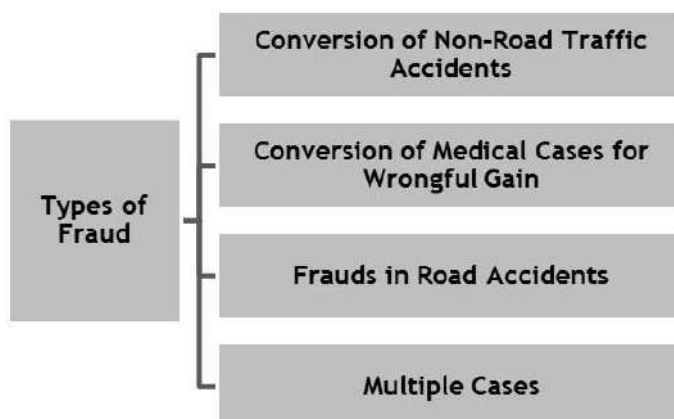
After Final Report is filed by the Investigating Agency in criminal cases, only Magistrate has the power and the aggrieved can file appeal or seek judicial review. [2007 (7) Supreme 495]

### g) Motor Vehicle Act, 1988

Section 158(6) of Motor Vehicle Act, 1988 provides that as soon as any information regarding any evidence involving death or bodily injury to any person is recorded or report under the section is completed by a Police Station, the Officer in-charge of the Police Station shall forward a copy of the same within 30 days from the date of recording of information or as the case may be, on completion of such report to the Claims Tribunal and Insurer.

## 3. Types of Fraud

Diagram 1: Types of fraud



**a) Conversion of Non-Road Traffic Accidents**

Fraud is perpetrated by conversion of non-road traffic accidents into road traffic accidents for example:

- i. A person falling from tree / slipped in staircase or bathroom or receiving injury in likewise manner.
- i . Natural death / suicide / murder converted into road traffic accident by way of staging false accident.

**b) Conversion of Medical Cases for Wrongful Gain**

Medical expenses incurred for some disease are met out by way of filing MACT cases by falsely associating it with some false injury.

- i. Permanent disability either on medical ground or congenital (since birth) is converted into disability arising out of road accident.
- i . Inflated or bogus medical bills and certificates

**c) Frauds in Road Accidents**

- i. Substitution of uninsured vehicle by an insured vehicle.
- i . Late implication of insured vehicle in case of hit and run.
- i . Substitution of name of the driver having no driving licence by the name of a driver having a valid driving licence.
- iv. Addition of names of the persons not affected by accident, either at the time of finalising charge sheet or writing general report.
- v. Impersonation either for the driver or victims of the accident or claimants.
- vi. False FIR's, fraudulent medical documents / employment records / vehicle documents

**d) Multiple Cases (Forum Shopping)**

Multiple cases for the same accident at different Tribunals or places or time: Filing of more than one application in different MACT(s) due to the provision permitting filing of claims at the place of accident, at the place where the claimant resides, at the place of business of claimant, or where the branch office of the respondent company is situated.

It may be done simultaneously at one time or at different times. It may be during the pendency of first case or when the first case had already been decided, due to the omission by the legislature in respect of limitation period for filing road accident claims.

### Test Yourself 1

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing\_\_\_\_\_.

- I. Fraudulently
- II. Forcefully
- III. Dishonestly
- IV. None of the above

### B. Underwriting Frauds and Issues to be Audited

#### 1. Underwriting Frauds

- i. Insurance is arranged after loss with connivance of insurers employees
- ii. Using fabricated and bogus cover note, policy document or Certificate of Insurance.
- iii. Forging a cover note or photocopy of existing cover note, by way of interpolation of dates, name of insured and vehicle number.
- iv. Issuance of ante-dated cover note / deposit challan / receipt / by authorised person of the company.
- v. Issuance of original cover note to insured, without filing the time of commencement of the cover in cover note, with the intention to give wrongful gain to insured, and submitting copies thereof, in the office after filling the time of commencement of cover.
- vi. Misuse of signed, blank cover notes handed over to Agents/ Dealers /RTA agents by the Development officer/ Branch Manager.
- vii. Acceptance of cover by authorised officer either in collusion with the issuer of the cover note or due to gross negligence.
- viii. Acceptance of premium in cash, for ante dating by way of adjusting the premium on back date while the genysis is operative on the date. (It can be operative up to next 6 days) or by way of showing as late collection scroll, particularly of Friday evening.

- ix. Acceptance of premium by back dated Cheque/ Third Party cheque to adjust the premium of bogus cover.
- x. Cheque of the date, knowingly that it will not be honoured by the bank.

#### **a) Various Stages of Commission of Frauds**

- i. At the time of underwriting, when cover is given knowingly about the occurrence. If cover is not available, then by arranging forged cover.
- ii. By way of furnishing wrong information to Police Authority or by way of arranging False FIR through Police Authority.
- iii. By way of arranging false medical records / forged hospitalization records and also Medical Leave Certificates.
- iv. By way of arranging certificates of Competent Medical Practitioner for creating nonexistent Permanent Total or Partial Disablement or to exaggerate percentage of Permanent Partial Disablement.
- v. By way of arranging vehicles for non-traffic or traffic accidents in collision with some vehicle owners.
- vi. By way of arranging for bogus Employment Certificate, Tax Receipts, RC Books, Post arranged driving licenses, age certificates, etc.
- vii. By way of furnishing wrong information in the application for compensation filed in the MACT and / or criminal court, in respect of dependency, occupation, income, age, injury, accident itself, impersonation, etc.
- viii. By way of staging examination-in-chief through stock witness in relation to the information laid down above.
- ix. By way of collusion with the insured and sometimes in connivance with advocates of the Company.
- x. Satisfaction of award where grounds of successful appeal are available.

**Identification of Fraud:** Thorough knowledge of MACT cases, MV Act, Criminal Procedure Acts, IPC and document related in connection thereof should be there to detect the fraud. Some examples are:

- i. FIR provides information about the cause and nature of accident, negligence, vehicle no., name of the driver, place of the accident, name of the victims of accident, names of the hospital where the victims were first admitted, name of eye witnesses.

- i . Accidents register gives information about the above facts.
- ii . Seizure memo gives first information about the existence of policy, name of the driver and also the driving licence seized along with vehicle records.
- iv. Panchnama / site sketch plan at the place of accident gives information about cause of accident, and negligence part.
- v. Inquest report gives information about the deceased person, time of accident, time of identification of dead body, and outer marks of injury, hurt, etc.
- vi. Post Mortem Report gives information about time of death, age of deceased and cause of accidental death.
- vii . Statement of witness given before the Police Authority in accordance with section 161(3) of Cr. PC gives information on the persons involved in criminal cases where as, stock witnesses are examined in MACT trials.
- viii . Report of Motor Vehicle Inspector informs about the damages to the vehicle, with date of accident and inspection. It can also be inferred from there, if vehicle had some mechanical fault. It gives information about the name of the owner and the driver.
- ix. Charge sheet informs about the negligence of the driver, in addition to giving other information like vehicle involved persons dead or injured, etc.
- x. Findings in a criminal case such as non-involvement of vehicle or non-accident cases.

**Effective investigation:** The perusal of above-mentioned documents and probing mind of MACT officer will be able to detect if any fraud is involved. Apart from these, effective investigation should be arranged for the corroboration of the vital facts and to dig out additional information to ascertain the truth. For effective investigation following norm should be followed:

- i. The investigator must visit the place of occurrence of accident to ascertain the place of accident / details of accident / victims etc. It is preferable that this part of investigation is conducted immediately after the information of accident is made available through any source such as newspaper etc.
- i . Details of information in relation to victims and claimants should be ascertained by the investigator from the residence/ dwellings of the victim/ claimants and from the neighbours of this person. As proof

of it,



the investigator should bring recent photographs of these persons, as well as the persons whose statements he obtains in support of the facts. Weightage should be given to the documentary evidence.

- i . Investigator should specifically collect the details of the offending vehicle, the driver at the time of accident, owner, RC particulars, insurance details, so that any fraud in connection with aforesaid should be detected at an early stage.
- iv. The investigator must bring a copy of Medical Leave Certificate, Hospital record where the victim allegedly had been reported/admitted. In addition to it he must bring information if any other hospital or clinic was situated near the place of accident. If yes, then the reason for admitting victims to a distant hospital. Copy of prescription, discharge certificate, bills of purchase, etc must be collected.
- v. Identification of fraud is also possible if investigation is arranged by introducing modern technology like videography, audiography, etc., so that fraud is proved conclusively.
- vi. Own damage claim file should be connected with MACT claim file for verification of facts and detection of frauds.

### **Methods of Detection of underwriting fraud in early stage**

- i. The investigation report
  - i . The seizure memo
  - ii. . 64 VB Compliance Certificate
- iv. The copy of cover produced by the applicant in MACT in support of the claim
- v. Any complaint received in the office

### **b) Frauds Committed with Internal Support**

The cases falling under close proximity must be reported to the controlling office immediately with all documents as prescribed by the guidelines. Investigation must be made into the close proximity cases to exclude the possibility of antedating or old losses being camouflaged. If antedating is found, immediate departmental action through vigilance should be initiated so that a stand on fraud in collusion with the employees / agents could be taken in defence in MACT. In such cases the cover note issuance authority of the suspected employee should be withdrawn simultaneously while the matter is being reported to vigilance department for initiating action.



It would be necessary to establish fraud at trial level by deposing through the authorised officer of the company, establishing policy / cover note / other documents and initiating departmental action.

### **c) Frauds Committed by Outsiders**

- i. FIR should be lodged before the competent police authority. In case police authority does not take cognizance of it, the complaint should be made to the judicial authority.
- ii. Specific pleas on the issue should be raised in written statement itself. If detected at a later stage, it should be raised through additional petitions before MACT.
- iii. Available evidences must be produced in the MACT either through the documents / investigator / officer of the company or voluntary witnesses. In case any document is adduced, it should be deposed through the person who issued the document e.g., RTA record, Hospital record.
- iv. False disability certificates must be challenged through our panel orthopaedic medical practitioner.
- v. If the fraud is detected after the award, the matter must be brought to the same court, which passed the award under Section 151 of CPC in the light of recent Supreme Court judgement which says that no Court is powerless to review its own judgement, if judgement is obtained by way of fraud or false information, whatsoever.
- vi. If the fraud is detected after the appeal is filed it must be submitted with proper prayer by way of specific petition for consideration as additional evidence, in the light of judgement of Supreme Court.

### **vi . Frauds by Facilitating Agencies**

vi i. Advocate

ix. Police

### **d) Preventive Management of Fraud Cases**

- i. In extreme cases the practice of issuance of cover note should be abolished. It would be appropriate to consider functioning of non-TP offices. Also where there are rampant cases of fraud related to the underwriting, the office should be closed / staff should be rotated and all facilitating personnel must be reviewed / changed.

- i . Care must be taken when fraud is detected the first time to appoint specific investigators and the advocates who have enough skills and standing to deal with such cases. There should be interactive sessions with advocates, investigators, underwriters and other connected persons with MACT offices.
- i . In cases of frauds connected with major accidents, necessary assistance may be invited from the media whose first time reporting might be used as evidence.
- iv. The time has come when the leading investigators should be appointed in each District nationwide, who will work directly under the supervision of controlling offices. They should also be instructed that they will personally visible all accidents in Districts. If any case is related to the company they will immediately commence their investigation in the matter and shall collect all particulars / documents / information from various statutory authorities, hospitals, independent witnesses, etc. Emphasis should be on their creating their own data bank relating to all the accidents in the vicinity. Strict legal action is to be initiated against the hospitals stock witnesses / doctors and others if they are found involved in the fraudulent activities against the company.
- v. Advocates should be instructed to arrange for summons / bail able warrants, etc. for the non-cooperative witnesses and persons representing statutory authorities.
- vi. Such cases should not only be defended properly but after establishing the fraud, they should also be published in newspapers, electronic media and on other available platforms.
- vi . Initiation of criminal action is also suggested against the persons involved in fraud.
- vi . Some of the judgements like (M. Jayanna vs. K. Radhakrishna Reddy) of Hyderabad should be distributed among all the officers and dealing advocates from the nodal offices.
- ix. When the role of advocate appears to be doubtful, this misconduct must be dealt with in accordance with the laid down guidelines in Advocates Act.
- x. No cover note must be issued by the development officer/ agent for TP cases to save the company from the liability of pay-and-recover in cases where the premium cheques are dishonoured.
- xi. No third party cover should be issued without proper identification and inspection of the vehicle.

### e) False and Fabricated Claims

In (2007 ACJ 2824) it was held that minor discrepancies in the FIR would not prejudice the sustainability of the claim petition. However it has been held repeatedly that if there is inconsistency in the version of the accident, the dismissal of the claim petition is in order. There was a delay of 6 months in filing the FIR and the evidence of the so- called eyewitness was not trustworthy. The dismissal of the claim petition was upheld in appeal.

In a fabricated claim by an injured policeman, the claim was dismissed with directions to Police to take action against the claimants / policeman. In spite of the driver being convicted on admission of guilt, the claim was dismissed as false.

### f) Power to Recall by Tribunals

The Supreme Court had adverted to tainted claims in [(United India Insurance Co. Ltd., vs. Rajendra Singh) 2000 ACJ 1032] and held that the Claims Tribunals had the inherent power to review / recall awards which are alleged to be tainted with fraud. It was held that fraud and justice can never go together and no insurer can be deprived of his right to seek and recall the award, which is alleged to be so tainted.

There were a couple of claims lodged by father-son duo alleging involvement of an insured vehicle. Four months after the awards were passed in lakhs, there was a visitor to the insurer who produced a document to demonstrate that the claims were fudged and fabricated. On appeal to Supreme Court, it was held that the insurer was entitled to move the Claims Tribunal under Secs.151 & 152 CPC., irrespective of whether or not the power of review was vested statutorily with the Claims Tribunal.

The Supreme Court held that it had the inherent power from its very Constitution to deal with such allegations of fraud. The remedy of appeal was an unrealistic one since the insurer would obviously be unaware of the elements of fraud while contesting. Any appeal would be futile as there would neither be a pleading nor evidence. Therefore, it was held that review/recall of the award was the proper remedy.

There is yet another decision reported in [(Oriental Insurance Co. Ltd., vs. R. Mani) 2000 ACJ 247 (Mad)] on similar lines holding that the Claims Tribunals of such kind had the concomitant power to recall awards tainted by fraud from its very Constitution.

But Tamil Nadu had the unique distinction of providing a dubious lead in having a major share of such tainted claims, which has now culminated in an order by the High Court wherein the complaints of insurance companies have been directed to be entrusted to Central Bureau of Investigation, New Delhi, for re-investigation.

It appears that the menace of such false and fabricated claims is not unique to the genius of Tamil Nadu. Such claims do exist all over the country and are real menaces crying to be dealt with to safeguard the purity of this welfare jurisdiction. The orders dated 1/3/2006 is now pending before the Apex Court in SLP at the instance of State of Tamil Nadu and hopefully it will look at it in a the national perspective.

#### **g) False Premises**

It is not as if fabrication is only in falsely implicating insured vehicles in motor accidents where the vehicle is unidentified. An accident was originally reported to Police as a skidding of a scooter leading to a fall. After six months the mishap was converted to a collision between the scooter and an insured. The High Court came down heavily on the claim as a fraud and fabrication.

It was held that appreciation of evidence should be in proper context and the earliest version should be taken to be truthful as lapse of time enables parties to fabricate the facts. It was held that sympathy for the victims should not be misplaced. The claim petition was held fit to be dismissed as false and fabricated. It was held to be a fabrication based on the discrepancies in documentary evidence and the oral depositions.

#### **h) Non-motor Cases Fixed as Motor Accidents**

But there are instances of persons dying from AIDs, Jaundice, being falsely claimed to have died from motor accidents. In a recent case, murder was converted to motor accident. The insurer was held not liable [2008 ACJ 113 (Kant)]. Injuries suffered due to falling from a tree or heights are fixed as motor accidents. There is willing complicity of the owners of vehicle, drivers, police personnel and medical professionals too to fabricate a claim. In a case of fraud it would be open to the aggrieved to file a writ petition since fraud would vitiate any judgment intended to do justice. [(New India Assurance Co. Ltd. vs. MACT, Gauhati) 2007 ACJ 1360 (Gau)].

It would suffice to record a couple of them and the events leading up to the orders of the High Court, Madras directing re-investigation by CBI. In 1996 there was an accident in Tiruppur area of Tamil Nadu involving a Maruti car in which some persons were travelling when it hit a palmyrah tree. The FIR was registered at the instance of a passenger on the car, stating the manner of accident as the car having lost control and hitting a palmyrah tree.

Six months down the line, police investigation suggests that one Mr. Kittan had come to the Police Station to relate a conversation he had overheard between a driver and a cleaner of goods vehicle, at a teashop on the highway.

According to it the driver of the Truck had laughed aloud and related to the cleaner that six months earlier there was an accident involving a Maruti car and the injured passengers were unaware of the involvement of the truck.

One Good Samaritan Mr. Kittan had noted the vehicle number. This event was related to Police authorities on a Friday and the following Monday morning the driver / owner of the vehicle was arrested and in a jiffy charge-sheeted, they confessed to guilt and were convicted to pay fine before a criminal Court. Thereupon, 5 motor accident claim petitions were filed before the Claims Tribunal seeking compensation from the owner of the vehicle and the insurer of it.

### **i) Insurers Right to Challenge Conviction on Abuse of Process of Law**

The insurer is not a party to the Criminal Court proceedings. Though Criminal Court verdicts are not binding on Claims Tribunals, a plea of guilt would stop the driver and insurer from disputing otherwise in a claim proceeding. In the criminal jurisprudence insurers right to challenge such conviction on abuse of process of law was unheard of and not reported till only some years back. The insurer chose to move the High Court by way of Civil Revision Petition in 1998 challenging the order of conviction of driver/owner on admission before the Criminal Court under Article 227 as having arisen out of an abuse of process of law.

The petition was admitted and stays on the claim petitions were granted.

Ultimately, it culminated in an order of the High Court directing the Crime Branch in Tamil Nadu to conduct re-investigation of the closed criminal action in the light of the evidence submitted by the insurer that the claim was a fabricated one [in (National Insurance Co. Ltd., vs. K. Nandabalan) 2005 (2) LW 439.]. This course of action was probably the only one of its kind embarked on by an insurer until [(Rajendra Singhs Case) 2000 ACJ 1032] opened their eyes to the possibility of recall of the award.

Thereafter, in similar circumstances of fudging in a claim, the insurer moved the High Court under Article 226 seeking for re-investigation of a closed criminal case, by the higher echelons of the Police establishment and to file an additional charge sheet, if necessary, under Sec.173 (8) of Cr.P.C. A writ of mandamus was issued by the High Court to the Police authorities. The authorities failed to comply with the directions and contempt petition arose there from.

During pendency of the contempt proceedings the Police Authorities filed a report confirming that the allegations of the insurer on false and fabricated claims appeared to be correct and that the accident might have been a stage-managed one. By that time it was widely reported in the media that in Namakkal belt of Tamil Nadu there were scores of such false and fabricated claims and huge loot was going in the name of welfare jurisdiction.

