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FD-on the topic-

Motor Insurance in India

Final Draft – Banking and Insurance law

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Chapterisation

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INTRODUCTION

What is motor insurance? The answer to this question is very simple as it comprises two words i.e. motor + insurance and motor means a vehicle of any sort which is running on the road and Insurance means to provide cover for any unforeseen risk which may occur in day to day life. Then another question arises what is unforeseen risk? You are walking on the road a car hits you from the back, you get a fracture in your leg and while coming out you never thought that you will have an accident but it happened and this is unforeseen risk i.e. a risk of happening of an event which may happen or may not happen. So Motor Insurance as we all know is the insurance for motor vehicles, there are various risks which are related with the loss of/ or damage to motor vehicles like theft fire or any accidental damage so as to provide coverage for this motor insurance is taken.

Vehicle insurance (also known as, [GAP insurance](#), car insurance, or motor insurance) is [insurance](#) purchased for [cars](#), [trucks](#), [motorcycles](#), and other road vehicles. Its primary use is to provide financial protection against physical damage and/or bodily injury resulting from [traffic collisions](#) and against [liability](#) that could also arise there from the specific terms of vehicle insurance vary with legal [regulations](#) in each region. To a lesser degree vehicle insurance may additionally offer financial protection against theft of the vehicle and possibly damage to the vehicle, sustained from things other than traffic collisions.

Motor Insurance is one of the most flourishing industries in India. The number of vehicles running on the Indian roads has grown manifold. Almost every month, a new car is being launched by top car manufacturers such as Hindustan Motors, Hyundai Motors India Limited, Mahindra and Mahindra, Maruti Suzuki, Tata Motors, and Toyota Kirloskar Motors Ltd.

Motor insurance in India is a mandatory requirement for all vehicle owners. Whether you use it for individual use or commercial purpose, you need to have an auto insurance policy in place. Vehicle insurance policies in India have been devised to insure private cars, two wheelers, and commercial vehicle

HISTORY OF MOTOR INSURANCE:

If we see in real life, we can say that Motor Insurance is an important part of General Insurance. This type of insurance has come into existence from United Kingdom in the early part of this century. Incidentally, the first Motorcar was introduced in England in 1894. The first motor policy to provide coverage for third party liability was came into existence in 1895. Third party liability includes third party and liability incurred towards third party. Third Party means any party other then owner /driver or the government, any liability occurring towards third party due to use of motor vehicle is third party liability. It can be in the form of bodily injury to third party or damage to third party property. So at the beginning, only third party insurance came into existence but later on, in U.K they realized the importance of insurance in terms of motor and with this an accidental comprehensive policy also came into existence and later on the lines of U.K. we started using approx the same policy.

In 1903 the Car and General Insurance Corporation limited was established mainly to transact motor insurance, after this company a lot many other companies has come into existence to transact this business. It has been realized that after World War I, there was a considerable increase in the number of vehicles on the road and when we have the number of the vehicles on the road there is an increase in the number of accidents. As the concept of insurance was not that much in existence so lot of accidental damages were not at all recovered and the motorists faced a lot of problems for getting their treatments and damages to their vehicles. After realizing this introduction of compulsory third party insurance through the passing of the Road Traffic Acts 1930 and 1934 was done. Later on these Acts have been consolidated by the Road Traffic Act 1960.

HOW THE CONCEPT OF MOTOR INSURANCE HAS COME INTO EXISTENCE?

In 1939, India has also realized the importance of Motor Insurance and Motor Vehicle Act was passed and came into existence in 1939. Earlier, only few people knew about motor insurance but later on compulsory third party insurance was introduced by the Act on 1st July 1946. We in India follow the same practice as that of U.K.. As Motor Vehicles Act laid the provisions in 1939 and it required some amendments that were implemented by the Motor Vehicles Act 1988 and it became effective from 1st July 1989 and that's how the insurance concept has come to India.

WHY ONE SHOULD GO FOR MOTOR INSURANCE?

As you all know in our country crores of vehicles are plying on the road and lot of accidents occurred daily, and due to these accidents damages to material and third party occurs. Third party is any person other than the owner. But the question arises how the loss is to be compensated? After realizing all these problems it was made mandatory for all the vehicles which are plying on the road to have an insurance which can provide coverage to general public against the risk of loss or damage to motor vehicles and with this the motor insurance concept has come into existence and Act made this insurance compulsory for everyone those who are driving the vehicle on the road so it become quite popular among people and than motor insurance policies become available to provide a comprehensive cover and a third party liability cover.

PRINCIPLES OF INSURANCE & ITS RELEVANCE

WITH MOTOR INSURANCE

- Utmost Good Faith
- Insurable Interest
- Principal of Indemnity
- Proximate cause

1) Utmost Good Faith:

Contract of insurance have all essential elements of nature of general contract. According to ¹Indian Contract Act, the valid contract must have the essential element of offer and acceptance, considerations, legal parties, sound mind and free consent of the parties. Like every other contract the insurance Contract is the sort of contract it is approved by the Indian Contract Act. Contract of insurance comes in to an existence where there is an offer and the underwriter or proposal of one side and the insurer accepts it by issuing the policy. It has to satisfy all the essential elements of a simple contract. The contract of insurance must be entering into contract by the competent person in order to be a valid contract. The competent person may be who is the age of majority according to law and who is of sound mind. Premium is the age consideration that must be given for starting the insurance contract. The object of the contract should be lawful. Every person entering into an insurance contract should enter into by their free consent.

Contracts of motor insurance are governed by the doctrine of utmost good faith. It is one of the important principles of that implies to the contract of insurance It refers that both the parties involved in insurance contract insurance It refers that both the parties involved in insurance contract should make the disclosure of all material facts and figures relating to the subject matter of the insurance contract. If either party does not disclose the utmost good faith the other party may avoid the contract. The insured's duty to disclose all material facts known to him but unknown to the insurer. Similarly the insured's duty of utmost good faith is

¹section 2(h) and section (10)

disclosing the scope of insurance at the time of contract. Any concealment, misrepresentation, fraud or mistake concerning the material facts to the risk should be disclosed. No important material facts and figures must be concealed. Thus, responsibility of disclosure of both parties should be a reciprocal duty i.e. disclosure is absolute and positive. Some of the few examples of disclosure of material facts such as: Life insurance: Age, income, education, occupation, health, family size, etc. Fire insurance: Inflammable materials, nature and its uses, fire detection etc. Motor Insurance: Type of car, value and details of driver, the driving history and traffic convictions of the driver, past loss experience, etc i.e. which vehicle he is using, in which area he will be driving the vehicle i.e. hilly area or plain area, how good is the driver at driving the vehicle which can be known by his past record. Any past experience related to loss has to be informed to the insurer.

In the context of the principle of utmost good faith, it is pertinent to note the provisions of ²the Motor Vehicles Act 1988. This section provides that: it is compulsory to take the insurance policy if a vehicle is plying on the road and if a certificate of insurance is being issued then insurer can not cancel or avoid a third party liability under this policy. In other words It means that any one who is driving a vehicle on the road can not drive the vehicle without an insurance policy it may be a comprehensive policy or only a third party liability policy.

2) Insurable Interest:

Insurable Interest means the insured must have some legal right to insure the subject matter. Insurable interest is an important and fundamental principle of insurance. Thus it is necessary for valid contract of insurance. According to the definition of insurable interest in the event of the legal right to insure arising out of a financial relationship should be recognized under the law between the insured and the subject matter of insurance. It means that insurable interest must be a pecuniary interest. The insured must have an insurable interest in the subject matter of insurance.

Without insurable interest the contract of insurance is void and unenforceable. A person said to have an insurable interest in the subject matter has to have benefit from its existence and prejudice by its destruction. Thus, insurable interest must be actual and real and not arising out of mere expectation. For e.g. if I own a car I can take a insurance policy on my name but

²Section 149

if my friend own a car then can I take a policy on my name? The answer is 'No' as we don't have any right on other's property and no profit or loss will occur to me if a claim arises to this vehicle. The essentials of insurable interest are:-

i) The existence of property exposed to loss, damage or a potential liability; ii) Such property or liability must be the subject matter of insurance; iii) The insured must bear a legal relationship to the subject matter whereby he stands to benefit by the safety of the property, right, interest or freedom from liability and stands to lose by and loss, damage, injury or creation of liability.