Claims unrelated to motor accidents were manipulated as motor accident claims and compensation sought for in lakhs and even crores.

**j) Nandabalans Case Constituting a Central Agency to consider the complaints of insurers**

Taking the cue from this wide reportage, the insurer moved an application before the High Court seeking for creation of a re- investigative mechanism with the Crime Branch of Tamil Nadu Police, as distinct from the local police establishment. It was pointed out that the local Police establishment, medical men and lawmen were in the thick of the scam and it was widespread.

The State Public Prosecutor was called by the High Court, Madras who appeared and confirmed the scam in all its manifestations. It was recorded that the State was equally inclined to expose the scamsters and proceed against them. The High Court, thereupon, delivered a verdict constituting a Central Agency at Chennai to consider the complaints of insurers with regard to false and fabricated claims. The order [in (National Insurance Company Ltd., Coimbatore vs. K. Nandabalan, 2005 (2) LW 439)], in full is a unique decision of its kind, fully revealing the goings-on.

**k) Reinvestigations closed as Mistake of Fact**

It was true that during the proceedings and in the immediate aftermath of the decision, there were a host of withdrawal of claims fearing criminal action. Insurers were able to save crores of rupees. But some months down the line, it was found that the scamsters had devised ways and means to get over this hiccup.

The complaints of insurers for reinvestigation were being closed by the dozen, on the premise of *mistake of fact*. The insurers were in no position to defend the motor accidents claims, based on fraud, and equally challenged the criminal Court verdicts on other fronts.

The High Court by orders of its own kind, on the national level, dated 1/3/2006 directed to constitute a Central Agency headed by the Deputy Inspector of Police. CB-CID, Chennai for the purpose of looking into all the complaints relating to bogus claims before the Motor Accident Claims Tribunal filed, based on fabricated records.

The course of action initiated by the Central Agency was not only slow and tardy but after the initial enthusiasm, on the realization that a sincere re-investigation may expose fellow police officials, there was an effort to tone down the manner of investigation. It is alleged that the officers to whom re-investigation was entrusted are totally indifferent to the serious nature of the crimes involved.



Even in such of those few cases where a fraud was exposed and charge sheets were filed, it was found that the charge sheets were so formulated and proceedings manipulated so as to enable the accused to escape the wrath of law. In a large number of cases, notwithstanding the glaring fraud and fabricated documents available on record, the Central Agency has totally disregarded and ignored the vital links and instead closed the complaints as mistake of facts.

The statistics as on 31.12.2005 Insurer MCOPs Total Amount No. Reported Claimed (Rs. in Crores)

1	M/s. National Ins. Co. Ltd.	28.462	238.40
2	M/s. New India Assu. Co. Ltd.	16.727	179.38
3	M/s. Oriental Ins. Co. Ltd.	28.157	313.08
4	M/s. United India Ins. Co. Ltd.	55.962	692.75

It is stated that 25% of the above claims were found to be tainted by fraud and fabrication. Further, in order to demonstrate that re-investigation by CB-CID was not sincere and diligent and their closure of the complaints as mistake of facts was contrived and deliberate several instances from other Police Stations were also cited.

CBI submitted before the High Court, Madras that they did not have adequate manpower, infrastructure to handle so many complaints and accordingly, they have been entrusted only with 23 complaints till date. By orders dated 10.11.2006, the High Court had directed the Central Government to respond as to whether an Insurance Fraud Bureau, like those existing in UK, and US could be created in India.

The Central Government has since filed an Affidavit expressing inability on the ground that already an IRDA Committee and the Law Commission have found it not feasible. Hence it would appear that IFB in India may remain an unrealized dream. The Central Government has suggested that just as banks are taking care of their claims; it was for the vigilance department of the respective Insurance Companies to handle it, enlisting the services of the local State Police, as law and order was a state subject. The said proceedings are pending before the High Court, of Madras and the last word on it cannot be said to have been uttered yet.

## 2. Issues to be Audited

The insurers make all out efforts towards continuous improvement of quality in the operations of Third Party Claims Department. Besides Internal Audit, insurers have also initiated quality assurance exercise on a regular basis to review the existing claims and make adequate provision. Due to prevailing state of affairs the work load in the operating offices has enormously increased. The pressure to handle claims is to the tune of over 1000 cases per officer, which leaves a lot of gaps in efficient working of the department.



The audit teams are required to test that outstanding provision made for third party claims are adequate. Further the teams have to look into the aspect of timely completion of files.

- i. Whether policy copy and 64 VB confirmations were received immediately?
- i . Whether vehicle-related documents are verified routinely?
- i . Whether investigators used are giving quality reports and whether they obtain statements on affidavit and make themselves available for evidence in Court of law to protect the company's interest?

In order to look into various audit issues it is necessary to study common processing defects in third party claims settlement.

#### **a) Common Processing Defects**

The service of summons along with the copy of the plaint to insurance company is the first step in the processing of third party claims. The copy of the plaint must be thoroughly studied since it gives a fair idea not only of the applicants and the claimants and / or victims e.g., age, occupation, income, family background etc., but also the circumstances of the accident. There may be several claims where cases filed may not have resulted out of vehicular accidents.

Investigation is the second important step to be instituted immediately on receipt of plaint. The Investigator should invariably collect facts, documents, and statements as here under:

- i. Certified copy of police papers viz. F.I.R. Panchnama, Station Diary entry form 54, Charge sheet as well as statements recorded by the police.
- i . Driving Licence with the certificate of concerned RTO (Xerox copy to be avoided)
- i . Insurance particulars of vehicle, R. C. Book, Fitness Certificate and Permit (if applicable), Load Challan.
- iv. Facts about claimant and / or victim, e.g., age, proof of income, Financial Status & information from neighbours and other relevant details like previous illness, injury, hospitalisation and related medical accounts / record including Bed Side Ticket, test reports, prescriptions etc.

- v. Injury, disability certificate, Confirmation from treating hospital / Doctor.
- vi. The insured could also be informed by investigator to cooperate as per the provision of the Section 134 (C) of 1988 Act.

As such many a time the spot statements given to police and facts mentioned in the plaint vary due to an afterthought by the claimants, e.g., the vehicle responsible for accident being uninsured, blame is shifted to another vehicle, FIR is lodged late, the name of the driver is changed, the Driving Licence does not authorise the holder of licence to drive that type of vehicle, the copy of Driving Licence submitted in OD claim is different.

The investigator must also look into and verify classification of vehicle to ascertain whether the vehicle was being used for the purpose it was insured, in reference to Notification # SO 451 (E) dated 19-06-1992 (Annexure1) specifying Transport or Non Transport vehicles and Notification # G.S.R. 400 (E) dated 11-05- 2002 categorising motor vehicles as per their seating & luggage carrying capacity.

The statements with regard to injury must be crosschecked with police papers to rule out any exaggeration of facts. The Advocate may be instructed to scrutinise the Disability Certificate for the purpose of getting interim compensation u/s 140.

If necessary, the Advocate should be asked to request the Court to summon the Doctor as a witness and an affidavit of Insurance Company's Orthopaedic Surgeon may also be filed highlighting the discrepancies in the Certificate submitted by the applicant. The advocate may also ask Claims Tribunal to seek affidavit from the attending Doctor to bring out the truth.

Sometimes more than one vehicle is involved and one insurance company may pay their share of No Fault Liability compensation u/s 140. Later it may happen that the insurer who had paid the NFL is exonerated of their liability at the stage of final award. In such a situation the attention of the other insurer must be asked to deduct the amount paid by the other insurer and reimburse the same to them so as to make sure that the applicant does not receive more than the actual award.

#### **i. Receipt of summons**

The common processing defect at the time of service of summons to the insurer is that no date stamp is affixed by the insurers office on the face of summons received, which can be vital evidence of late service of summons. The summons are neither filed with file number, case number and claim number on the same day, nor entered in TP claims register or Genysis same day, resulting in misplaced summons.

Further the summonses are not handed over to the advocate immediately, delaying the timely filing of proper written statement; improper written statement on general denial basis is filed in the Claims Tribunal hurriedly. The Underwriting Office is not requested immediately for Certified Policy copy and advance premium payment compliance certificate under Section 64 VB of Insurance Act 1938, resulting in lack of updated data when required.

## **ii. Receipt of response from underwriting office**

The Advocate is not informed immediately about the policy & premium details causing the liability of the company being wrongly denied or admitted in the written statement.

- (a) First hearing:** No application is submitted immediately on receipt of summons by the panel Advocate in the Claims Tribunal for filing of police records, PM report etc. This leads to pleading of the case with defective arguments / defective defenses being raised in regard to gratuitous passenger, invalid driving licence, extent of disability, proof of income, age etc. culled out from the investigation report. Further, application under Section 170 is not filed despite non-representation / collusion by the insured. This results in the insurer losing the rights under Section 149(2) to use all grounds for defence, which are otherwise available to the insured.
- (b) Receipt of investigation report:** The case is not handed over for investigation with proper brief immediately to the investigator resulting in first or subsequent hearing dates being missed. Further, it results in the insured's Advocate filing improper pleadings in written statement and putting forth improper arguments both on liability and quantum fixation.
- (c) Hearing stage:** A regular interaction with the advocate is essential to ensure correct defences being taken. Lack of regular interaction with the advocate during the hearing stage leads to defects in defence, and no timely correction is possible later.
- (d) After the tribunal's judgement:** The advocates do not notify immediately about the final order pronounced by the MACT. A Certified copy of the award is not obtained immediately entailing unnecessary interest liability. At times awards are not satisfied in time either due to collusion with claimants, when the market interests are low as compared to interest awarded by courts or due to sheer carelessness resulting in accumulation of avoidable interest and legal costs and possibility of default in payment.

This causes execution petitions with arrest warrants or seizure of Insurers accounts and custody of money by the courts. Sometimes the decision on whether the award is satisfactory or if there is need to go in for appeal against it is not taken within the limitation period. This results in avoidable petitions for condoning delay and even rejection of the same.

### iii. Appellate court

At times, unnecessary appeals are pursued e.g., application under Section 170 has neither been filed nor permission taken from the Claims Tribunal to contest on all the grounds. Similarly appeals made on quantum are not tenable and at times lower amounts to be defended are offset by legal and likely interest costs. Sometimes hurriedly drafted appeals on improper grounds weaken the defences resulting in failure in appeal with enhancement in interest liability and legal costs to insurers.

### iv. Scope and purport of tribunal

As regards the scope and purport of Section 168 of the Motor Vehicles Act, 1988, the Claims Tribunal is not only entitled to determine the amount of claim from the insurer, owner or driver of the vehicle jointly or severally, but also adjudicate on the dispute between the insurer and the owner or driver of the vehicle involved in the accident, in so far as it can be resolved by the Claims Tribunal in such proceedings.

### b) Internal Audit Issues in Third Party Claims Settlement

Some important issues in third party claims settlement are listed below:

- i. Whether the method of computing outstanding provision is incorrect?
- i. Why some of the files are incomplete (pertaining, for example, to the following aspects):
  - (a) 64 VB confirmation not received from outstation policy issuing offices
  - (b) Vehicular documents not verified
  - (c) Investigators not available to verify outstation addresses
  - (d) Driver is no longer in service of transporters to avail verification of DL
  - (e) Record keeping in settling office is unsystematic.
  - (f) Xerox copies of Cover notes do not bear office rubber stamp
  - (g) Revised address list of offices with present and old office code not available
  - (h) Neglecting orphan claims
- i. Claims paid through inter office accounts are not reflected in TP claims paid / intimation register in the year of payment affecting correctness of

incentive payments to development officers due to paid claims being shown as inadequate outstanding provisions.

- iv. Attachment orders need be examined as to the causes which led to the serious situation. System deficiency should be identified and panel advocate should be asked to explain.
- v. Number of TP claims registered is too large vis-a-vis personnel earmarked to handle claims effectively.
- vi. Quality assurance teams must examine large claims and claims outstanding for over three years to initiate appropriate action in order to expedite settlement.

### c) Treatment of Orphan Claims

These are third party claims where no policy details are available. Sometimes, Claims Tribunals serve notice only on the Insurance Company and no claim petition is received, then such cases are registered as Orphan Claims and a separate list is kept of such claims. Suitable standing provision is made in the claim register immediately. However, these provisions do not form a part of the Divisions outstanding claim provision.

Efforts are made by insurers to trace the policy details through investigator, panel advocate, and petitioners etc. In some cases they may belong to a series of cases pertaining to a single accident. If the details are received then suitable entry is to be made in the Claims Register, policy particulars including Section 64 VB of Insurance Act 1938, compliance is procured through the concerned underwriting office and sent to panel advocate. It is absolutely necessary that an advocate is appointed immediately on receipt of notice without for the policy details as otherwise the case may be decided ex-parte.

Sometimes the underwriting office receives summons without a petitions copy. In that case the first thing to be checked is whether such a case was already registered. This could happen because sometimes the Claims Tribunal sends one copy of the summons by registered post and another by hand delivery. If a case already exists, then one must make sure that it has been entrusted to an advocate already. If no particulars are available, then the case is registered as an orphan claim.

Orphan claims are those claims where policy particulars are not available despite all efforts by insurance company who has been served the summons. This gives rise to doubt that the policy may have been issued by some other office or insurer. It may also happen that there is no insurance at all for the vehicle causing accident and the insurance company is made respondent just for the sake of getting the case admitted in a Claims Tribunal.

The panel advocate in such a case is asked to move Claims Tribunal to seek all available particulars, in relation to this case. The Advocate is required to initially move an application to obtain comprehensive search report having details with documents filed by petitioner. On submission of search report by the Advocate and on the basis of confirmation of the insurance and coverage for insured vehicle in the said accident, the panel Advocate submits a **Say Report** to the Court Registrar. In case insurance is not accepted or not confirmed **No Say Report** is submitted.

The available details are given to the investigator for obtaining further details of the accident and related documents.

If policy details remain unknown even after investigation, the claim would remain as an orphan claim in our books. O/s provision will be made for such claims and the statutory auditors will also examine it. However, one third (1/3rd) of the provision are added to the figure of outstanding provision of motor claims in our final accounts towards such orphan claims.

- i. **Tax on Interest Portion of Compensation:** The insurers maintained that interest was paid on the amount awarded as compensation because of delayed payment and ordered by the Claims Tribunal, and if TDS was applied, it was the beneficiaries who would be put to great loss, and in view of that, companies were not deducting tax so far. The High Court of Madras has ruled that insurers engaged in Motor Insurance business are bound to deduct income tax at source (TDS) on interest paid on compensation awarded by MACT in respect of claims under Section 194-A of Income-tax Act.

Was their non-deduction of TDS for the past period wrong and were they liable to pay the said amount?

The petitioner, National Insurance Co. Ltd., a Government of India undertaking, contended that Section 194-A had since been amended with effect from June 1, 2003; and they were deducting TDS on interest payable on the compensation.

Referring to non-deduction of income tax on compensation for the earlier period, the petitioner submitted that the Central Board of Direct Taxes, through their circular dated September 5, 2003 clarified that no deduction of tax at source need be made in cases where the interest awarded on compensation did not exceed Rs. 50,000/-. Mr. Justice K. Chandru, who heard the petition, said there was no escape from liability for deducting tax on interest on compensation. The Income-tax Department had said that if the petitioner sent any representation in this matter, it would always be received and will be given due attention.



**Test Yourself 2**

As regards the scope and purport of \_\_\_\_\_ of the Motor Vehicles Act, 1988, the Claims Tribunal is entitled to determine the amount of claim from the insurer, owner or driver of the vehicle jointly or severally.

- I. Section 163
  - II. Section 168
  - III. Section 158
  - IV. Section 161
- 





## Summary

- a) Frauds in TP claims: Whilst it is not denied that Motor accident Third party settlements are a social obligation, it must also be ensured that individuals / claimants do not take undue advantage of the provisions of the law to enhance personal wealth.
- b) Section 158(6) of the MV Act requires the Officer-in-charge of the Police Station to forward the FIR to the insurers and Claims Tribunal having jurisdiction within thirty days.
- c) Fraud management is essential to ensure only genuine claims are settled. Some of the steps taken in fraud management include:
  - i. Appointment of investigator
  - i . Photograph of victim
  - ii. . Panchnama and Seizure report
  - iv. Identity of witness
  - v. The Motor Vehicle Inspectors (MVI) report
- d) Wrongful gain is the gain by unlawful means, of property, to which the person so gaining is not legally entitled. Wrongful loss is the loss by unlawful means, of property, to which the person losing it is legally entitled.
- e) Section 464 of IPC provides that a person is said to make a false document, who dishonestly or fraudulently makes, signs, seals or executes a document or part of document or who, without lawful authority, dishonestly, fraudulently, by cancellation or otherwise, alters a document in any material part thereof or who makes a false document, which dishonestly or fraudulently causes any person to sign, seal, execute or alter.
- f) Types of fraud in Motor Insurance include:
  - i. Conversion of Non-Road Traffic Accidents
  - i . Conversion of Medical Cases for Wrongful Gain
  - i i. Frauds in Road Accidents
  - iv. Multiple cases
- g) At the time of underwriting, when cover is given knowingly about the occurrence. If cover is not available, then by arranging forged cover.
- h) Identification of Fraud: Thorough knowledge of MACT cases, MV Act, Criminal Procedure Acts, IPC and document related in connection thereof should be there to detect the fraud.

- i) Effective investigation: The perusal of documents and probing mind of MACT officer will be able to detect if any fraud is involved. Apart from these, effective investigation should be arranged for the corroboration of the vital facts and to dig out additional information to ascertain the truth.
- j) Methods of Detection of underwriting fraud in early stage:
  - i. The investigation report
  - i . The seizure memo
  - ii. . 64 VB Compliance Certificate
  - iv. The copy of cover produced by the applicant in MACT in support of the claim
  - v. Any complaint received in the office
- k) Frauds Committed with Internal Support: The cases falling under close proximity must be reported to the controlling office immediately with all documents as prescribed by the guidelines.
- l) Frauds Committed by Outsiders: FIR should be lodged before the competent police authority. In case police authority does not take cognizance of it, the complaint should be made to the judicial authority.
- m) Preventive Management of Fraud Cases: In extreme cases the practice of issuance of cover note should be abolished. It would be appropriate to consider functioning of non-TP offices. Also where there are rampant cases of fraud related to the underwriting, the office should be closed / staff should be rotated and all facilitating personnel must be reviewed / changed
- n) Power to Recall by Claims Tribunals: The Supreme Court had adverted to tainted claims in [(United India Insurance Co. Ltd., vs. Rajendra Singh) 2000 ACJ 1032] and held that the Claims Tribunals had the inherent power to review / recall awards which are alleged to be tainted with fraud. It was held that fraud and justice can never go together and no insurer can be deprived of his right to seek and recall the award, which is alleged to be so tainted.
- o) Reinvestigations closed as Mistake of Fact: It was true that during the proceedings and in the immediate aftermath of the decision, there were a host of withdrawal of claims fearing criminal action. Insurers were able to save crores of rupees. But some months down the line, it was found that the scamsters had devised ways and means to get over this hiccup.
- p) Issues to be audited: The insurers make all out efforts towards continuous improvement of quality in the operations of Third Party Claims Department. Besides Internal Audit, insurers have also initiated quality assurance exercise on a regular basis to review the existing claims and make adequate provision.