In motor insurance, the 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 insures that liability through third party caused by negligent use of the vehicle. Therefore, the insured has insurable interest, which entitles him to insure the vehicle against damage and liability risk. Further, under M.V.Act 1988³, no person shall allow any other person to use a vehicle in a public place unless the vehicle is covered by an insurance policy complying with the requirements of the Act. If a vehicle is purchased under a hire purchase agreement, the finance company has an insurable interest in the vehicle until all the installments are repaid. A clause included in the policy to protect the financier's interest. This clause provides 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 owners, i.e. the financiers.

3) Principal of indemnity:

Indemnity means to indemnify the loss or to put the insured back in same position as he was before the loss. The word "indemnity" implies that protection, security against damage or loss of security against legal responsibility. According to this principle the assured in the case of loss against the policy made shall be fully indemnified. Indemnity is one of the fundamental principles that except life insurance, personal accident insurance, other contracts of insurance such as fire, marine and accident insurance are contracts of indemnity. There are two corollaries to indemnity, they are:

1) Subrogation 2) Contribution.

³Section 146

The term 'Subrogation' means transfer of all the rights and remedies available to the insured in respect of subject matter to the insurer after indemnity has been affected. It is also referred to as getting into the shoes of the others. It implies that the substitution of the insurer in place of the insured in respect of the latter's rights of Subrogation. For e.g. If a vehicle has collided with another vehicle then the loss occurred to vehicle can be claimed from insurer but if it is due to other party and loss has occurred then it will come from other party, which means insurer may give the claim to you but they can get the amount of loss from the other party. This principle holds good only in the case of motor, fire & marine insurance. Contribution in simple words means to contribute the amount. This is the one important principle essential for valid insurance contract. This doctrine of contribution also applies only to contracts of indemnity i.e., to fire and marine insurance. According to this principle, the case of double insurance, the insurers are to share the loss in proportion to the amount assured by each of them. In order to apply the right to contribution between two or more companies the following factors must exist: 1(a) The subject matter of insurance must be the same 2(b) The event insured must be the same 3(c) The insured must be the same.

For e.g. If a car is insured by two insurers for Rs. 100,000 from insurer A and for Rs. 200,000 from insurer B. A loss occurs for 75,000 then the claim will come in proportion from both the insurer's i.e. Rs 25,000 from insurer A and Rs. 50,000 from insurer B. It does not mean that if loss occurs and if a person has double insurance then he can claim the whole amount from both the insurers, this way he can make profit out of these contracts. So for this purpose this contribution corollary has come into existence as insurance contracts are the contracts of indemnity and no body has to make profit out of it.

4) Proximate cause:

It means the actual cause of the loss due to which a loss has occurred. Causa Proxima is necessary for a valid contract of insurance. It has been defined as "The active efficient cause of 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 doctrine of proximate cause applies to motor insurance as to other classes of insurance. The loss or damage to the vehicle is indemnified only if it is proximately caused by one of the insured perils. Insured perils means the perils covered by insurer under the policy. The doctrine also applies to third party claims. The third party injury or damage must be proximately caused by the negligence of the insured for which he is held legally liable to pay damages.

MOTOR VEHICLES ACT

The Motor Vehicles Act 1939:

Motor Vehicles Act in actual sense came into existence in 1939. If we see the provisions of this we will realize that it provides for various matters relating to the use, maintenance and operation of motor vehicles. Besides this it also take into consideration the matters relating to licensing of drivers of motor vehicles, registration of motor vehicles, construction equipment and maintenance of motor vehicles, control of traffic etc. Under this Act Chapter VII- A and Chapter VIII of the Act provides for insurance of motor vehicles against third party risks.

It was long time back in 1939, when this Motor Vehicles Act has come into existence and properly came in force on 1st July 1939. But this did not include all the provisions where as Chapter VIII was brought in force on 1st July 1946.

The Motor Vehicle Act, 1939 (No. 4 of 1939) consolidated and amended the law relating to motor vehicles. This was amended a several times to keep it up to date. A need was, however, felt that this law should now take into account also the changes in the road transport technology, pattern of passenger and freight movements, development of road network and particularly 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. They recommended updating, simplification and rationalization of this law.

Therefore a working group was 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.

In 1985 General Insurance Corporation has appointed a Committee of experts, which examined the provisions of the 1939 Act thoroughly and submitted to the Central Government an exhaustive report suggesting constructive amendments to the Act. It has 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:

The Motor Vehicles Act, 1988 (Act No. 59 of 1988) is the outcome of the recommendations proposed by various Committees. It has replaced the earlier 1939 Act and it became effective from 1st July 1989. Some of the more important provisions of the Act provide for the following matters:

- a) Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.
- b) Stricter procedures for grant of driving license and period of their validity. c) Laying down of standards for the components and parts of motor vehicles.
- d) Standards for anti-pollution control devices. e) Provisions for issuing fitness certificates of vehicles also by the authorized testing stations. t) Enabling provision for updating the system of registration marks. g) Liberalized schemes for grant of All-India Tourist permits as also national permits for goods carriages. h) Administration of Solarium Fund by General Insurance Corporation.
- i) Maintenance of State registers for driving licenses and vehicle registration.
- j) Constitution of Road Safety Councils.
- k) Seeking to provide for more deterrent punishment in cases of certain offences.

No Fault Liability: Motor Vehicles Act, 1988⁴ 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, the owner of the vehicle shall, or, as the case may be, the owners of the vehicle shall, jointly and severally, be liable to pay compensation in the respect of such death or disablement in accordance with the provisions of this section.

The material change in the law is that the negligence of the owner of the owner or service of the motor vehicle is no longer relevant to decide the question of liability. The provisions of the Act ⁵specifically provides when the claimants shall not be required to plead and establish

⁴Section 140(1)

⁵section 140 (3)

that the death or permanent disablement in respect of which the claim has been made due to any wrongful act, neglect or default of the owner, owners, of the vehicle, or vehicles concerned or any other person. This concept is known as No Fault Liability.

However the amount of compensation payable is restricted to Rs.50, 000/- in the case of death and Rs.25, 000/-in the case of permanent disablement to motor vehicle act 1988. Earlier, it was Rs. 25,000/- for death and Rs. 12,000/-for permanent disablement.

Permanent disablement is defined as any injury or injuries involving;

- a) Permanent privation of the sight of either eye or the hearing either ear, or privation of any member or joint; or
- (b) Destruction or permanent impairing of the powers of any member on joint
- (c) Permanent disfiguration of the head or face.

Hit and Run Accidents:

Hit and run accident is "an 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."

The Act provides⁶ that the central government may establish in fund known as Solatium Fund to be utilized for paying compensation in respect of death or grievous hurt to persons resulting from Hit and Run Motor accidents.

It is provided that grievous hurt shall have the same meaning as in the Indian Penal Code. According to the Indian Penal Code⁷ the following kinds of hurts are designed as grievous:

- Permanent Privation of the vision of either eye.
- Permanent Privation of the hearing of either ear.
- Privation of any member or joint.
- Permanent disfiguration of the head or face.
- Fracture or dislocation of a bone or tooth.

⁶Section 163

⁷section 320

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.

The compensation payable from death claims is fixed at Rs. 25,000/- in respect of 'grievous hurt' Rs. 12,500/- after the amendment to Motor Vehicles Act 1988. (Earlier to amendment, it was Rs. 8500/- for death and Rs. 2,000/- for grievous hurt.

The payment of compensation for Hit and Run Accidents is subject to the condition that if any compensation is awarded for such death or grievous hurt under any other provisions of the Motor Vehicles Act or any other law under Hit and Run Accident has to be deduced from such compensation.

Solatium fund:

It is the fund, which is, consists of contributions from the General Insurance Industry, the Central government, and the State Government as decided by the Central government. A solatium fund is created so as to provide compensation for the victims of hit & run cases. You must have seen a lot of accidents on road where a vehicle had hit the other vehicle or peddlers on the road, so for them this solatium fund is created to provide them compensation.