Receipt of summons: The common processing defect at the time of service of summons to the insurer is that no date stamp is affixed by the insurers office on the face of summons received, which can be vital evidence of late service of summons. The summons are neither filed with file number, case number and claim number on the same day, nor entered in TP claims register or Genysis same day, resulting in misplaced summons.

- q) Scope and purport of tribunal: As regards the scope and purport of Section 168 of the Motor Vehicles Act, 1988, the Claims Tribunal is not only entitled to determine the amount of claim from the insurer, owner or driver of the vehicle jointly or severally, but also adjudicate on the dispute between the insurer and the owner or driver of the vehicle involved in the accident, in so far as it can be resolved by the Claims Tribunal in such proceedings.
  - r) Internal Audit Issues in Third Party Claims Settlement: Some important issues in third party claims settlement are listed below:
    - i. Whether the method of computing outstanding provision is incorrect?
    - i . Why some of the files are incomplete
    - ii. . Claims paid through inter office accounts are not reflected in TP claims paid / intimation register in the year of payment affecting correctness of incentive payments to development officers due to paid claims being shown as inadequate outstanding provisions.
    - iv. Attachment orders need be examined as to the causes which led to the serious situation. System deficiency should be identified and panel advocate should be asked to explain.
    - v. Number of TP claims registered is too large vis--vis personnel earmarked to handle claims effectively.
    - vi. Quality assurance teams must examine large claims and claims outstanding for over three years to initiate appropriate action in order to expedite settlement.
  - s) Treatment of Orphan Claims: These are third party claims where no policy details are available. Sometimes, Claims Tribunals serve notice only on the Insurance Company and no claim petition is received, then such cases are registered as Orphan Claims and a separate list is kept of such claims.
-

**Answers to Test Yourself****Answer 1**

The correct answer is III.

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly.

**Answer 2**

The correct option is II.

As regards the scope and purport of Section 168 of the Motor Vehicles Act, 1988, the Claims Tribunal is entitled to determine the amount of claim from the insurer, owner or driver of the vehicle jointly or severally.

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**Self-Examination Questions****Question 1**

For identification of Motor Insurance related frauds, one should have thorough knowledge of \_\_\_\_\_.

- I. MACT cases
- II. Motor Vehicle Act
- III. Criminal Procedure Acts and CPC
- IV. All of the above

**Question 2**

Section 158(6) of the MV Act requires the Officer-in-charge of the Police Station to forward the FIR to the insurers and Claims Tribunal having jurisdiction within \_\_\_\_\_.

- I. Seven days
- II. Fifteen days
- III. Thirty days
- IV. Forty five days

**Question 3**

Fraud management is essential to ensure only genuine claims are settled. Some of the measures that can be adopted are documentary proofs of accident details which include\_\_\_\_\_.

- I. Photographs
  - II. Witness statements
  - III. Identification of claimants by concerned police official
  - IV. All of the above
- 

**Answers to Self-Examination Questions****Answer 1**

The correct option is IV.

For identification of Motor Insurance related frauds, one should have thorough knowledge of MACT cases, Motor Vehicle Act, Criminal Procedure Acts and CPC etc.

**Answer 2**

The correct option is III.

Section 158(6) of the MV Act requires the Officer-in-charge of the Police Station to forward the FIR to the insurers and Claims Tribunal having jurisdiction within thirty days.

**Answer 3**

The correct option is IV.

Fraud management is essential to ensure only genuine claims are settled. Some of the measures that can be adopted are documentary proofs of accident details which include photographs, witness statements, identities of claimants and witnesses, identification of claimants by concerned police official etc.

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# ANNEXURE A

## LEGAL ASPECTS OF THIRD PARTY CLAIMS

### Introduction

In this section you will learn about the definition and essential components of negligence vis-à-vis duty, the no fault liability and if victim has its own fault, the scheme of structured compensation based on no proof of negligence.

You will also learn about liability if policy is not in existence and the documents required to be produced and proved; statutory liability vis-a-vis a third party liability u/s 147 and 149 of the 1988 Act, liability of insurers to drivers and passengers and no liability for owner-driver, breach of policy conditions of contract, assessment of compensation under MACT as per EC Act 1923 and liability of the insurer with regard to passenger carried in goods carrier.

### Learning Outcomes

- A. Negligence
- B. Liability when policy is not in existence

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## A. Negligence

### 1. Legal aspects of Third Party Claims

The legal position is that under Section 146 of 1988 Act, necessity for insurance against Third Party risk is mandatory which provides that no vehicle shall ply in a Public Place without a valid insurance.

The duty to give information as to insurance to any person / claimant is stipulated under Section 151 as hereunder:

If any third party / claimant approach the owner of the vehicle for details of the policy issued he shall furnish the details without refusing.

#### a) Third Party (TP) Claim

A Third Party claim can be filed under Section 166 for ‘Fault Liability’. Section 166 provides application for compensation and explains as to how, where and by whom an application for compensation is to be preferred. An application for compensation can be made to any of the following Claims Tribunal:

- i. Within whose jurisdiction accident occurred.
- i . Within whose jurisdiction the claimant resides or carries on his business.
- i i. Within whose jurisdiction the defendant resides.

#### b) No Fault Liability

The claimant can in addition to application under Section 166 invoke the benefit of Section 140 which stipulates for ‘no fault liability’ for an interim award under Chapter - X:

If an accident results in death or permanent disablement, the owner(s) shall pay compensation in equal proportion on the following basis:

- ✓ Rs. 50,000/- in case of death
- ✓ Rs. 25,000/- in case of permanent disablement

- i. **Sub-section (4) of Sec 140** provides that the amount should not be reduced even if the victim is finally proved to have been negligent.
- ii. **Sub-section (5) of Sec 140** provides that the claimant is also entitled to compensation under any other law, subject to the condition that the amount paid under Sec.140 or 163(A) be deducted from such other compensation.

**iii. Section 141 (1): Compensation for death and permanent disablement under No Fault Liability (NFL)**

No claim can be made under Section 140 in conjunction with or in addition to a claim under Sec.163. But it can be made along with Sec.166 under Fault liability.

**iv. Sub-section (3)** provides that compensation paid under Sec.143 should be deducted from the final award if it is more than the NFL award. If it is less than the NFL award, the final award need not be paid.

**v. Section 142** stipulates ‘Permanent Disablement’ and defines Permanent Disablement for the purpose of award under NFL. Permanent Disablement has been defined as:

- (a) Permanent privation of the sight of either eye or the hearing of either ear or privation of any member or joint, or
- (b) Destruction or permanent impairment of the powers of any member of joint, or
- (c) Permanent disfiguration of the head or face

**c) Liability under Employees’ Compensation Act 1923**

**Section 167 gives right to claim under MV Act 1988 / EC Act 1923:** Where an accident gives rise to claim compensation under MV Act 1988 as also under Act 1923 the application can be filed under either of the acts but not under both. Section 143 gives applicability of Chapter X to Claims under the Act 1923 and states that the provision of this Chapter also applies to claims under the Act 1923 arising out of the use of the Motor Vehicle.

**d) Liability without establishing negligence**

As for a claim under Sec.163-A, no negligence needs to be established and the scheduled compensation within the limits provided can be obtained. Section 163(A) provides for Structured Compensation: The Section gives a right to the claimant to prefer a claim against the owner or insurer of the vehicle where the negligence on the part of the driver is not required to be proved. The compensation payable shall be as per Schedule Second of the Act 1988. Permanent Disablement is to be ascertained from the provisions of Act 1923 for the purpose of compensation under this Section.

### e) Liability on proof of fault

As for the further prosecution of the claim, the claimant can seek further compensation on proof of fault. It would suffice if claimant establishes a preponderance of probabilities and the burden would be on the insurer to rebut the presumption of negligence. The proceedings being summary in nature and strict rules of evidence are not being applicable; the rigour on the claimant has drastically been reduced, making it easy to breathe comfortably even while being whipped by the cruel fate in the form of an accident.

The legal liability to pay motor third party claim depends on whether the insured is legally liable to the third party and that the insurance company is liable to indemnify him under the Motor Insurance Policy contract issued in compliance to Motor Vehicle Act 1988.

Section 147 stipulates requirements of policy and limits of liability and specifies the cover to be granted under the policy and the limits of liability.

A	The liability towards Third Party Personal Injury / death in respect of all vehicles	Unlimited.
B	Towards Third Party Property Damage	Rs. 6,000/-
C	Towards Passengers in a Passenger Service Vehicle	Unlimited
D	Towards Workmen as also the coolies connected with the operation or maintenance of the vehicle	As per the Schedule of the EC Act 1923.

The insured's legal liability to the third party, out of the use of motor vehicle in public place is based on law of negligence, and On the other hand the insurance company's liability to indemnify depends upon the terms and conditions of the insurance policy contract besides the mandatory provisions of Motor Vehicle Act 1988 as amended from time to time.

## 2. Negligence

### a) Definition of Negligence

**Chambers 20th Century Dictionary** defines negligence as want of proper care, an act of carelessness omission of duty especially care for the interests of others as the law may require.

Though the Claims Tribunal was created by a statute, the law relating to liability and compensation would still be under Common Law of Torts and not under MV Act 1988.

**Negligence is a specific Tort and in any given circumstances, it is the failure to exercise that degree of care, which the circumstances demand. Negligence may consist in omitting to do something, which ought to be done in either a different manner or not at all.**

There is a duty under common law to exercise reasonable care to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to other persons or their property. The degree of care required in a particular case depends on the surrounding circumstances and may vary according to the amount of risk to be encountered and to the magnitude of the prospective injury.

The claimants were, therefore, required to plead and prove negligence to sustain a claim. This led to manifold problems as the claimants were handicapped by their inability to adduce eyewitness accounts or organise a witness to be examined in a far flung place. The prejudice caused by such imposition of a burden was significantly reduced when the Supreme Court ruled that the maxim *res ipsa loquitur* would apply to arrive at the culpability of tort-feasor and the burden would shift to the claimants to rebut the presumption arising there from.

### Important

**MAXIM *res ipsa loquitur* means accident speaks for itself.**

It was held that Courts should not succumb to niceties, technicalities and mystic maybe and allow culpable drivers escape liability. It was held that the initial burden was squarely on the claimants to establish negligence, without proof no compensation could be awarded. The preponderance of probabilities to fix negligence would suffice and technical niceties would need to be eschewed.

In a case where the victim, while getting down from a bus, suffered amputation, it was ruled that lack of co-ordination between the driver and conductor was the cause and, therefore, negligence on the transport corporation was evident. The rigour and rigmarole of need to plead and prove negligence was significantly lessened by these decisions. Mere occurrence of accident ought to suffice to fix liability.

From 1/10/82 under Sec. 92-A of MV Act, 1939, a **No Fault Liability** regime was introduced which has now been substituted by Sec.140 under MV Act, 1988. But it remains for the purpose of interim award and payment of a minuscule proportion of the compensation.

## b) No Fault Liability

It was felt that **No Fault Liability** regime also did not provide necessary succor and relief to redress the grievances of the affected lot. Sec. 163-A and attendant Schedule vide Act 54 of 1994 as of 14/11/94 introduced a short cut for claimants to obtain compensation without proof of fault. Though akin to No Fault Liability position, it was distinct in that an award under this provision would be a final award [(Deepal Girishbai Soni Vs. United India Insurance Co. Ltd.), 2004 ACJ 934] unlike an award under Sec.140. Thus the rigour of negligence as the fulcrum for sustaining a claim has been considerably reduced.

**Absence of driving licence for the claimant** 2008 (5) MLJ 1386 (SC)] will not be proof of negligence or contributory negligence. One can safely say that it is only if the claimant was blatantly seen to be at fault, that the claim petition can be expected to be dismissed. In a particular case the driver of the bus had taken the bus on a bridge overflowing with water and the bus was washed away in the floods, the finding was reversed on grounds of the negligence of driver writ large in the circumstances.

### i. No fault liability and victims own fault:

Sometimes a claim under No Fault Liability under Sec.140 may survive for some relief [(K. Nandakumar vs. Thandai Periyar Transport Corpn) 1996 ACJ 555 (SC)]. The claimant victim of accident was himself prosecuted, but was acquitted. It was held that acquittal by the Criminal Court could be for several reasons and the degree of proof required was also different. If so, the proceedings before Criminal Court were not to be taken into consideration. The claimant himself was held responsible for the accident but was declared entitled to the statutory sum under no fault liability.

## c) Section 163 A

Coming to an award under Sec.163-A, which would be a short route to a final award, no negligence needs to be proved to sustain a claim. Any party to a claim under Sec.163-A can seek the compensation provided for by the Second Schedule and it would suffice for the claimants to prove the occurrence of accident, the injuries sustained and disability suffered or death and provide proof of age and income; and be awarded the compensation contemplated by the Second Schedule.

The benefit of this Second Schedule would be available only to those whose income is less than Rs. 40,000/- per annum [(Deepal Girishbai Soni Vs. United India Insurance Co. Ltd.), 2004 ACJ 934]. However, those of the claimants who are unwilling to wait in the regular claim queue to establish fault under sec 166 and seek a remedy, can seek this shorter and alternate route, if they are satisfied with the fixed compensation in Second Schedule.

It being a remedy meant for such segment of victims, it can be invoked by only such classes of victims, who have income within the specified bracket and not above it.

#### i. Section 163 A and victims own fault

It would suffice to say that the language of the relevant provisions would suggest that a claim under Sec.163-A can be defeated or reduced for fault on the part of the victim or contributory negligence of the victim, unlike a claim under No Fault Liability under Sec.140.

#### ii. Theory of Absolute Fault

Mere occurrence of accident would suffice to support a claim and there was no need or compulsion for the claimants to prove fault. However, the sixth exception to the Rule in (Rylands Vs. Fletcher) holds that when the Plaintiff himself was at fault, a claim can be effectively dismissed or reduced, if the Respondent proved that the claimant was himself at fault.

#### iii. Liability towards Parked Vehicle

Parked Vehicle need not be at fault all the time. Parked vehicle can be at fault, but a vehicle coming from behind has *last opportunity*. Apportionment of liability on a parked vehicle is also proper. But in a case where a Jeep had dashed against a parked Truck, adverting to Sec.122 of MV Act, 1988, it was held that the accident arose due to the dangerous parking of the stationary Truck and hence the said driver alone was liable for the loss of lives/limb of victims on the Jeep, though it was hit from behind.

#### iv. Liability when more than two vehicles involved

A person hit by one vehicle fell down and was then run over by another vehicle. Both vehicles were found liable apportioning damages at 40:60. In another case a two wheeler hit a taxi, and fell down and the two wheeler rider was crushed by the Bus; negligence was apportioned at 60:40 between the bus and 2-wheeler rider. [(R. Pramanathan Vs. MTC) 2008 (1) TN MAC 300 (Mad)].

#### v. Overloading

The insurer cannot avoid liability on the ground that *three persons were carried on a two wheeler* unless it was shown that such overloading itself led to the occurrence of the accident. Principle of *res judicata* in such claims was discussed. Applicability of *res ipsa loquitur* in such claims finding has to be common and consistent in all connected claims.



## vi. Other cases on evidence of negligence

The claim of the driver of a Transport Corporation was disputed on the ground that he was already held liable in connected claims. Though he was not a party in those claims, he appeared as a witness and deposed on behalf of the Transport Corporation. Hence such a finding would operate as estoppel in his own claim, when the finding against him had gone uncontested and became final. [(Machindranth Kernath Kasar Vs. D.S. Mylarappa) 2007 ACJ 1323 (Kant)].

The claim was against the driver, owner and insurer of a van. The FIR was to the effect that the van had collided but the fault was on the part of the truck driver. The Transport Corporation had examined only their conductor. It was held that driver of the bus was the best witness and his non-examination shall lead to adverse inference against him. The finding that bus driver alone was to blame for the accident was upheld in the appeal.

## d) Delay / Discrepancy / Mistake in FIR

i. Delay in filing FIR was held not considered fatal to the maintainability of the claim.

i . Delay of 53 days in registering FIR [2004 (2) MLJ 202] was irrelevant, when the driver pleaded guilty, it is binding before claims Tribunal.

i . The name was shown differently as Arun in FIR/Charge-sheet and as Arunachalam in the Hospital records; the mere fact of such difference in name would not affect the identity of the injured claimant. [2007 (2) TN MAC 493]

iv. Where the owner of the vehicle did not dispute the accident but only contested negligence and apart from the injured, an independent eyewitness had also deposed about the involvement of the vehicle, the finding of the Tribunal that the FIR did not carry the registration [(Sudesh Kumar Kapoor Vs. Anil Anand) 2007 ACJ 1130 (Uttara)], was set aside as improper.

v. The insurer cannot avoid liability merely on the basis of mistaken alphabet in the FIR as to the vehicle [(Dewakar Shukla Vs. Ashok Thakur) 2007 (II) ACC 833 (MP)] involved in the accident, in the face of proof of involvement of the vehicle and prosecution of driver.



### e) Conviction of driver before the Criminal Court

Mere conviction of driver before the criminal court would not be relevant except as a fact and trial being summary in nature, strict rules of evidence were not necessary. In the absence of rebuttal evidence, adverse inference has to be drawn to fix negligence. Merely because of the criminal case against bus driver, it cannot be contended that the car driver was not at all liable. *Acquittal of driver* by criminal court was not found relevant in claim before MACT. However, *driver being convicted* as in [1975 ACJ 215, 1998 (3) LW 521], it has been so held in [(TNSTC Vs. Muthu Maheswari) 2008 (7) MLJ 344] is a valid piece of evidence.

### i. Other cases

In summary procedure, strict rules of evidence are not applicable; documents marked without author can be looked into. The son of the deceased was examined as the only eyewitness and his evidence was found acceptable by the High Court who observed that *mere interestedness was no ground* to reject his testimony. An award for Rs. 1,00,000/- was passed by the High Court. [2007 (2) TN MAC 497] for 60% disability due to fracture of both bones of right leg.

### f) Negligence and Duty

Though there is no statutory definition in common parlance, negligence is categorised as either composite or contributory. Negligence is omission of duty caused either by omission to do something, which a reasonable man guided upon those considerations, which ordinarily by reason of conduct of human affairs would do or be obligated to do, or by doing something which a prudent or reasonable man would not do.

Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance, which the circumstances justly demand, whereby such other person suffers injury.

**Negligence and duty** are strictly complementary. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. Where a passenger was alighting, it was held that the duty was on the part of the driver and conductor to ensure safety.

In another case where the passenger of a transport corporation bus had his *arm on the window sill* and suffered injuries from a moving vehicle, it was ruled that the obligation was on the driver of the vehicle to give allowance for such conduct of passengers and drive accordingly. Failure to do so would constitute negligence on his part.

### **i. Damnum sine injuria**

Not all actions or failure to take action give the right to a claim in a tort e.g., it is not ones duty to save a person from drowning even if knows how to swim well. Similarly it is not ones duty to refrain from setting up a business just because competition can cause loss to others. These actions are known as damnum sine injuria i.e., harm done without the commissioning of a legal wrong.