TYPES OF MOTOR VEHICLES

DEFINITION OF MOTOR VEHICLE:

In simple words we can say a motor vehicle is that which runs with a motor, but in technical sense we can define a "Motor Vehicle" as any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external 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 a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimeters.⁸

Types of Motor Vehicles running on the road:

There are various motor vehicles plying on the road but for the purposes of insurance, the Indian Motor Tariff, which governs the Motor Insurance business in India, and revised with effect from 1st July 2002, classifies the motor vehicles broadly in 3 categories:

Private Cars, Motorized Two Wheelers And Commercial Vehicles.

I) Private Cars:

These are:

a) Private Car type vehicles are used for social, domestic and pleasure purposes and sometimes for professional purposes of the insured or used by the insured's employees for such purpose. It excludes use for hire or reward, racing, pace making, reliability trial, speed testing and sue for any purpose in connection with the motor Trade. It also excludes carriage of goods other than samples. b) Motorized three wheeled vehicles (including motorized rickshaws/ cabin body scooters) are used for private purpose only. Trial, speed testing and used for any purpose in connection with the Motor Trade is excluded. c) Three Wheeled vehicles, which also includes motorized rickshaw cabin scooters used for private purposes.

2) Two wheelers:

⁸Section 2 (28) of the M.V. Act

Motorized two wheelers can be with or without sidecar, which is used for social, domestic and pleasure purposes and also for professional purposes. It excludes carriage of goods other than samples of the insured or used by the insured's employees for such purposes but excluding use for hire or reward, racing, pace making, reliability trial, speed testing etc.

3) Commercial Vehicles:

a) Goods carrying vehicles (own goods): They are trucks and trolleys which carry goods for their own purposes or for their private use. These are vehicles used under a Private Carrier's permit within the meaning of the Motor Vehicles Act 1939. The Act defines a "private carrier" as "an owner of a transport vehicle other than a public carrier who uses the vehicle solely for the carriage of goods which are his property or the carriage of goods which belong to him and is necessary for the purpose of business to carry the goods and not being a business of providing transport". For e.g. I own AXC Co. Ltd at Delhi and I have to send my own goods to my manufacturing unit at Meerut so for this purpose if I use my own truck to carry my own goods, it means this vehicle is under the category of Private carrier vehicle.

b) Goods carrying vehicles (General Cartage): These are vehicles used under a Public Carrier's permit within the meaning of the Motor Vehicles Act 1939. The Act defines a 'public carrier' as "an owner of a transport vehicle who transports or undertakes to transport goods or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise."

When the Motor Vehicles Act (of 1988) was amended it did not have this category, all goods carrying vehicles are called "Goods Carriage" and they did not categorize them into Public carrier and Private carrier. Motor Tariff Categorized the Goods Carrying Vehicle as 'Own Goods Carrier' and 'General Cartage Carrier' separately for rating purpose.

But this was not the right way to charge premium, as people who were using it for personal use and people those who were using it for business purposes were paying the same premium. After realizing this, when the tariff was revised in 1.7.2002, T.A.C. renamed as Public carrier and Private carrier for rating purpose.

LOK ADALATS AND MALT

Motor Accidents Claims Tribunal:

Under the provisions of the Motor Vehicle Act, 1939(as amended), Motor Accidents Claims tribunal are constituted by State Governmentto adjudicate upon claims for compensation in respect of motor vehiclesaccidents involving death of or bodily injury to persons or damage totheir property. These Tribunals were introduced with the object ofproviding facilities for less expensive and quick settlement of third partyclaims. MACT is formed so as to provide assistance to general publicwhen any third party claim arises.

In a way Tribunal has all the powers, which a Civil Court has and it isdeemed to be a Civil Court at times but still the procedures of theTribunal and a Civil Court are different.

The procedures of this Tribunal is simpler then those of Civil Court, butstill they were unable to settle the various disputes regarding third party damage / injury.

Lok Adalats:

Lok Adalats as the name says are the Adalats formed for the general public to settle their disputes regarding claim settlement. There are so many accidents that occur daily and claims arises due to accidents but when the settlement has to be done sometimes insured is not at all satisfied with the compensation provided to him as settlement of claim.