### **ii. Test of negligence**

Negligence can be assessed by a three-fold test:

- (a) The likelihood of causing injury or damage must be reasonably foreseeable.
- (b) The person injured or whose property is damaged must be in close proximity to the action or conduct called into question
- (c) It was just and reasonable to impose liability in that situation. Charles worth has defined negligence as a tort, which is the breach of a duty to take care imposed by common or statute law, resulting in damage to the complainant.

### **iii. Breach of general duty and contributory negligence**

Negligence is breach of general duty, which everyone in the society owes to every other person, of not causing bodily injury or damage to property of the other person. In the case of the Supreme Court of India observed the liability of the owner of the car to compensate the victim in car accident due to negligent driving of his servant is based on Law of Tort.

The negligence of the driver of the insured vehicle can be ascertained from the sketch of the scene of accident, panchnama, FIR in criminal case. The contributory negligence is also ascertained from the aforementioned documents to find out, if the injured or deceased had contributed in any manner by their negligence towards causing the accident.

### **g) Essential Components of Negligence**

The essential components of negligence as narrated in [(Poonam Verma Vs. Ashwin Patel), 1999 ACJ 721 (S.C.)] are:

- i. The existence of duty to take care which is owed by the defendant to the complainant

- i . Failure to attain that standard of care prescribed by the law thereby committing a breach of such duty
- ii . Damage, which is both casually connected with such breach and recognised by the law, has been occasioned to the complainant.

From the reading of Section 140 and Section 144 of the 1998 Act and Bihar Motor Vehicles Rules 226 and 246, it is clear that Chapter XI of the Act prescribes independent provision for grant of interim compensation, notwithstanding, the pendency of any application for grant of interim compensation under Chapter XII of the said Act. Chapter XI is clearly a departure from the usual common law principle that a claimant should establish negligence before claiming any compensation.

### **i. Own Negligence**

A person cannot be compensated for his own negligence in MACT. When the accident occurred due to the negligence of the deceased driver himself [1984 ACJ p 882 (Karnataka); 1987 ACJ p 588], no claim by his legal heirs can be entertained by the MACT.

### **ii. EC Liability under WC Act 1923**

In case of the death of a driver of a truck when it skidded from the road and fell into a river due to the negligence of the driver [2002 ACJ p 706 (Mad HC)], it was held that the case was not maintainable in MACT. However, the insurer is liable with reference to contract of insurance but the liability is limited to the Employee's Compensation Schedule under EC Act 1923 only.

### **iii. Burden of proof with claimant**

The burden of proof on an action for damages for negligence rests primarily on the plaintiff who, must show that he was injured by a negligent act or omission for which the defendant is in law responsible. This involves the proof of some duty owed by the defendant to the plaintiff; some breach of that duty and an injury to the plaintiff, a casual connection must be established.

The general law applicable is only common law and law of torts. If under the law a person becomes legally liable then the person suffering injuries is entitled to be compensated and the Motor Accident Claims Tribunal is authorized to determine the amount of compensation, which appears to be just compensation. The Supreme Court in [1977 ACJ 118] questioned the rights of Claims Tribunal awarding 'just compensation' on its satisfaction, on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence.

There is no doubt that it is for the claimant to prove negligence against the person from whom compensation is claimed. The culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. The transport operators generally get away due to judicial laxity [1980 ACJ 435 SC], despite the fact that they do not exercise disciplinary control over the drivers in the matter of careful driving. Each motor accident claim is defined by a particular set of circumstances and each case would govern the verdict on the question of negligence.

#### **h) Liability through negligence in use of motor vehicle**

The liability for accidents through negligence in the use of motor vehicles usually arises in the following circumstances:

- i. Dangerous and reckless driving without proper regard to safety of the pedestrians.
- i . Non observance of traffic rules and regulations
- i i. Drunken driving
- iv. Leaving a motor vehicle unattended on the road or highway without taking proper precaution for its safety
- v. Using defective vehicle. However, latent defects of the vehicle of which owner was not aware do not constitute negligence. The onus is on defendant to prove that the vehicle was defective or unfit.
- vi. The employer is liable for the negligence of his servant if the relationship of master-servant exists and the servant was found acting within the scope of his employment at the time of accident. In case of vehicles whether commercial or private cars driven by the owners own employees, the driver alone or the employer or both may be proceeded against.

#### **i. Dangerous and reckless driving - Materiality of speed**

As to when a certain speed will be considered dangerous varies with the nature, conditions and use of a particular highway and the amount of traffic which actually is, or may be expressed to be on it. The speed at which a vehicle is driven is material to the question of liability. The driver of a vehicle should, usually drive at a speed that will permit him to stop well within the distance he can see clearly, although exceeding that speed is not conclusive evidence of negligence.

The question is always, one of fact, but, if the driver strikes a person or object without seeing that person or object, there is the dilemma as to whether he was not keeping a sufficient look or that he was driving too fast having regard to the speed limit that could be observed, e.g., at night or during foggy conditions. A driver is not bound to foresee that a vehicle travelling in front of him, may stop suddenly without warning or apparent cause, and it will usually be negligence so to stop, unless sufficient reason exists.

**Road crossing** should be approached with care by the drivers. It is the duty of persons, who are driving over a crossing to drive slowly, consciously and carefully, for foot passengers who are at the entrance of a street, but it is also the duty of a foot passenger to use Zebra crossing at the entrance of a street so as not to get among the carriages, and thus receive injury.

The Highway Code provides when coming to a **Zebra crossing**, one should be ready to slow down or stop to let people pass. You must give way once pedestrians have stepped onto the crossing. One must signal to other drivers, that you mean to slow down or stop and at pedestrian crossings controlled by lights or by a Police Officer or traffic warden, or to give way to pedestrians who are still crossing when the signal is given for vehicles to move.

## ii. Obligation of Drivers

There is an obligation to take special care at cross roads. The driver of a vehicle which approaches a major road from a side road ought to give way to traffic on the major road, but the driver of a vehicle on the major road is not absolved from the duty of taking care to avoid collision at cross roads.

There is a guiding rule that the vehicle which has the other on its side must give way. The driver in general owes no duty towards traffic regulated through a light controlled crossing. However, the driver cannot claim absolute right to enter a road junction merely because the lights became green; he is still bound to observe safety while doing so.

## iii. Duty of pedestrians while crossing roads

Similarly a person on foot has a right to be on the Highway and is entitled to the exercise of reasonable care on the part of persons driving vehicles on it, but they must take reasonable care of themselves, and may be answerable if they give an occasion resulting in an accident to vehicle.

The amount of care reasonably to be required of them depends on the usual and actual state of the traffic and on the question, whether or not the foot passenger is at an approved and indicated pedestrian crossing. A driver owes no special duty to inform persons on the Highway, unless he knows or should have known of their infirmity.

#### iv. Non observance of traffic rules and regulations

Taking *Suo motu* notice of the traffic problem and increase in number of accidents and unsafe driving practices in the interest of general public and good administration taking *suo motu* notice of the statutory provisions of MV Act, 1988 and Rules on maintenance of Traffic discipline and Traffic Signals, provision of adequate machinery, etc. for the safety of road users, including the necessity of wearing a helmet is a duty cast on various stake holders.

The compliance with the directions is mandatory and any failure may invite contempt proceedings. [*Suo Motu Petition vs. State of Gujarat* 2007 (II) ACC 638 (Guj)]. The stipulation that riders of two wheelers should wear helmets compulsorily is a reasonable restriction and as such the same is valid and enforceable. In fact it was observed that public safety was a concern of the State, though not a fundamental duty. While holding that violation of the rules of traffic discipline would suffice to fix negligence on the culpable driver of the vehicle, the Traffic discipline is complied with more in breach.

The tragic occurrence of too many accidents is the result of laxity on the part of traffic authorities in imposing discipline and ensuring compliance. The High Court adverted to the severe social and economic loss arising from lax compliance with statutory provisions and directed strict compliance for the betterment of society at large. [(*United India Insurance Co. Ltd. Vs. Sundaram*) 2007 (3) TLNJ 662 (Civil) (Mad)]: [2007 (5) MLJ 952:2007 (4) LW 157].

#### v. Duty to follow traffic rules

Drivers of the vehicles should keep well to the left side of the highway unless road signs or markings indicate otherwise or they are about to overtake, or turn right or have to pass a stationary vehicle or pedestrians on the road. If two motor vehicles collide in the centre of the road, the inference is, in the absence of evidence enabling the Court to draw any other conclusion, that the drivers of both were equally to blame, and it is not a proper decision to hold the other, when no sufficient case, has been established against either.

#### vi. Traffic lights

Crossing a road in disobedience to a traffic light is negligence. A driver crossing when the lights are in his favour is under no duty to look out for traffic crossing in obedience to the lights, but if he sees such traffic, he must use reasonable care to avoid collision. On the other hand, as regards traffic which was already lawfully on the junction prior to the change of lights could reasonably be foreseen, might still be crossing over, he was under a duty not to enter it until it was safe for him to do so.



**vii. Signals**

The driver or rider of a vehicle should give proper signal before he moves out or overtakes before he stops, slows down or changes his direction, and all signals should be given clearly, and in good time, to give an indication of the intention to other users of the highway. He must watch out for the signals of other drivers and act promptly. Further, he must make sure certain that the direction indicator if it be used must give the signal intended and that it is cancelled immediately after use.

**viii. Lights**

In the hours of darkness it is necessary for the driver or rider of a vehicle to carry light so as to indicate his position on the road and the direction in which he is going or intending to go. Accordingly, failure to carry the usual lights, which misleads the driver of another vehicle and causes a collision, is negligence. It is negligence to drive a vehicle with inadequate lights so that the driver cannot see an obstruction or traffic on the road in front of him in time to stop or avoid it.

**ix. Sounding horns**

Sounding a horn or bell may be useful to warn other traffic of the approach of a vehicle, but it does not absolve the driver or rider of his duty to take care or give him the right of way. The omission to sound a horn or a bell is a collateral fact only and not an independent act of negligence: by itself it is not evidence of negligence, but it may be taken into account with other circumstances in determining whether the driver or rider was negligent.

**x. Law of the highway**

Principle of the law of the highway is that all those lawfully using the highway must show mutual respect and forbearance. Hence the duty of a person who drives or rides vehicle on the highway is to use reasonable care to avoid causing damage to person, vehicles or property of any kind on or adjoining the highway.

Reasonable care in this connection means the care which an ordinary skillful driver or rider would have exercised under all circumstances and connotes an avoidance of excessive speed, keeping a good lookout observing traffic rules and signal and so on.

Traffic hazards due to use of public highways for Agricultural operations such as thrashing has to be taken seriously to avoid loss of lives or limbs maimed from it.



The Supreme Court took serious note of the rising number of accidents and the recklessness in the use of Highways and the economic impact that befall on the community at large and the need for authorities to do some serious thinking and conduct research in trying to prevent the occurrence of such mishaps in such large numbers.

The context was for upholding of conviction arising out of rash and negligent driving of a motor vehicle, and it was observed that maximum permissible punishment of 2 years conviction as of now was too low compared to the consequences arising from it.

### **i) Duty while driving defective and unattended vehicles**

Driving a defective vehicle Halsburys Laws of England, 4th Edition, Vol. 34 where the defect might reasonably have been discovered is a negligent act. It is negligent to leave a vehicle unattended either on a slope where it runs of itself or in such special circumstances that the mischievous intervention of a stranger to restart it should have been foreseen. To leave a horse and a cart unattended on highway may be evidence of negligence.

#### **i. Duty of drivers while driving**

On a Public Interest Litigation it was held that vehicles while carrying school children has to comply with the provisions of the MV Act 1988 and CMV Rules 1989 and also guidelines laid down by the Supreme Court in [(M.C.Mehta Vs. Union of India) 1997 (8) SCC 770]

#### **ii. Duty while overtaking and being overtaken**

Overtaking of vehicle must be done on the right hand or offside of the vehicle overtaken, except where the driver in front has signaled that he is going to turn right. But this rule does not necessarily apply to roundabouts or on one-way roads. Nevertheless, when on a motorway, since the right hand lanes are free from slow moving as well as right turning vehicles, overtaking on the left must never take place.

The driver or rider of the overtaking vehicle, before attempting to overtake, should see that it is safe to do so, and should be especially careful at dusk or in fog or mist when it is more difficult to judge speed and distance. A driver should not overtake at or when coming to a corner or bend, a road junction, a pedestrian crossing, the brow of a hill, a level crossing, and a hump backed bridge, or where the road narrows, when to do so would force another vehicle to swerve or to reduce speed.

In all cases it is the duty of the person overtaking to allow an adequate margin of safety between his vehicle and the vehicle overtaken, and overtake only when he can do so without causing danger to other traffic.

### **iii. Parallel parking on roads**

The driver of a vehicle following another should allow sufficient space between the vehicles, to deal with the ordinary exigencies of running traffic but if he keeps too close to the rear of the vehicle-ahead and so fails to pull up in time, should the other vehicle come to a sudden halt, he may be found liable in negligence.

On the other hand, it is right to say that a bus driver must always keep a gap in front of his vehicle, sufficient to enable him to break at leisure was a counsel for perfection, which is ignored in modern traffic conditions. Whether the leading vehicle will be liable depends on whether the sudden stop was due to the driver's negligence or in some others cause. The USA has a rule to keep 20 seconds distance among the following vehicles.

### **iv. Duty to lookout**

It is the duty of the driver or rider of a vehicle to keep a good look-out. He must look-out for other traffic which is or may be expected to be on the road, whether in front of him or behind him, or alongside of him, especially at cross-roads, junctions and bends, and for traffic light signals and traffic signs including lines marked on the highway. Disregard of traffic signals and failure to keep a proper look-out is evidence of negligence.

When there are pedestrians about, the driver or rider must be ready in case they step from a street refuge or a footpath or from behind a vehicle or other obstruction and also be prepared for children, knowing that they may be expected to run suddenly onto the road. When passing a standing vehicle or other obstruction, which prevents a clear view of oncoming traffic or pedestrians, care should be taken and a good lookout kept.

### **v. Duty of driver while reversing**

A motorist, before reversing or tuning round on the highway should satisfy himself that it is safe to do so. The Highway Code provides that before you reverse; make sure that there are no pedestrians, particularly children or obstructions in the road behind you. Be especially careful about the blind area behind you that is the part of the road, which you cannot see from the driving seat. If you cannot see clearly behind, get someone to guide you when you reverse, never reverse from a side road into a main road.

### **vi. Duty of occupants opening doors**

It is negligence to open the door of a vehicle so as to strike a pedestrian or cyclist on the highway without just taking reasonable care to see that it is safe to open the door. The Highway Code provides, before opening any door of a vehicle make sure there is no one on the road, pavement or footpath close enough to be hit by the door. Be particularly careful about cyclists.

Get out on the side nearer the kerb; whenever you can, and make sure your passengers especially children do so, too.

## **B. Liability when policy is not in existence**

The Motor Insurance Policy is a legal agreement issued in compliance with Insurance Act, 1938 and its provisions relating to advance payment of premium. The policy does not cover the risk, if the premium cheque is dishonoured, or if the premium to accept the risk, is paid after the accident has already taken place.

The Certificate of Insurance and Cover Note issued in such circumstances becomes infructuous but the treatment of their consequences is different in case of own damage liability vis-a-vis third party liability as envisaged under the 1988 Act.

Therefore, the question arises whether insurance company may be held liable for payment of compensation during the period when the insurance policy was not in existence.

- i. If time is mentioned in the insurance policy or cover note, the effectiveness of the policy would start from that time and date mentioned and not from an earlier point of time;
- i . If the accident takes place on that very date before the time which is mentioned in the insurance policy, the insurer will not be liable to indemnify the insured;
- i . If the time is not mentioned in the insurance policy, it would commence from the date which means midnight and in case the accident occurred on the date of taking the policy, the insurer will be liable to meet the liability of the insured under the award.

### **1. Documents produced and proved**

The insurance policy and the motor renewal endorsement were on record and were produced and proved by the appellant insurance company. The Apex Court held that the ignoring these basic and vital documents and deciding the case against the insurance company on the ground of non-production of the Cashier and Development Officer was a serious error.

**a) Commencement of cover from the time and date specifically incorporated**

In the absence of any specific time mentioned in the policy, the contract would be operative from the mid-night of the day. Under the operations of the provisions of the General Clauses Act and in view of the special contract mentioned in the insurance policy, the effectiveness of the policy would start from the time and date indicated in the policy. It is the obligation of the Court to look into the contract of insurance to discern whether any particular time has been specified for commencement or expiry of the policy.

In very large number of cases insurance policies are taken immediately after the accidents to get compensation in a clandestine manner. In order to curb this widespread mischief of getting insurance policies after the accident, it is absolutely imperative to clearly hold that the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time. In [(Kalaivani & Ors. vs. K. Sivashankar & Ors) 2002 ACJ 613 ].

**b) Break in Insurance**

Knowing fully well that the policy would come into force from a particular day mentioned therein and when the parties have not let in any evidence to show the intention of parties to the terms and conditions of the policy, no court can vary the terms and conditions of a concluded contract. The court held that the policy came into force from the date mentioned in the policy and that the company is not liable to indemnify the owner in between the time and date on which the policy is issued and the time of commencement of policy in a case of break in insurance.

**c) Fitness of the vehicle**

As per Section 56 of the 1988 Act if the fitness of the vehicle had expired before the date of accident, the vehicle shall not be deemed to be registered for the purpose of Section 146 of the Act 1988 which states that No person shall drive any motor vehicle and no owner of the motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the Motor Vehicle Act 1988’.

The provision must be read in consonance with Central Motor Vehicle Rule 52 for renewal of certificate of registration and Rule 62 for the validity of the certificate of Fitness. Further any motor vehicle constructed or adapted to carry more than six persons excluding driver is to be inspected periodically, otherwise it is not permissible to use in public place.

#### **d) Dishonour of Cheque**

If the cheque is dishonoured the Insurance Policy Contract becomes *void ab initio*, however, the courts have emphasised the fact that the 1988 Act was brought forward for the benefit of third party and the underlying public policy behind the statutory scheme in respect of insurance as evidenced by Sections 147 and Section 149 of the 1988 Act, having regard, in particular, to the fact that the policy of insurance to cover the bus without receiving the premium, had already been issued, the insurance company was liable to indemnify the-insured.

#### **i. Public Policy vis-a-vis Cancellation of Policy**

A policy of insurance, which is issued in public interest, would prevail over the interest of the insurance company. Applying the principle of estoppel, public interest would prevail over the interest of the insurance company.

#### **ii. Waiver of condition precedent for Policy to take effect**

Ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for the insurance policy to take effect. But such a condition which is intended for the benefit of the insurer can be waived by 1988 Act.

The third party would have a claim against the insured would not affect the rights already accrued in favour of the third party [(New India Assurance Co. Ltd. vs. Rula and ors.) (2000) 3 SCC 195] The dicta laid down clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

#### **iii. Failure to pay premium**

In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque on presentation would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker under Negotiable Act.

#### **iv. Communication of Cancellation of contract**

The respondent who was driving the vehicle was also the owner thereof. The insurance policy was to remain valid for the period 17.10.1997 to 16.10.1998. Respondent issued a cheque on 15.10.1997. The said cheque was presented for encashment before the Syndicate Bank. The bank by its letter dated 21.10.1997 issued a return memo disclosing dishonour of the cheque with the remarks fund insufficient.

Insurer cancelled the policy of insurance, informed insured and intimation was also given to the R.T.O. concerned. The insurer also examined witnesses, to prove cancellation of the policy of insurance, submitted postal acknowledgement showing intimation served to the insured and a copy of the letter dated 6.11.1997 issued to the R.T.O. and the memo issued by the bank as regards dishonour of the cheque etc.

**Note:** Section 147 of the act obligates the owner of the motor vehicle to get the vehicle insured in so far as the claim of third party is concerned. The 1988 act does not deal with contract of insurance as such. Contract of insurance is governed by the 1938 Act.

#### v. Section 64VB

Section 64-VB of the 1938 Act provides that no risk is to be assumed unless premium is received in advance. No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

**Explanation:** Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal-holidays.

The said provision, as such in no unmistakable term provides for issuance of a valid policy only on receipt of payment of the premium.

#### vi. Provisions of the Contract Act 1882

Under Section 25 of the Contract Act 1882 an agreement made without consideration is void. Section 65 of the Contract Act 1882 says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it.



So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get back the money. A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration.

#### **e) Payment by cheque subject to encashment**

In today's world payment made by cheque is ordinarily accepted as valid tender. Payment by cheque, however, is subject to its encashment. On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time.

The question is whether this was a lawful tender. It is well established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was credited on presentation, the date of payment is the date when the cheque was posted.

#### **f) Limited obligation of Insurer to Indemnify under EC Act 1923**

Unlike the scheme of the Motor Vehicles Act, the Employee's Compensation Act 1923 [(The New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya and anr) 2006) 5 SCC 192], does not confer a right on the claimant for compensation under that act to claim, the payment of compensation in its entirety from the insurer himself. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to.

#### **i. Contract of Insurance part of General Law of Contract**

It was further observed by Roskill, L.J. In [Cehave vs. Bremer] the law relating to contracts of insurance is part of the general law of contract. Lord Wilberforce in [(Reardon Smith vs. Hansen- Tangen) All ER p 576 h)] approved this view and said, –it is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principle should not apply to different branches of that lawll.

#### **ii. Insurer"s liability not for interest and penalty**

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. A policy of insurance has, therefore, to be construed like any other contract. 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 the employer was liable to pay among other things under the Employee's Compensation Act 1923.



Unless one is in a position to declare void, the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Employee's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.

## **2. Statutory Liability vis-a-vis A Third Party Liability u/s 147 and 149 of the 1988 Act**

The Supreme Court in [(National Insurance Co. Ltd vs. Deddappa & Ors)-Appeal (Civil) 5829 of 2007 dt.12/12/2007)] accepted that they are not oblivious of the distinction between the statutory liability of the insurance company vis-a-vis a Third party in the context of Sections 147 and Sec 149 of the 1988 Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid.

If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion; the insurance company would not be liable to satisfy the claim. A beneficial legislation as should not be construed in such a manner so as to bring within its ambit a benefit, which was not contemplated by the legislature to be given to the party.

The apex courts has opined that If all concerned have been informed, mainly RTO & Insured, by registered post A. D. & all the proof made available at the time of the evidence, and if the contract of insurance has been cancelled and all concerned have been intimated thereabout, the insurance company would not be liable to satisfy the claim.

### **a) Cheque dishonoured but premium paid before the date of accident**

However, if the insured makes up the premium, even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid, in the order in which the nature of transaction required it.

## **3. Liability of Insurers to Drivers and Passengers**

The Motor Vehicle Act, 1988 covers liability for private car in respect of death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward), but except insofar as it is necessary to meet the requirements of Motor Vehicle Act 1988, the insurance company shall not be liable, where such death or injury arises out of and in course of employment of such person by the insured.

In case of commercial vehicles, liability for death or bodily injury to any person is caused by or arising out of use (including the loading and unloading), even when the vehicle is stationery and not directly involved in the accident of the motor vehicle.

The commercial vehicle policy provides cover for Employer's liability towards paid drivers, conductors, ticket examiners in case of public passenger vehicle, and in case of goods carrying vehicles, persons carried in the vehicle (for loading and unloading). It may be noted that legal liability towards persons carried in the goods vehicle is excluded. However, legal liability towards fare paying passengers carried by virtue of a contract of employment is covered.

In Package Policy unlike the Liability only policy, the cover is not restricted during the use of vehicle in a public place only, as the section is silent on this aspect. Therefore, it is implied that third party liability cover granted by this section in package policy, operates whilst the vehicle is used in a private as well as public place.

#### 4. No Liability for Owner-Driver

As per Motor Vehicles Act 1988 and CMV Rules 1989 the owner is not entitled to get any compensation, if he drives the vehicle and meets with an accident. The contract between the insured and insurer is that, if any accident occurred out of the use of Motor Vehicles, then only third party is entitled to get compensation.

The deceased was the owner of the vehicle and was driving the vehicle when he met with a fatal accident. Though the deceased held valid driving licence, he was not considered third party as per Rules and 1988 Acts. Hence the petitioners are not entitled to get any compensation.

The requirements of Motor Insurance policies and limits of liability are as given below:

**Section 147 (1) (b)** In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sec 147 (2) against any liability which may be incurred by him in respect of the death of or bodily injury (to any person, including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of the third party caused by or arising out of the use of the vehicle in a public place.

(ii) (b) Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required:

(i) To cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Employee's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee:

(a) Engaged in driving the vehicle, or

(b) If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) If it is a goods carriage, being carried in the vehicle, or

(ii) To cover any contractual liability.

**Explanation:** For the removal of doubts it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged, was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

Liability of the insurer company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act 1988, the question of the insurer being liable to indemnify insured, therefore, does not arise.

An insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle.

Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. [(Dhanraj vs. New India Assurance Co. Ltd. & Anr) 2004 (8) SCC 553]. If the policy does not cover any risk for injury to the owner himself, the contention that the premium of Rs. 4,989/- was paid under the heading Own damage is for covering liability towards personal injury is not acceptable.

Under the heading Own damage, the words premium on vehicle and non-electrical accessories appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim, provided a valid Personal Accident insurance Policy or PA to Owner driver has been obtained and subsisting on the date of accident.

## 5. Need for Driving Licence

Section 10 of the Motor Vehicles Act 1988 enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-Section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are:

- a) Motorcycle without gear
- b) Motorcycle with gear
- c) Invalid carriage
- d) Light motor vehicle
- e) Transport vehicle
- f) Road roller, and
- g) Motor vehicle of other specified description

The definition clause in Section 2 of the 1988 Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are goods carriage, heavy goods vehicle, heavy passenger motor vehicle, invalid carriage, light motor vehicle, maxi-cab, medium goods vehicle, medium passenger motor vehicle, motor-cab, motorcycle, omnibus, private service vehicle, semi-trailer, tourist vehicle, tractor, trailer and transport vehicle.

### i. Obligation on driver to hold effective and valid Driving Licence

Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It may be true that a fake or forged licence is as good as no licence, but the question is whether the insurer must prove that the owner was guilty of a willful breach of the conditions of insurance policy or the contract of insurance.

There is a general agreement with the approach of the Bench in Lehu case, but in the light of the requirements of the law, the insurer is required to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever.

## **ii. Disqualification of driver or invalid Driving Licence**

Section 110 (iii) relates to the breach of policy condition. Disqualification of the driver or invalid driving licence of the driver, as contained in Section 149(2) (a) (ii), has to be proved to have been committed by the insured for avoiding liability by the insurer.

Mere absence of driving licence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defenses available to the insurer against either the insured or the third parties.

To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

## **iii. Fake Driving Licence**

As a matter of law there is no doubt that a fake licence cannot get its forgery outfit stripped off, merely on account of some statutory authority renewing it with or without knowing it to have been forged. Section 15 of the MV Act 1988 empowers any licensing authority to renew a driving licence issued under the provisions of 1988 Act with effect from the date of its expiry.

No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact, those other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

Although, a contract of insurance is in the realm of private law domain, having regard to the object for which Section 147 and 149 of the 1988 Act had been enacted, the social justice doctrine as envisaged in the preamble of the Constitution of India has been given due importance.

## 6. Breach of Conditions of Contract

The Act, however, provides for the cases where the insurance Company can avoid its liability. Avoidance of such liability would largely depend upon violation of the conditions of contract of insurance.

Where the breach of conditions of contract is ex-facie apparent from the records, the Court will not fasten the liability on the Insurance Company. In certain situations, however, the Court while fastening the liability on the owner of the vehicle may direct the Insurance Company to pay to the claimants, Awarded amount with liberty to it to recover the same from the owner.

### i. Statutory obligation of owner that driver holds a valid license

The owner of the vehicle has a statutory obligation to see that the driver of the vehicle whom he had authorised to drive holds a valid licence. Here again a visible distinction may be noticed, viz. where the license is fake and a case where the licence has expired, although initially when the driver was appointed, he had a valid licence.

When the insured had handed over the vehicle for being driven by an unlicensed driver, the Insurance Company would get exonerated from its liability to meet the claims of the third party, who might have suffered on account of vehicular accident caused by such unlicensed driver.....  
[(United India Insurance Co. Ltd. vs. Gian Chand and Others) (1997) 7 SCC 558].

A motor vehicle must be driven by a person having a valid and effective driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. The insurer is entitled to succeed in its defence and avoid liability, where the driver of the vehicle, did not hold any licence and was allowed to drive the vehicle consciously by the owner of the vehicle. The liability of the Insurance Company vis-a-vis the owner depends upon several factors [(National Insurance Co. Ltd. vs. Swaran Singh and Others) 2004 (3) SCC 297].

The owner would be liable for payment of compensation, where the driver was not having a licence at all. The obligation is on the part of the owner to take adequate care, to see that the driver had an appropriate licence to drive the vehicle. The owner of the vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.



The matter, may be different where a disputed question of fact arises as to, whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance, as also the provisions of the Act, by consciously allowing any person to drive a vehicle, who did not have a valid driving licence. Where an accident took place owing to a mechanical fault *or vis major*. The driver of the vehicle may not have any hand in it at all.

## **ii. Appropriate Licence**

The driver, who was alleged to be driving the said vehicle at the relevant time, was holder of a licence to drive a (LMV) light motor vehicle only. He did not possess any licence to drive a commercial goods carrying vehicle National Insurance Co. Ltd. vs. Kusum Rai and Others [(2006) 4 SCC 250]. Evidently, there was breach of condition of the Contract of Insurance.

## **iii. Driver did not possess a Valid Driving Licence**

The proviso appended to Section 15(1) of the M V Act 1988 in no uncertain terms states that the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident [(Ishwar Chandra & Ors. vs. The Oriental Insurance Co. Ltd. & Ors) 2007 (4) SCALE 292].

The claim petition related to an accident, which occurred on 20.11.1994 when a child aged seven years who was the son of claimants had lost his life. The High Court by the impugned order enhanced the sum to Rs.1, 52,000/-. The appellant (hereinafter referred to as the insurer) was directed to indemnify the award. The insurers stand was that the driver driving the lorry was not authorized to drive the lorry because he was licensed to drive only a Light Motor Vehicle (in short the LMV).

When the accident took place, i.e. on 20.11.1994, the driver was authorized to drive LMV. Subsequently, on 11.10.1996 at the time of renewal of licence it was endorsed to drive Heavy Goods Vehicle (in short the HGV). In view of what has been stated in Swaran Singhs case (supra) the Supreme Court held that the appellant insurer was not liable to indemnify the award. [(Oriental Insurance Co. Ltd vs. Syed Ibrahim & Ors) - Appeal (civil) 4308 of 2007. date of judgment: 17/09/2007 arising out of SLP (C) Nos. 8499-8500 of 2005)]



## 7. Whether Compensation can be Assessed in Mact as per EC Act 1923

The cleaner of a Truck suffered injuries in course of employment and preferred a claim in MACT [1992 ACJ p 65 (MP)]. It was held that liability would be determined in accordance with the Law applicable to the forum opted and cannot be restricted to the quantum payable under the EC Act 1923

## 8. Liability of the Insurer with regard to Passenger Carried in Goods Carrier

Transporting unauthorised persons causes more road accidents and loss of life too. It creates a huge loss of revenue to Government because the owner of the vehicle does not pay passenger tax etc. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger as per the definition of goods carriage in the 1988 Act as amended. This is clear from the expression ‘in addition to passengers’ as contained in the definition of goods vehicle in the Old Act.

The position becomes further clear because the expression used ‘goods carriage’ is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the 1988 Act. [(Oriental Insurance Company Ltd. vs. Devireddy Konda Reddy and Ors). AIR 2003 SC 1009].

Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of public service vehicle. The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Employee’s Compensation Act, 1923. There is no reference to any passenger in goods carriage. The inevitable conclusion, therefore, is that provisions of the 1988 Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore to cover any contractual liability.

### a) Tractor Trailers

When a trailer is attached to a tractor, the motor vehicle becomes a Transport Vehicle. A trailer comes within the definition of a goods vehicle [Refer case 1996 (3) Civil LJ 3139 (P & H) Ejaz book page no. 23 para I & para 31]

As per notification No. SO 451 E dt 19-06-1992 Vehicles are categorised in two specific categories i.e. Transport Vehicles and Non Transport vehicles.

As per Sr. No. (VI), Trailers are classified under Transport Vehicle (T) & as per Sr. No. (X) Tractors are classified under Non-Transport (NT).

Section 14 (2) (a) of Motor Vehicle Act 1988 states that a licence to drive Transport Vehicle, shall be effective for a period of three years, and in Section 14 (2) (b) it is given for a longer period than for other Transport vehicles.

As per Section 3 (1) no person shall drive a Transport vehicle unless his driving licence specifically entitles him so to do. As per Section 10 tractors come under motor vehicles of a specified description because in the format of licence it is not mentioned, that is, in other words, it cannot be considered as light motor vehicle.

Wherever tractor alone is insured and not the trailer, insurance company must produce a copy of the Driving Licence and RTO Certificate and see that it is exhibited. In [(New India Assurance Co. Ltd vs. Thirakappa Ramappa Itagi) 2002 (5) ACJ 753], the Tractor was insured but trailer was not insured and front portion of the trailer ran over the deceased; it was held that in order to fasten liability on the insurance company the tractor and the trailer both must be individually insured.

A tractor and a trailer are both goods vehicle [(Ramesh vs. Kamathchi Ammal) 2002 (3) ACJ 482 (Mad)]. In [2002 (2) ICC 482 AP] & [(New India Assurance Co. Ltd vs. Ijjagiri Kanakamma & others). The tractor was insured while trailer was uninsured and unauthorised passengers were travelling in the trailer, so the insurance company was absolved of the responsibility of paying any compensation.

#### **b) Permit**

The police requisitioned a tractor trolley to carrying students for a function of the Minister of State. Some students were injured and later succumbed to death in an accident. The tractor was insured for agricultural purpose and not for carrying passenger gratis or on payment of charges. It was held in (Madhya Pradesh vs. Sommla Police ([2002 (6) ACJ 1080 (MP)]) that insurance company was not liable.

#### **c) Liability of Insurers to Passengers**

Will a statutory insurance policy under the Motor Vehicles Act, 1998, intended to cover the risk to life or damage to property of third party, cover the risk of death or injury to a gratuitous passenger carried in a private vehicle?

The following points are required to be proved to disclaim liability by insurers towards passenger in goods vehicle (Bombay High Court):

- i. Produce the certified true copy of the policy with all endorsements and warranties attached and to place on record the relevant exclusions relating to carrying passengers for hire or reward

- i . Make the insured produce the original permit issued by the RTA before the court and bring the exclusion therein to the attention of the court and / or if it is not permissible.
- i . Serve notice on RTA to present himself as witness before the court and to give evidence about breach of permit committed by the insured.

#### **d) Gratuitous Passengers in a Private Car**

It is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 147(1) of the Act, the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured, the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act, 1988.

In [(Dr. T.VS. Jose vs. Chacko P.M. alias Thankachan and Ors.) 2001 (8) SCC 748] Variava, J. had an occasion to survey the law with regard to the liability of insurance companies in respect of gratuitous passengers. The law on this subject is clear, a third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. The insurer company was not liable to reimburse the appellant.

Section 147 of Motor Vehicles Act 1988, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of public service vehicle. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Employee's Compensation Act. It does not speak of any passenger in a good carriage.

Furthermore, sub-clauses (i) of Clause (b) of sub-section (1) of Section 147 speak of the liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

Whereas sub-clause (ii) thereof deals with liability, which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service caused by or arising out of the use of the vehicle in a public place.

**e) Liability to pillion passengers**

In [(United India Insurance Co. Ltd., Shimla vs. Tilak Singh and Ors) - Appeal (civil) 2291 of 2000 date of judgment: 04/04/2006] it was held that although the observation made in Asha Ranis case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also.

Thus, we must uphold the contention of the appellant-insurance company that, it owed no liability toward the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

For covering liability to pillion passengers endorsement of I.M.T. 70 pertaining to accident to unnamed hirer/driver/pillion passenger, is required on the insurance policy, which may be obtained by payment of additional premium. Refer [(United India Insurance Co. Ltd., Shimla vs. Tilak Singh and Ors.) Appeal (civil) 2291 of 2000 date of judgment: 04/04/2006]

**f) Fixing the responsibility of the person to pay**

The Supreme Court remitted the matter for the limited purpose of fixing the responsibility of the person who is to satisfy the Award given by the Tribunal in Smt. Thokchom Ongbi Sangeeta @ Sangi Devi & Anr vs. Oriental Insurance Co. Ltd. & Ors [Appeal (civil) 4946-4947 of 2007 (Arising out of SLP (C) Nos.3871-3872 of 2005) date of judgment: 23/10/2007].

**g) Chairman of a society neither third party, nor employee**

The Chairman of a co-operative society who was travelling in the society's car died in an accident. It was held that the Insurance Company was not liable to cover the risk of any passenger travelling in the car, and not being carried for hire or reward. Also, the passenger could not be deemed to be a third party within the meaning of the MV Act 1988. It was held that the insurer was not liable to pay compensation, since the Chairman could not be said to be a servant of the society, travelling in the car in pursuance of a contract of employment.

This was because the Chairman or Elected Representative of the body could not be said to occupy the office as an employee. He occupied the office in his own right, as an elected member, and not under any contract of employment. [(Oriental Fire and General Insurance Corporation Ltd. vs. Shuivangouda and others) 1984 ACJ 786 (Kant) (B.B.)]

### **h) Gratuitous passenger on official duty contract of employment**

The deceased was an occupant of the car on official duty and returning in the car of his employer, when the car met with an accident. It was held that the deceased was a passenger in the car, by reason of or in pursuance of a contract of employment; hence, the insurer was liable to the claimant. [(Gopi Bai Ghanshyam Das Advani vs Food Corporation of India, Bombay) 1983 ACJ 340(Bom)].

### **i) Car used in contravention of Limitation as to use**

The deceased was carried for hire in a car. It was held that the insurer was not liable for the claim of the death of the said occupant, since the car was used in contravention of the policy condition prohibiting the carrying of passenger for hire or reward. It was held that the use of the car for the carriage of passengers for hire was an unauthorised use. Hence, the insurer was entitled to avoid their liability. [(United India Fire and General Insurance Corp. Madurai VM.S.Durairaj) 1982 ACJ 261 (MAD)]

## **9. Liability in regard to Goods Carrier**

The insurer submitted that on the basis of the position in law no direction to pay and recover the amount from the insured can be given by the Claims Tribunal for the passenger carried in goods carrying vehicle. The question of liability of the insurer with regard to the goods carrier has been with dealt in [(Oriental Insurance Company Ltd. vs. Devireddy Konda Reddy and Ors.) AIR 2003 SC 1009] and [(National Insurance Company Ltd. VS. Ajit Kumar and Ors.) AIR 2003 SC 3093].

### **Definition of Goods Carriage as per new Act**

The legislative intent in the new Motor Vehicles Act 1988 was to prohibit goods vehicle from carrying any passenger. The position becomes further clear because the expression used is goods carriage is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act of 1988. Section 147 of the Motor Vehicles Act 1988 mandates compulsory coverage against death of or bodily injury to any passenger of public service vehicle.

The proviso under section 147 makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Employee's Compensation Act, 1923. There is no reference to any passenger in goods carriage.

The inevitable conclusion, therefore, is that provisions of the 1988 Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability thereof. The above position was highlighted in *Oriental Insurance Company Ltd. vs. Devireddy Konda Reddy and Ors.* [AIR 2003 SC 1009] and *National Insurance Company Ltd. vs. Ajit Kumar and Ors.* [AIR 2003 SC 3093].

**a) Owner driver whether a third party**

As per Motor Vehicles Act and Rules, the owner is not entitled to get any compensation if he drives the vehicle and meets with an accident, as the Insurance Policy scope of cover is meant for third party. The contract between the insured and insurer is that if any accident occurred out of the use of Motor Vehicles, then only the third party is entitled to get compensation. The insurer and the insured is the first and second party and other than these all others are third parties. [(Oriental Insurance Co. Ltd. vs. Jhuma Saha and Ors.) Appeal (Civil) 280 of 2007 date of judgment: 16/01/2007]

(a) Section 147(1) (b) of the Motor Vehicles Act, with which we are concerned, reads as under:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)

(i) Against any liability which may be incurred by him in respect of the death of or bodily injury (to any person, including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of the third party caused by or arising out of the use of the vehicle in a public place.

(ii) Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place  
Provided that a policy shall not be required-

(i) To cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Employee's Compensation Act, 1923(8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) Engaged in driving the vehicle, or



- (b) If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) If it is a goods carriage, being carried in the vehicle, or
- (i) To cover any contractual liability.

**Explanation:** For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

Liability of the Insurance Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act 1988, the question of the insurer being liable to indemnify insured, does not arise.

In *Dhanraj vs. New India Assurance Co. Ltd. & Anrs.*, [(2004) 8 SCC 553], it is stated that: an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle.

Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. It has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium paid under the heading Own damage is for covering liability towards personal injury.

Under the heading Own damage, the words premium on vehicle and non-electrical accessories appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.

The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would not be attracted in the present case.



**b) Cover while Boarding / Alighting**

Questions have arisen as to whether or not a person attempting to board a bus or alighting from a bus and being involved in a road accident would be a passenger within the meaning of the MV Act, since it would mean the application of section 95(2)(b)(ii) regarding the limit of liability. If he was not to be categorized as a passenger in the public service vehicle then the limit of liability as for the case of a third party would apply.

The decision reported in [1978 ACJ 160] would throw proper light on the subject since the decision looked at the entire proviso (ii) in sub-section 1 of Section 95 of 1939 Act to see whether such persons who attempt to board the bus or alight from the same could be considered as passengers in the public service vehicle.

A boy made an attempt to board a crowded bus. The conductor whistled to signal to the bus to move on. The boy fell down and sustained severe injuries. It was held that the boy was a passenger of the bus within the meaning of M.V Act and the insurers liability were restricted as per the passenger liability specified in the policy.

It is with regard to proviso (ii) of sub-section (1) in Section 95 that a policy of insurance also covers the risk to such persons as are being carried in or upon or entering or mounting or alighting from the motor vehicle endorsement No. I.M.T 13 attached to commercial vehicle policies for the contract carriage/ stage vehicle carriages vehicles.

When seen in the light of provisions of the M.V Act and the policy of Insurance, it is a contentious point whether or not persons attempting to board a public service vehicle or alighting from it, would not suffer the limit of liability of the insurer vide section 95(2)(b) of the MV Act. This question is best left to the Courts of the land. [(Kala Devi vs. Balwant Singh) 1986 ACJ 832(N.D) (N.D)]

**c) Foot on the footboard of the bus and another on the ground**

The deceased had one foot on the footboard of the bus and another on the ground. He fell beneath the left rear wheel of the bus and died. It was held that the driver of the bus was rash and negligent in causing the death of the passenger, that the deceased being a passenger in the public service vehicle, the liability of the insurer was limited as per the statute at the time of the said accident. It is of interest to note here that no effort was made to argue that the deceased was not a passenger when he met with the accident. He had in fact, ceased to be a passenger. He was a third party and hence liability ought not to have been limited as to a passenger. [(Makbool Ahmad vs. B. Huralal) 1986 ACJ 219(Raj)].

**d) Foot on the footboard of a stationary bus**

The deceased placed his foot on the footboard of a stationary bus. The driver started the bus and the deceased fell down. He was crushed under the rear wheel. On a question whether the deceased, who was attempting to board the bus, was a passenger, it was held that he was a passenger in the public service vehicle, within the meaning of section 95 of MV Act, and hence the insurer's liability was limited as per the statute.

**e) Definition of Passenger**

It was held that the word passengers would include even those persons meeting with death or bodily injury under the circumstances mentioned in proviso (ii) to sub-section (1) of section 95: to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of occurrence of the event out of which a claim arises. It was observed that the fact that the deceased did not buy a bus ticket would not render him gratuitous passenger and hence not a passenger within the meaning of MV Act.

**f) Definition of gratuitous passenger**

In the case of gratuitous passenger in a motor vehicle, the gratuitous passenger is he who has been given a free lift by the owner or driver of the motor vehicle. The free lift may be due to a variety of reasons e.g. friendship, direction from superiors, relationship, etc. In the case of taking a passenger gratuitous, there is always an element of obligation on the person so carried free of fare. In the instant case, the fact that the deceased would have purchased the ticket in due course would mean that he was not a gratuitous passenger and hence only a passenger per se.

The Court followed the judgement of the Calcutta High Court reported in the [1978 ACJ 160], in arriving at this decision. [(Uvaraja vs. Patrvathi Ammal) 1986 ACJ 506(Mad.)]

**g) About to board but fell down in the rush**

The deceased was about to get into the bus, but fell down before that, in the rush of people. He was ultimately crushed under the wheel. Following the decision of the division Bench of the Madras High Court made in the CMA 558/79, it was held that the deceased was not a passenger in the bus and hence the insurers liability was not limited as per section 95(2)(b)(ii) of the MV Act.

In the bench decision it was observed the facts were similar to those in a case where a person fell down in a scramble to get inside the bus and died. Therefore, we can safely say, that a person attempting to get into the bus and who does not succeed in getting an entry into the bus cannot be taken as a passenger in the bus. [(M/s Southern Motors Madurai vs. C Sivjothiammal) 1982 ACJ (Supp.) 85 (Mad.)]

#### **h) Attempting to get into a bus**

The deceased got down from the bus so as to give way to persons getting down from bus at the bus stop. But before he could get back into the bus, it moved. When he attempted to get into the bus, he fell down. His legs were crushed under the left rear wheel of the bus and he died. It was held that the deceased was not a passenger in the bus, since he was only attempting to get into the bus when the accident occurred.

The bench observed that a person who did not get an entry into the bus and failed to get into the bus cannot be said to be in any sense a passenger of the bus, even though the deceased may have been a passenger in the first stage of the journey. Hence it was held that the Insurance Company could not invoke the limit of liability towards a passenger in a public service vehicle since the deceased could not be categorized as a passenger in a bus.

The bench followed another decision of the Madras High Court in [Madras Motor and General Insurance Co. vs. Perumal Kodar in C.M.A nos. 7 and 25 of 1972.] where it was held that a person travelling on the footboard without actually entering the bus, could not be taken to be a passenger in the bus and that if death or injury was caused to such a person, there could not be any limit on the insurers liability.

The matter was set at rest by Supreme Court holding that a person who is in the process of boarding or alighting from a bus can be treated as a passenger, and not a third party and the liability is to be decided as per the provision of the Motor Vehicle Act 1988. [1997 ACJ p 6].

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# ANNEXURE B

## IMPORTANT DECISIONS ON MOTOR VEHICLE ACT

### Introduction

In this section you will learn about some important decision on Motor Vehicle Act pertaining to transfer of vehicle, driving licence, IDV, computation of compensation and mode of payment, duty of police officer & tribunal, tribunal's power of review etc.

### Learning Outcomes

A. Important decisions on Motor Vehicle Act



## A. Important decisions on Motor Vehicle Act

1. Transfer of vehicle
2. Driving licence
3. Insured declared value
4. Use of vehicle
5. Public place
6. Determining annual income
7. Computation of compensation
8. Demand to supply insurance particulars
9. Liability to employees and others
10. Collision between two vehicles
11. Preliminary objection
12. Computation of compensation and mode of payment
13. Condonation of delay
14. No fault liability
15. Payment of premium
16. 64 VB Advance payment of Premium
17. Passengers of goods vehicle
18. Driver's injury/death due to his own negligence.
19. Law prevailing at the time of accident
20. Quantum & liability
21. Interest
22. Duty of police officer & tribunal (Sec. 158 and 166)
23. Tribunal's power of review
24. Binding precedent
25. Pay and Recover

### 1. Transfer of vehicle *India's No1 E-Learning Platform*

#### a) Automatic transfer of third party insurance

On sale of vehicle Certificate of Insurance gets transferred to the new owner automatically, however, such transfer of insurance is only for Third Party insurance and not for Motor OD insurance. (SC 1996). The owner of a car, who voluntarily and freely transferred possession of it against a cheque has no claim under motor policy, if the cheque is turned out to be worthless. It is loss of money and not the car. (Eisinger vs. General Accident UK 1955).

**b) No presumption of transfer**

There is no presumption of transfer by Sec 146 vis-à-vis Sec 157. The Insurer cannot be held liable, if no intimation of transfer was given as per Sec 157 of Act. [(Ram Chander vs. Naresh Kumar) 2000 ACJ 727]. This judgement makes it abundantly clear that though insurer may be required to pay to third party as judgement debtor, but they will be able to recover, if the transferee has not informed the insurer requesting for endorsement within 14 days subject to other provisions of NCB recovery, min premium stipulation etc.

Sec 146 debars a vehicle owner from using Motor Vehicle in public place without a valid insurance Policy, therefore, it cannot be brought to justify for subsistence of cover. It cannot be presumed that liability to indemnify owner stood transferred from transferor to transferee on transfer of vehicle.

Sec 157 (2) of 1988 Act stipulates that the transferee shall apply within fourteen days from the date of such transfer, in the prescribed form to the insurer, for making necessary changes in regard to fact of transfer in Certificate of Insurance and the Policy described in his favour. And the insurer shall make necessary changes in the certificate of Insurance and Policy in regard to transfer of insurance.

Transfer of ownership Liability Only cover in reference to General Regulation 17 of India Motor Tariff Part 2 makes it clear that OD Section of the policy will be transferred on receipt of specific request.

**c) Transferee is not third party for damage risk [1996 ACJ 65 Supreme Court]**

Transferee intimated the transfer of vehicle and requested insurance company to transfer the insurance policy. Policy was not transferred and the vehicle got damaged in an accident. The transferee is not entitled to be indemnified by the insurer for the damage to vehicle. Section 157 is limited to third party risks and transferee is not a third party.

**2. Driving Licence****a) Unlicensed driver**

- (i) [1997 ACJ 1065 Supreme Court] Exclusion clause in the policy did not permit the insured to hand-over the vehicle for purpose of driving to an unlicensed driver. Car at the time of accident was being driven by a person who had no driving licence. The insurance company is not liable.



- (ii) In [1989 ACJ 1078 Supreme Court] the insured with the knowledge entrusted the tractor to a person who does not hold a licence and he caused an accident. Insurance Company took the specific plea that there is breach of condition of policy and the Insurance Company was exempted from liability.
- (iii) In [1988 ACJ 721 Punjab & Haryana] Son of the insured who was driving the offending vehicle had no driving licence at the time of accident. Tribunal absolved the Insurance Company from the liability in terms of conditions contained in the policy. Insurance Company had not taken any specific plea that the insured was at fault in allowing his son to drive the vehicle against the terms of the policy. In the absence of such a plea Insurance Company was held liable.

#### **b) Expired learner's licence**

A person having a learner's licence enables him to learn driving but if it is not renewed, the holder of cannot be regarded as duly licenced. In the event of an accident by such person the insurance company would not be liable to pay compensation. (New India vs. M Tambe Supreme Court)

#### **c) Appropriate licence**

- (i) The owner would be liable for payment of compensation when the driver was not having a valid licence. It was obligatory on the part of the owner to take adequate care to see that the driver held an appropriate licence to drive the vehicle [(National Ins co Ltd. Vs Kusum Rai) 2006 SC]
- (ii) Accident by a Tempo, a three wheeler goods vehicle, driven by a driver who was holding licence to drive L.M.V. Driver's licence was endorsed after the date of accident, authorising him to drive a transport vehicle as paid employee. The driver did not have a valid licence on the date of accident to drive the tempo and the Insurance Company was not held liable [1991 ACJ 625 MADRAS].
- (iii) Driver holding licence to drive a light motor vehicle was driving a heavy motor vehicle and the vehicle met with accident. Whether the driver had a valid licence and the insurance company liable? It was held in Negative. It was held that the validity of licence has to be considered with reference to the vehicle involved [1992 ACJ 375 (A.P.)].

**d) Liability of repairers**

When vehicle is entrusted to repairers who cause damage to vehicle in an accident and injuries to third Parties, compensation is payable by insurers of vehicle. (Guru vs. Filomena 1988) but it was held in [(New India vs. Lakhi Ram) 1988] that where the mechanic who caused an accident but did not have a valid Driving Licence, insurers were not liable.

**e) Validity of licence**

A driver was not having valid licence for the vehicle on the date of accident as his driving Licence had expired 8 months before the date of accident. It was held that the renewal application not having been filed till the date of accident, the driver cannot be said to have been holding valid licence. Hence insured was liable to pay the compensation and not the insurance Company [(Isharwar Das vs Oriental Insurance Co. Ltd). 2000 SC]

**f) Valid and effective Driving Licence**

Driver having licenced to drive Light Motor Vehicle was driving a goods vehicle at the time of accident. It was held that it is not a valid and effective Driving Licence [(- Oriental Ins. Co. Ltd. Vs Aagad Kol) 2008 SC]

**3. Insured declared value**

Tata Sumo was insured for Rs 3,54,000/-. Within 7 months it met with a major accident and became a Total Loss. On surveyors assessment insurance company offered Rs. 180000/- . Held insurer liable to pay Rs. 3,54,000/- . [(Dharmendra Goel vs. Oriental Ins Co Ltd) 2008 SC]

**4. Use of vehicle****a) Absolute liability of owner of vehicle**

By reasons of sub-section (1) of section 92-A, an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death or permanent disability resulting from an accident [1996 ACJ 555 Supreme Court] (Para- 4).

**b) Breach of condition for limitation as to use**

A vehicle was insured as a private car but used as a taxi, was stolen. The Insurers rejected the claim on the ground of breach of policy condition. In the case of theft of vehicle breach of condition is not relevant, as it is not a material fact. [( National Ins Co Ltd vs Nitin Khandelwal) 2009 SC]

**c) Damages payable by stationary vehicle**

Damages should be awarded to a pedestrian injured in an accident, originating in a vehicle even if it is not in a state of locomotion. (Bombay HC)

**d) Vehicle plying without permit (New India Vs Roshan Bibi Court dated July 22, 2013)**

Gujarat High Court allowed the appeal of insurance company. On the date of accident insured vehicle had no valid and legal permit; therefore, insurance company is not liable to pay compensation. Since the amount has been disbursed to the claimants, High Court has given recovery rights to the insurer, to recover the compensation from the owner of the Insured Vehicle.

**e) Compensation for exceeding seating capacity**

In UIIC vs Shri Ram Chandrappa [M.F.A.No.10633/2011 C/W M.F.A.Nos.10637 TO 10639/2011(MV) MFA.No.10633/201] Karnataka High Court dated Apr 1, 2013 where appellant insurer has filed an appeal contending that insurer is not liable to pay compensation for exceeding seating capacity. In the instant case the seating capacity of the rickshaw was 3 and Court appreciating the contentions of Insurance Company, exonerated for the fourth claim and directed insured to pay the compensation for the fourth claim.

**5. Public Place**

A private road in the compound of an industrial establishment where hundreds of visitors, besides employees visit on various modes of conveyance is also a public place within the meaning of the MV Act [(Pandurang vs New India) 1988]

**6. Determining annual income**

**a) No income prior to accident:** Notional income is laid down by Apex Court in the case of [(Maju Devi V. Musafir Paswan reported in) 2005 ACJ 99] regardless of the age of the victim at Rs.15000 per annum.

**b) Where the injured or the victim had no stable income prior to accident:** If the victim is skilled labourer, carpenter, mason, rickshaw-puller, and occupations of similar nature including the professionals or businessmen who are not income tax assesses then it would be Rs.24000 per annum

**c) Necessary to take in to account the state wise minimum wages** as per the Minimum Wages Act. The wages prescribed in the Minimum Wages Act is also to be kept in mind. In the case of a driver, conductor, and khalasi of taxi, truck, autos then the income is taken at Rs.30000/- per annum

- d) **Professionals who are income tax assesses:** their average income of last three financial years that precedes the date of accident is taken as per the income tax returns submitted and duly verified the insurance company.
- e) **Victim has stable income** arising out of employment of regular nature immediately preceding the accident, then his actual income is to be considered. The dependency factor is taken as  $\frac{2}{3}$ <sup>rd</sup> where the deceased is married but the same is taken as  $\frac{1}{2}$  or  $\frac{1}{3}$ <sup>rd</sup> where he is unmarried.

## 7. Computation of compensation

### a) Present income

Over the years the judges' have calculated compensation on the basis of present income to arrive at loss of future income. In the case of Susamma Thomas case the concept of future prospects was taken into account to arrive at future loss of income. Here the present compensation was increased by 100% to calculate future loss of income. However, the percentile to be adopted for future prospects has been inconsistently applied in subsequent judgments'. This issue was revisited by the Supreme Court and some uniformity and consistency can now be applied for the future prospects through the landmark case related to –[(Sarla Verma vs Delhi Transport Corporation) April 2009].

**Salary certificate a proof of income:** The income for the purpose of computation should be salary less income tax. The multiplicand would, however, not be applied if the person was self-employed or if salary did not provide for increments.

(National Insurance Company Ltd vs. Talib Hussain) CIMA No. 139 OF 2008]; The owner of the vehicle had filed the salary certificate of the deceased conductor before the Assistant Labour Commissioner in which the income of the deceased was Rs. 3100/- Whereas the Commissioner had ordered the compensation by taking income as 4000/- [Jammu High Court judgment dated April 23, 2013] modified the compensation by taking income as 3200/- and ordered that the balance amount be returned back to Insurance company with interest, if the same has been deposited in the bank.

**Second schedule u/s. 163-A MV Act** suffers from several defects. Courts & Tribunals cannot go by the ready reckoner. It can only be used as a guide. Selection of multiplier cannot be solely dependent on the age of the deceased. [(U.P. State RTC & Ors. vs. Trilok Chandra & Ors.) 1996 (2) TAC 286]

**No compensation towards loss of love and affection u/s 163-A:** An Appeal has been filed on sole issue that no compensation could be awarded towards loss of love and affection u/s 163-A in [(ICICI Lombard Vs Radhey Shyam MAC.) APP.1045/2012]. Hon'ble High Court of Delhi held that in a petition u/s 163-A of the Act, there is a cap of Rs 40,000 on the annual income and the compensation including non-pecuniary damages have to be strictly awarded as per the Second Schedule.

## **8. Demand to supply insurance particulars**

### **a) Claimant to furnish particulars of insurance**

A Claimant failed to mention policy particulars and in absence the insurance company could neither deny nor confirm having insured the vehicle. [1993 ACJ 668 Orissa] The Tribunal fastened liability to the Insurance Company in the absence of specific denial of insurance. The insurance company was held liable. The case was remanded to the Tribunal for affording opportunity to the claimant to furnish particulars of insurance.

A Specific plea should be taken in written statement regarding insurer's liability, driving Licence etc. True attested copy of Policy with Conditions and Endorsement should be filed in the MACT to prove insurers limited liability, if any, and it should be marked 'exhibit'.

### **b) Company to file policy copy to take a defence**

In case insurance Company wishes to take defence in a claim petition that its liability is not in excess of the statutory liability, it should file a copy of the insurance policy along with its specific defence [1988 ACJ 270 Supreme Court] .

## **9. Liability to employees and others**

If a person is covered under Employee State Insurance Scheme and injured while on duty in a motor vehicle accident, he cannot from both ESIS & EC Act but only under one forum because of provision of Sec 53 of MV Act. [( National Insurance Co ltd. Vs Hamida Khatom) SC 2009]

## 10. Collision between two vehicles

Where there is collision between two vehicles, a specific plea of contributory negligence against the other vehicle must be taken in the Written Statement.

### a) Composite negligence

#### i. Parking in a dangerous position:

A pipe which was protruding out from the tractor trolley parked on the road entered the bus and struck the head of a passenger, causing his death on the spot. The Tractor trolley was parked on the road in an angular position and no precaution was taken by the owner of the tractor to warn the incoming traffic. The door of the bus was badly damaged indicating that the pipe hit the door with great force provided by the speed of the bus as the tractor was stationary [1993 ACJ 652 Rajasthan] - Held - accident occurred due to composite negligence of the driver of the bus by rashly and negligently driving it and the owner of the tractor trolley parking it in a dangerous position.

#### ii. Apportion the inter se liability

A collision between a bus and scooter was caused due to equal negligence of both the bus driver and scooterist resulting in death of pillion rider. The claimants filed claim against the driver, owner and insurer of the bus. The driver and insurer of the scooter were not made party. [1995 A.C.J. 53 M.P. (D.B.)] It was held just and proper to apportion the inter se liability and specify the amount payable by the two tortfeasors, owner, insurer and driver of the bus as liable to pay 50% of the amount of compensation.

### b) Contributory negligence

#### i. Negligence of both the driver and the deceased

A Bus ran over a cyclist boy when he came out of the school resulting in his instantaneous death. [1993 ACJ 641 Punjab and Haryana] The Appellate Court found that the driver was expected to be cautious while crossing the pavement in the vicinity of an educational

Institution and the students were coming out at the closing time. The tribunal held that accident was caused due to the negligence of both the driver and the deceased and their blameworthiness being 60: 40 respectively.



## ii. Both the drivers" negligence

**A collision took place between a Corporation bus and Truck trailer coming from opposite directions, resulting in the death of four bus passengers' including driver and two other's sustained injuries.** The Bus was moving at a fast speed and it travelled 150 ft. after the collision & collided with a tree on the left side of the road and turned turtle. The Truck trailer was loaded with dumper weighing 25 tonnes and Truck was moving slowly on the left side of the road which was 24 ft. while Trailer was 12 ft. wide and dumper upon it was 15 ft. wide, and it protruded beyond the width of the trailer by 1.5 ft. On either side or protrusion was not marked out by red lights or reflectors. The Dumper was being transported in clear contravention of Rule 331 of Karnataka Motor Vehicle Rules, 1963; but for the protrusion of dumper from the bed of the trailer, the bus and the truck would have safely crossed each other. Had the bus driver not been speeding, he would have noticed the bulk upon the trailer and kept his bus away. Apex Court in [1992 ACJ 375 (A.P.)] held that both the drivers were negligent in causing the accident and their proportion of negligence being 60 percent for the bus driver and 40 percent for truck driver. [1996 ACJ 1125 Supreme Court]

**11. Preliminary objection** should be raised to follow the procedure laid down in Rule 226, 227 and 245, 246 under Bihar Motor Vehicles Rules 1992.

**12. For calculating reasonable compensation and mode of payment**, the case law [1994 ACJ 1 Supreme Court] should be cited and filed in the MACT.

## 13. Condonation of delay

### a) Accident occurred prior to 14-11-94

**Accident took place before the 1988 Act** came into force, but the claim application was filed after the 1988 Act became operative. Limitation of 6 months for filing claim application is the same in 1988 Act and in 1939 Act, but in 1988 Act the claim application couldn't be entertained after the expiry of 12 months from the date of accident, whereas there was no such restriction in 1939 Act. Claim application filed after a period of 12 months from the date of accident. Claimant contended that since the accident took place when the 1939 Act was in force, the proceeding must be governed by the 1939 Act and not by the 1988 Act. The right or privilege to claim benefit of a provision for Condonation of delay can be governed only by the law in force at the time of delay. —Sufficient Cause" as a ground of Condonation of delay in filing the claim is distinct from —Cause of action" for the claim.



- b) If claim is filed after one year from the date of accident then a specific plea of claim barred by limitation must be taken in written statement. This issue should be moved in the MACT with a separate petition for deciding as preliminary issue. [1991 ACJ 1060 S.C.](Applicable--Accident occurred prior to 14-11-94)

**c) Effect of omission of sub-section (3) of Section 166**

A delay of 4 days beyond the period of 12 months condoned by the Tribunal when Section 166 (3) was operative. The High Court [1996 ACJ 1013 Supreme Court]held that any application filed beyond the period of 12 months from the date of accident cannot be entertained, as no discretion has been left with the Tribunal and set aside the Tribunal's order. The Claimant is entitled to the benefit of amendment of sub section (3) of Section 166. However, the amending act will not apply to a case where the petition was filed beyond the limitation period, has been rejected and the claimant has allowed the same to become final.

**14. No fault liability**

**a) Whether policy covers the risk giving rise to the claim?**

- i. **No fault liability** several persons travelling in a truck died when it turned turtle. These persons were going to a place for earning their livelihood. Insurance Company contended that policy did not cover the risk relating to the death or injuries to passengers carried in the truck and it is not permissible to fasten the liability under Section 92 A on the Insurance Company unless a finding is recorded that the risk was covered by the insurance policy.

Claimants contended that the only question that arises while imposing no fault liability on the Insurance Company was to find out whether the vehicle was covered by an insurance policy and all other questions have to be decided at the trial and if ultimately it is found that the risk was not covered, a direction should be issued to the owner to reimburse the insurance company the amount paid under no fault liability.

Whether award directing payment of compensation under section 92-A could be made against the insurance company without a summary enquiry and a finding that, prima facie, the risk giving rise to the claim is covered by the policy; - [1990 ACJ 757 (Karnataka) Full Bench]:Held - - No.

- ii. **NFL for person travelling under goods vehicle:** A person while travelling on a goods carrier met with an accident and died, deceased was a gratuitous passenger and the vehicle was being plied in violation of the terms and conditions of the Insurance Policy.

Insurance Company is not liable to pay compensation in respect of death or bodily injury of any person travelling in a goods carrier as passenger, whether as a hirer or otherwise, unless it is proved that there was any extra coverage in the Insurance policy in question. [1999 (i) PLJR 870]: The insurance company was under no fault liability, has not been held liable to pay any interim compensation.

- iii. **Court satisfaction to award NFL:** Awarding compensation under no fault the claim tribunal is required to satisfy itself on the following matter [1991 ACJ 777 (S.C.) Para 44 & 45]

- (a) An accident has arisen out of the use of a motor vehicle.
- (b) The said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim.
- (c) The claim is made against the owner and the insurer of the motor vehicle involved in the accident.

- iv. **Scope of inquiry before passing interim award:** Whether the claim tribunal was justified in passing order, directing the Roadways to deposit amount of interim award without forming an opinion on the essential requirements or in the absence of any material or record to enable the Tribunal to come to the conclusion that essential requirements for passing interim award prima facie exist.-- Held - No.

Before an order is passed, the tribunal must, on the basis of material on record, satisfy itself that:

- (a) The accident has arisen out of the use of a motor vehicle.
- (b) The accident has resulted in permanent disablement of the claimant or death of a person
- (c) The claim is made against the owner and the insurer of the motor vehicle involved in the accident
- (d) The claim is made, in the case of the death of a person, by his legal representatives.

- v. **Application under Sec 140 is interlocutory matter:** Section 140 and 166 - application under Section 140 filed for grant of interim compensation but no application under Section 166 filed a prayer under Section 140 is an interlocutory matter [1999 (1) PLJR 872 & 747] in a proceeding under Section 166.

According to the Scheme of the Act pending final hearing and disposal of the claim application under Section 166 the claimant has been given liberty to obtain interim relief under Section 140. Unless a claim application under Section 166 was filed a mere application under Section 140 cannot be entertained.

**b) Collision between two vehicles**

- i. **No fault award should be apportioned between both vehicles.** Collision between two tractors resulting in the death of a person. Tribunal apportioned the tentative No fault liability under section 92-A between the two offending vehicles. The Tribunal [1992 ACJ 385 (M.P.)] had rightly apportioned the liability.
- ii. **Ad interim Compensation of Vehicles insured with different insurers** [1997 PLJR 987]: - Both vehicles were insured with two different insurance companies. It was held that the Ad interim compensation is to be shared by both insurance companies.
- c) **No fault award should be adjusted in final award.** Adjustment of interim award under no fault liability in final award, [1991 ACJ 923 MADRAS] The amount awarded as interim award is to be adjusted against the final award.

**d) Where involvement of vehicle is disputed?**

- i. **Defendants denied involvement of their vehicle in the accident**

Besides the FIR, claimants failed to produce any other evidence regarding involvement of the vehicle before the Tribunal. Tribunal [1992 ACJ 248 Madras] on the basis of the FIR passed the interim award. Whether on the basis of the FIR the tribunal could pass the award under section 140, where the involvement of the vehicle in the accident is denied? It was held in negative. FIR is not evidence on accident. Section 140 does not go the extent of exempting the claimant from proving the involvement of the vehicle in the accident. The case was remanded for fresh trial.

## ii. Owner denied involvement of his bus in the accident

The order for payment of interim compensation passed on the basis of statements of witness in the criminal trial without [1995 ACJ 942 PATNA] holding enquiry as to which of the bus was involved in the accident, is NOT sustainable.

## 15. Payment of premium

- a) A moped was insured under Motor policy and the premium cheque was sent for renewal of policy when due. However, cheque was dishonoured, and owner paid cash, insurers accepted and sent a cover note. In between loss occurred which was rejected by insurers. It was held by the Supreme Court that that the insurers were liable [(SC 2009)].
- b) Insurers did not deposit premium cheque with the Bank, for insurance of motor vehicle. A Third Party claim was reported. The Insurers were held liable [(Oriental Insurance Company Ltd. Vs Gowamma 1988)]

## 16. 64 VB

### a) Duty of insurance company on dishonor of cheque

As on the date of accident, policy was cancelled as cheque issued by the insured towards payment of premium was dishonored and the same was intimated to insured and concerned Regional Transport Office. This has been held as substantial compliance of Section 64 VB of the Insurance Act 1938. The court held that —The cancellation of policy of Insurance Company for non-payment of premium amount or dishonor of cheque issued for payment of premium is governed by the provisions of the Insurance Act 1938.¶

In [(Tata AIG Vs Balaguruvaiah)MFA no 9795/ 2010 (MV) dated Mar 15, 2013] Karnataka High Court held that in case of dishonor of cheque, Insurance company cannot be held liable for payment of compensation, if it has duly intimated the insured and the concerned Regional Transport Office.

### b) Interpreting the word “date”:

Accident occurred at 4.00 a.m. on the date on which the policy was obtained. The cover note was issued commencing w.e.f. 5.30 p.m. but in the policy issued thereafter, no time was mentioned. Owner contended that the policy commenced with the commencement of the date of issue. Whether a policy issued expressly specifying the date and time of issue on the cover note or the policy, covers the risk in respect of accident occurred earlier on the same day, the premium for which was paid and policy was taken after the accident. - Held [1992 ACJ 292 Karnataka (D.B.)]- No.

Interpreting the word "date" used in Section 64 VB of the Insurance Act 1938, insurance policy is meant to cover liability incurred by the owner of a vehicle or property as a result of accident taking place in future and not in respect of an accident which has already taken place.

In this case the time and date of issue was mentioned on the cover note, but in the policy the time was not entered and only date of commencement was mentioned. The insurance policy is issued in continuation of the cover note and one cannot be read in isolation. Both should be read together.

**c) Retention of cheque by agent:**

An Agent accepted cheque towards premium covering sheds and promised to issue cover note after inspection of the premises. No proposal form was submitted by the insured. The premises caught fire and were extensively damaged. Whether mere acceptance of premium by agent from the insured amounts to a concluded contract of insurance, so as to foist liability upon the Insurance Company? The matter was still under negotiation and no binding contract resulted. [1992 ACJ 503 Bombay] Even there was no interim contract for limited period in the form of cover note. There was no implied or express acceptance of the proposal hence no liability of insurance company. Merely because of retaining the said cheque for over a period of four months or because no steps were taken in returning the cheque even though intimation of, fire and loss, was given to it immediately. In fact said cheque was not even en-cashed by appellant and was returned later. Therefore, mere retaining of cheque has not passed on any benefit to the appellant.

**d) Suppression of material fact**

A pedestrian died when he was hit by a car. The Car was not insured at the time of accident, which occurred in the morning and the owner obtained insurance cover on the same day afternoon, without disclosing in the proposal form that the vehicle had met with an accident. Contention that contractual deficiency does not defeat third party claims in a beneficial legislation. [1993 A.C.J. 838 Gujrat (D.B.)] The policy is void on account of suppression of material fact on the part of the owner and the insurance co. were not held liable.

**e) General provision under General Clauses Act [1997 ACJ 351 Supreme Court]**

In view of special contract mentioned in the policy the same would be operative from 4 P.M. on the date of payment of premium. General provision under General clauses act that contract would be operative from mid-night would not be applicable. Accident in this case having occurred around 11 A.M. on the date of payment of premium the insurance coverage would not enable the claimant to seek recovery of the amount from the appellant company.

**Acceptance of cash against dishonour of cheque:**

Motor Vehicle Act, 1988 - Section 147(5), 149(1) & 146, Insurance Act, 1938 & - Liability of Insurer when cheque received towards premium under Section 64 VB was dishonoured, but the policy was not avoided [1998 (1) ACJ 123 S.C. = 1998 (1) SCC 371]. Insurer informed the insured that the cheque having been dishonoured the insurer would not be at risk. However, the insurer did not avoid the policy for that reason and accepted payment of premium in cash and same policy remained operative. In such circumstances, the insurer even if he was entitled to avoid the policy for not having received the premium, held nonetheless liable for third party risk as the public interest served by an insurance must prevail over the insurer's interest.

**f) Dishonour of cheque**

**i. Dishonour of the cheque is within the knowledge of the insured:**

Insurance Company issued a cover note, insuring the vehicle, the premium of which was remitted by a cheque. The cheque was dishonoured and the insurance company informed this fact to the registering authority and the insured. The vehicle met with an accident. Despite the plea of Insurance Company that the cheque had bounced and in the absence of payment, the cover note had become ineffective, the Tribunal in [1991 ACJ 650 Supreme Court] awarded a sum of Rs.15,000/- holding the Insurance Company liable. Supreme Court held that the fact of dishonour of the cheque is within the knowledge of the insured and no special notice to the insured is required. The liability of Insurance Company ceases.

**ii. Non-payment of cheque on presentation:**

Cheque given towards premium was dishonoured and the insurance Company had informed the insured that in view of nonpayment of the premium the cover note issued stands cancelled since its inception. The contention that the insurance company was liable as it did not inform the Registering Authority that the policy has not followed the cover note, within 7 days of the expiry of the cover note as required under Section 147 (4).



Whether insurance company can be made liable for amount of compensation either interim or Final - Held [1993 ACJ 1219 M.P. (D.B.)] - No, as no Premium was paid there was no contract of insurance; therefore, there was no assumption of risk. Liability is assumed only after the premium is received and payment takes effect from the delivery of the cheque but is defeated on non-payment on presentation.

iii. Cheque given towards premium was dishonoured. The insurance company was not found liable. There was no policy covering, the owner of the truck at the relevant time [1989 ACJ 816 Delhi].

#### **iv. Dishonour of cheque towards premium**

Cover note and receipt for the premium were issued by the insurance company subject to realisation of cheque. Cheque was dishonoured and the insured requested the insurance company to represent the cheque on a particular date. Cheque was represented on that date and the same was honoured. Vehicle met with an accident before that date. The insurance company was not found liable [1995 ACJ 663 Karnataka (D.B.)].

### **17. Passenger on goods vehicle**

#### **a) Paid passenger**

##### **i. Death of or bodily injury to persons travelling in a goods vehicle**

The Insurance Company is not liable to pay compensation in respect of death of or bodily injury to any person travelling in a goods vehicle, which is not adapted and meant in Law to carry passengers for hire or reward in the absence of any extra coverage [1992 ACJ 1 Karnataka (Full Bench)].

##### **ii. Fare paying passenger in Goods vehicle [1993 ACJ 65 Orissa]:**

Persons travelling in a truck on payment of fare, sustained injuries and some of them succumbed to their injuries when the truck toppled. There is no permit authorising carrying of passengers on hire in the goods vehicle. It was held that Insurance Company was not liable. There was violation of the rules and the owner of the vehicle is liable [1994 A.C.J. 1252 (P & H)]. In case of death of a person travelling by paying fare in a vehicle meant for transporting goods. It was held that Insurance Company was not liable. The offending vehicle was not meant to carry passengers.



## b) Gratuitous passenger

### i. No Policy for passenger for hire and reward

A policy of insurance is not required under MV Act to cover risk to passengers who are not carried for hire or reward [Pushpabai P Udeshi vs. Ranjit Ginning & Pressing Co. SC (1977)]. As a result of this TAC had amended the wording of the Third Party Section II of the Motor Comprehensive/Package policy for Private car and Two-wheelers. **Now the package policy is to include “occupants traveling the motor vehicle provided that such occupants are not carried for hire or reward.”** This stand was recently reiterated by IRDAI issuing directions to insurers not to make any changes in this cover.

Under MV Act 1988 insurance policy covering Third Party risk is required to exclude gratuitous passengers no matter the vehicle is of any type or class [(New India Ass. Co. Ltd. vs. Satpal Singh (SC 2000)]. A sequel to this case was [(New India vs. Asha Rani & others) (SC) 2002].

The definition of —goods vehicle in old MV Act 1939 included carriage of passengers in addition to goods, whereas under the M.V. Act 1988 definition of —goods carriage specifies only —carriage of goods in the vehicle. ~~Here~~ after 1988 Act insurers have no liability towards passengers in goods carrying vehicles. The driver of a truck gave lift to a person and he died when the truck went off the road and fell in a khud [1993 ACJ 770 Himachal]. The Insurance Company was not held liable.

Employees of Owner of Motor vehicle like driver, conductor, ticket checker etc. are covered as per Employee's Compensation Act 1923. Whether the insurer is obliged under law to indemnify the owner of a goods vehicle, when the employees engaged by the hirer of the vehicle travel with the owner of the goods on the foundation that they should be treated as an employee covered under the policy, issued in accordance with the provision contained under Section 147 of the Motor Vehicles Act, 1988.

An appeal was filed in the High Court by the insurer that the employee of hirer is not covered under the act and the insurer is not liable to indemnify. [(Sanjeev Kr Samrat vs. National insurance company) [Civil appeal no 8925 of 2012] arising out of [SLP 17272 of 2006] On appeal, Supreme Court upheld the decision of the High Court and held owner of the vehicle liable.

### ii. Occupants of the Private car

Although occupants of a car are not required to be covered as Third Party under compulsory insurance provisions of the 1988 Act, but the wording under Motor Package policy are wider than that required under the MV Act to cover —occupants of the vehicle, Insurance Company was held liable to pay compensation. [(Bhagyalakshmi vs United India Ins. Co. Ltd.) (SC) 2009]

### c) Owner of the goods

#### i. Accident occurred prior to 14-11-94

Liability of Insurance Company for persons travelling in a goods vehicle the Insurance Company is not liable for death or injuries suffered by persons carried for hire or reward in a goods vehicle. Proviso (ii) to section 95 (i)(b) did not apply to person carried in a goods vehicle for hire or reward [1994 ACJ 138 Orisa (Full Bench)]. It is restricted to passengers carried in a public service vehicle.

The Owner of goods, who has hired a goods vehicle does not become a person travelling on the vehicle in pursuance of a contract of employment and even if he is carrying his own goods after hiring the vehicle, the vehicle does not become a vehicle meant for carrying passengers for hire or reward and consequently would not come within the proviso (ii) to section 95 (i)(b).

#### ii. Accident occurred after to 14-11-94

In the case of [(National Insurance Co. Ltd. v. Cholleti Bharatamma), (2008) 1 SCC 423], the Supreme Court held that the risk of the Owner of the goods or his representative would be covered only, if he travels in the cabin with the driver.

### 18. Driver's injury/death due to his own negligence

- i. Claim in respect of injuries sustained by driver in an accident due to his own negligence as the vehicle he was driving slipped down the road and turned turtle [1986 ACJ 951 (Gujrat)]: -- The driver was not found entitled to compensation.
- ii. Claim tribunal did not have the jurisdiction to entertain the claim for the deceased, who was himself responsible for the accident[1984 ACJ 582 (Karnataka)].
- iii. The driver himself was negligent and responsible for causing the accident did not have a cause of action. [[1986 ACJ 144 (Rajasthan)]: Relied on 1976 ACJ 128 Supreme Court]
- iv. Collision between two trucks due to negligence of driver of truck "All. The claim by the driver of truck "A" was not maintainable [1991 ACJ 36 (Punjab & Haryana)]:.
- v. Similarly, in [1991 ACJ 699 Karnataka (Division Bench)]: the driver who sustained injury due to his own driving cannot maintain claim application under section 110-A against his owner & insurer. The remedy available is before the commissioner under E.C.Act 1923.

- vi. In another case driver of car died when the car met with accident due to his own negligence. No plea of master servant relationship between the owner & deceased was taken. No wrong or tort committed by owner, has been pleaded and proved by the claimants. Neither the owner is vicariously liable nor can the insurance company be made liable in the absence of any liability being imposed on the owner [1993 A.C.J. 522 Madras (Division Bench)].
- vii. A driver of the vehicle met with an accident while driving the vehicle. Dependants filed a claim application against the owner and insurer of the vehicle under Section 166 & 167 read with section 2, 4 (1) (c) and schedule (iv) of Employee's Compensation Act, 1923. When accident was caused due to driver's own negligence the claimants of the deceased driver were not entitled to claim compensation under M.V. Act rather they were entitled to receive the claim under E.C. Act only. Amount awarded by claims tribunal is not justified and insurance company is not liable to pay compensation [1997 (1) PLJR 827 Patna]. The Award was set aside by Patna High Court.

#### 19. Law prevailing at the time of accident will be applicable

- i. [AIR 1982 S.C. 836]: Full Bench Held that the liability of Insurer would be extended to legal provisions as it stood on date of accident.
- ii. The rights and liabilities under the Act arises on happening of the accident and not on any subsequent date [(1991 ACJ 960 M.P. (Full Bench) Followed 1990 ACJ 280 Supreme Court)]. It seems apparently unjust to impose fresh liabilities on owner and insurer for part events on the basis of subsequent change in law, which was not in contemplation of parties either at the time of insurance or accident. [Whether provisions relating to unlimited liability of insurance company specified in section 147 (2) (a) which came into force on 1-7-89 are retrospective and apply to pending cases, where accident has occurred prior to 1-7-89. It was held in Negative 1993 ACJ 343 Kerala (Full Bench)]. Nothing in 1988 Act seeks to alter the liability of the insurance company as it stood on the date of accident.
- iii. However in [1993 ACJ 188 Kerala (Full Bench)] reiterated that the provisions of Sec. 92-A are not retrospective. Section 92-A is part of substantive law. It does not lay down a rule of procedure or refer to a rule of evidence within the tort system. When the amending act proposes to give different dates of commencement to different section, there is presumption against retrospectively. If a provision is capable of two interpretations namely prospective or retrospective, the former is to be preferred.

## 20. Quantum & Liability

### a) Liability

If owner of the vehicle does not contest the claim then a petition under Section 170 of M. V. Act 1988 should be filed to allow the Insurance Company to take all defenses available to the owner of the vehicle and get an order passed by the Tribunal in this regard.

- i. **Defence available to insurance company** [1993 ACJ 828 Guwahati (Full Bench)]: The contention that the restriction on the right of the insurance company to raise defences which are available under section 149 (2) is applicable only to the proceeding in the Tribunal and it is not applicable in appeal. The insurance company cannot raise in appeal, defences which are not contemplated under section 149 (2). Unless, of course, the Tribunal has passed an order under section 170 or the Insurance Company and has reserved in the policy the right to contest the claim on behalf of the insured.
- ii. **Owner and Driver appeared, but didn't file written statement.** No permission of the Tribunal was sought by the Insurance Company Under Sec.170 for contesting the proceeding on merit, the Insurance Company was not found to challenge the quantum of compensation[1998 (1) ACJ 513 S.C].
- iii. **Owner and driver of offending vehicle remained ex-parte.** [1995 ACJ 847 (M.P.)]: Insurance company in its written statement alleged collusion between the claimants, driver and owner of the vehicle. Tribunal permitted the insurance company to cross examine the witnesses on all aspects. The appeal was held maintainable against the finding of quantum, rash & negligent driving and rate of interest, filed by the insurance company under Section 149 (2) and 173 of M.V. Act.
- iv. **Owner of the vehicle remained ex-parte.** [1992 ACJ 721 (Patna)]: Tribunal permitted the insurance company to cross examine the witnesses on all aspects without recording reasons under Section 170. The Insurance Company was held entitled to question in appeal the quantum of compensation awarded.
- v. **Aggrieved insured filing appeal** [1993 ACJ 828 Guwahati (Full Bench)]: The full bench of the Guwahati High Court held that an insured who is indemnified by the Insurance Company is a person aggrieved and can file appeal challenging the findings regarding negligence or quantum of compensation. The fact that the owner will be indemnified by the insurance company does not obliterate the adverse decision rendered by the Tribunal against him.

## b) Method of calculation of compensation

### i. Interest Theory

ii. **Multiplicand or Loss of dependency.** [1994 (1) ACJ 1 S.C]: - The multiplier method involves the ascertainment of the 'loss of dependency' or the multiplicand, multiply by appropriate multiplier. The choice of multiplier is determined by the calculation as to what capital sum, if invested at a rate of interest would yield the multiplicand by way of annual interest. [1996 (1) BLJR 473 (confirmed by division bench in 1996 (2) BLJR 1242.)]: The multiplier should be applied in such a way that the dependency calculated in money value should fetch the same amount of dependency to the applicants by way of annual interest if the award amount is deposited in a Nationalised Bank or other financial institution in fixed deposit.

iii. **Application of Multiplier.** The Multiplier method should be applied in such a manner that dependency calculated in money value should fetch the same amount of dependency to the claimants, if the award amount is deposited in Bank or other financial institution in fixed deposit [1999 (1) PLJR 873]. The annual dependency should be multiplied by such figure which would ensure a monthly income to the similar amount, if the whole amount is kept in the fixed deposit in a Bank would yield by way of annual income [1999 (1) PLJR 287 & 400].

## 21. Interest

a) **Applicability of interest** Petition remained pending for a longtime due to certain acts of omission and commission on the part of the claimant. The claimant was held not entitled to interest from the date of filing of petition [1992 ACJ 35 (Delhi)].

b) **Interest from the date of impleading** Insurer The Insurance Company was impleaded after more than 4 years of filing the claim petition. Insurance Company was held liable to pay interest from the date it was impleaded [1994 ACJ 198 Orissa] till the date of payment. Interest prior to the date of making claim [1995 ACJ 232 Supreme Court] The interest cannot be allowed from a date earlier than the date of claim.

c) **Higher interest in case of default** Tribunal allowed interest at the rate of 6 percent from the date of claim and ordered that if the amount is not paid within a specified period then the rate of interest would be 12 percent per annum. The Tribunal cannot allow higher rate of interest in case of default, [1993 ACJ 1119 Orissa] such a direction virtually amounts to imposition of penalty which is not prescribed in the 1988 Act.

- d) **Non admissibility of interest on future expenses** Claimant who was injured in a motor accident was awarded compensation for past and future expenses under different heads. Tribunal allowed interest @ 12 % p.a. on the entire amount awarded from the date of application till realisation. High Court has reduced the interest to 6 % in appeal. The interest on amount allowed for future expenses is not admissible [1995 ACJ 366 Supreme Court].
- e) **Rate of interest payable:** On amount payable by insurer, it is liable to apply the rate of 12% per annum only because as per the direction of the Govt. of India, the Insurance Company has no option but to invest the money in the securities specified by the Govt. of India under which the Insurance Co. is securing interest @ 11.3% per annum [1996 (6) SCC 428].

## 22. Duty of Police officer & Tribunal (Sec. 158 and 166)

- a) **Duty of police officer** - It is obligatory for officer-in-charge of police station to forward within 30 days information recorded by a police officer regarding any accident involving death of or bodily injury to any person or report prepared under Section 158 (6) of M.V. Act 1988 to the Claims Tribunal having jurisdiction over the area in which the accident had occurred with a copy to the owner and concerned insurer [1995 ACJ 714 GUJRAT (D.B.)]. Directions issued to the concerned authority for better implementation of the provisions of section 158 (6).
- b) **Duty of Tribunal Section 166 (1) and 166 (4) of M.V. Act :-** Report of any accident forwarded to the Claims Tribunal by the police officer under section 158 (6) is to be treated by the Tribunal as an Application for compensation, irrespective of the fact whether claim petition is instituted by the concerned claimant or not.
- c) **Owner is not a third party:** [1991 ACJ 177 ALLAHABAD (D.B.)]: The insurance company is not liable for claim in respect of death of the owner insured who himself was driving the vehicle, when it met with an accident.. Liability of insurer arises only when the insured incurs liability. By his death, from his own insured vehicle, the insured has not incurred any liability to pay any damages or compensation to any person. The Policy indicates that the insurance was in respect of damages to third party and not to the owner insured of vehicle.



### 23. Tribunal's power of review

- i. Section 95(2)(b)(i) - Claim's Tribunal failed to take into notice the provisions of the section by which the liability of insurance company is fixed a maximum of Rs.50000/- only - Though the M.V. Act does not lay down any power of review, since tribunal is supposed to work as court, therefore, in absence of any specific procedure, provisions of code of civil procedure applies - Correction of mistakes of court may be made by exercise of inherent jurisdiction under section 151 of code - Since statutory provisions of law was ignored by claims tribunal while passing order, it's review cannot be said to be illegal and without jurisdiction 1997 (2) PLJR 30 PATNA: M.V.Act, 1939.
- ii. Claim's Tribunal in their order made deduction on account of lump sum payment. Supreme Court had taken the view that deduction is not permissible [1995 ACJ 572 ALLAHABAD]. Claimants filed review application and the Tribunal disallowed giving objection that claims Tribunal is not being a Civil Court, is divested of any inherent power to review its order under order 47 or section 151 CPC. The claims tribunal has jurisdiction to review or recall its order, but on the limited grounds that the order is apparently illegal having been passed in ignorance of any statutory provision or of any law declared by the superior court or of any fact well established on record.
- iii. Review in E.C. Cases is also applicable 1993 ACJ 75 M.P. & 1982 ACJ 137 ALLAHABAD (D.B.).

**Doctrine of binding precedent:** India is governed by a judicial system identified by a hierarchy of Courts, where the doctrine of binding precedent is a cardinal feature of its jurisprudence. It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of the superior Courts.

With this impressive expanse of judicial power, it is only right that the superior Courts in India should be conscious of the enormous responsibility which rests on them. This is especially true of the Supreme Court, for as the highest Court in the entire judicial system, the law declared by it is by Article 141 of the Constitution, binding on all Courts within the territory of India.

Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the Courts are of significance not merely because they constitute adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.



–Binding precedent" is a doctrine in the law that requires a lower court to apply the same law when presented with the same or substantially similar set of facts as in prior cases where that law was applied. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. The concept is to provide consistently in handling cases where the facts are the same or very similar. The doctrine of binding precedent is based on principle of **stare decisis** which has two components. They are:

- a) The first rule is that a decision made by a superior court, or by the same court in an earlier decision, is binding precedent to the court itself and all its inferior courts are obligated to follow.
- b) The second is the principle that a court should not overturn its own precedent unless there is a strong reason to do so and should be guided by principles from lateral and inferior courts.

Apex Court on –Doctrine of Binding Precedent" : In the present case the Bench of two learned jud [(Pradip Chandra Parija and Ors.vs. Pramod Chandra Patnaik and Ors.) (04.12.2001 - SC) MANU/SC/0304/2002 / AIR89 2002 Supreme Court 296 (5 Judges)] ges has in terms doubted the correctness of a decision of a Bench of three learned judges. They have, therefore, referred the matter directly to a Bench of five judges. In our view, judicial discipline and propriety demands that a Bench of two learned judges should follow a decision of a Bench of three learned judges.

But if a Bench of two learned judges concludes that an earlier judgment of three learned judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned judges setting out as has been done here, the reasons why it could not agree with the earlier judgment.

If, then the Bench of three learned judges also comes to the conclusion that the earlier judgment of a Bench of three learned judges is incorrect, reference to a Bench of five learned judges is justified.

In [(Chandra Prakash and Others vs. State of UP and Another's) (04.04.2002 - SC) (2003) SCC(LS)827 (5 Judges)] The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system; therefore, there is this need for consistency in the enunciation of legal principles in the decisions of the Supreme Court. A pronouncement of law by a division bench of the Supreme Court is binding on a division bench of the same or similar number of Judges.

But if a bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a bench of three learned Judges setting out the reasons why it could not agree with the earlier judgment. If, then, the bench of three learned Judges also comes to the conclusion that the earlier judgment of a bench of three learned Judges is incorrect, reference to a bench of five learned Judges is justified.

The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength [(Central Board of Dawoodi Bohra Community & Anr. Vs. State of Maharashtra) (17.12.2004- SC) (5 Judges)]. A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

In *Rajesh Vs. Rajbir Singh*, civil appeal No.3860/2013 [Arising out of S.L.P. (Civil) No. 24825/2010] the three judge bench decision dated 12-04-2013 in [(Reshma Kumari V. Madan Mohan)] was not brought to the notice of their Lordships. Three judges bench of Supreme Court on 12.04.2013 has prescribed in [(Rajesh Vs Rajbir) - Civil Appeal No 3860/2013] about future prospects as hereunder:

- i. 50% of future prospects in all cases wherein deceased aged below 40 Yrs.
- i . 30% of future prospects in all cases wherein deceased aged between 40-50 Yrs
- i . 15% of future prospects in all cases wherein deceased aged between 50-60 yrs.
- iv. Loss of consortium - One Lakh and
- v. Future Expense at least Rs. 25,000.

[(Delhi High Court in New India Assurance Co Ltd. V Harpal Singh & Ors). on Sept 6, 2013] relying on [(Reshma Kumari Vs. Madan Mohan)] explicitly stated that addition towards future prospects be made only when the deceased has permanent job and so no addition towards future prospects shall be made where the deceased was self employed or was getting a fixed salary without provision of annual increment.

Hon'ble High Court of Delhi in view of [(Union of India & Ors. v. S.K. Kapoor)] held that the previous decision of three Judge Bench in [(Reshma Kumari Vs. Madan Mohan)] shall be taken as binding precedent. —It is well settled that if a subsequent co- ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strengthll.

As per order in SLP (National Insurance Company Vs Santosh Khandelwal dated May 07,2013 of Supreme Court) has granted interim stay in favour of National Insurance company on the ground of conflicting judgment in [(Reshama Kumari and Ors Vs Madan Mohan and Anr) dated April 02,2013] & [(Rajesh Vs Rajbir)dated April 12,2013] wherein one bench has held that in a case where the deceased was a self-employed person, the actual income at the time of death without any addition to income for future prospects will be appropriate while the other bench has held that for a self-employed person, an increase need not be merely 30%, it can be, in appropriate cases, to the extent of 50% where the deceased victim was below 40 years of age.

The matter is still prejudiced until then [(Reshma Kumari V. Madan Mohan)] will hold good as declared by [(Central Board of Dawoodi Bohra Community & Anr. Vs. State of Maharashtra) (17.12.2004- SC) (5 Judges)] supra.

## **24. Pay and recover by insurer**

For the purpose of recovery from the owner, the insurer shall not be required to file a suit, it may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle i.e. appellant No. 1 shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security.

If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle. [(Pramod Kumar Agarwal v. Mushtari Begum) AIR 2004 SC 4360] and [(Oriental Insurance Company Ltd vs. Nanjappan & Others) AIR 2004 SC 1630]

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