If in reality we see there are lot of third party claims are still pending withMACT and to clear this backlog and to provide a proper way for the settlement of claims the concept of Lok Adalat (also known as Lok Nayayalaya-peoples court) was mooted by Shri P.N Bhagwati, Ex. Chief justice of India. If in a general way we see Lok Adalat sections are held at important centers in the country in lose liaison with the Legal Aid Committee of the state and the M.A.C.T or District and Session Judge.

It has been specified by GIC that Claims up to certain limits from time to time are submitted to the Lok Adalat and only pending cases are taken up for compromise settlement. Chapter XI of the Lok Nyayalaya rules, 1986 provide special provisions for the amicable settlement of pending cases before MACT. It is provide that members of MACT themselves should

scrutinize each case pending before them, and if it is found that there no defense regarding the negligence of the victim nor any defense under Section 96(2) of the Motor Vehicle Act, 1939 section 49(2) of the Motor Vehicle Act, 1988) - which section provide the only grounds of defense open to an issuer - then these matters may placed before the Lok Nyayalaya for amicable settlement.

A consent application has to be taken from the applicant and also the consent of the advocates for the applicants, for the opposite party and the insurer has to be obtained well in advance for placing the cases before the Lok Nyayalaya. A notice has to be made to all the parties to be present in Lok Nyayalaya on the appointed date and time.

All the parties shall voluntarily agree to place the matter before the Lok Nyayalaya and extend their cooperation to settle the dispute by Lok Nyayalaya and after it will arrive at an agreement by writing on the prescribed form. After this a compromise memo will be submitted to MACT for passing the final order.

Then the insurer will be required to deposit the cheque for the amount decided upon by MACT within four weeks form the date of agreement to settle.

The three members of the Lok Adalat are drawn from the followings:

- a) Retired judges of the Supreme Court or High court or District Court or Motor Vehicle as member;
- b) Government pleader;
- c) Senior Advocates having knowledge about M.A.C.T matters;
- d) Principals or professors of law colleges, etc.

NECESSITY FOR THIRD PARTY INSURANCE AND ITS EXEMPTIONS

A third party insurance policy is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party. The insured is one party, the insurance company is the second party, and the person you (the insured) injure who claims damages against you is the third party.⁹

No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter (chapter XI) Provided that in case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the public liability insurance act, 1991. Section 146 seeks to protect members of public traveling in vehicles or using the roads (public place) from the financial liability caused by risks attendant upon the use of motor vehicles on the roads by making third party insurance compulsory for users of motor vehicle. This section embodies the compulsory nature of third party insurance for using a vehicle in a public place.

Salient Features of Third Party Insurance

- 1) Third party insurance is compulsory for all motor vehicles. In *G. Govindan v. New India Assurance Co. Ltd.*¹⁰, Third party risks insurance is mandatory under the statute. This provision cannot be overridden by any clause in the insurance policy.

⁹A third party insurance policy is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party. The insured is one party, the insurance company is the second party, and the person you (the insured) injure who claims damages against you is the third party

¹⁰AIR 1999 SC 1398

- 2) Third party insurance does not cover injuries to the insured himself but to the rest of the world who is injured by the insured.
- 3) Beneficiary of third party insurance is the injured third party, the insured or the policy holder is only nominally the beneficiary of the policy. In practice the money is always paid direct by the insurance company to the third party (or his solicitor) and does not even pass through the hands of the insured person.
- 4) In third party policies the premiums do not vary with the value of what is being insured because what is insured is the 'legal liability' and it is not possible to know in advance what that liability will be.
- 5) Third party insurance is almost entirely fault-based.(means you have to prove the fault of the insured first and also that injury occurred from the fault of the insured to claim damages from him)
- 6) Third party insurance involves lawyers aid
- 7) The third party insurance is unpopular with insurance companies as compared to first party insurance, because they never know the maximum amounts they will have to pay under third party policies.

EXEMPTIONS

The provisions relating to compulsory third party insurance do not apply to any vehicle owned by the Central government or state government and used for Government purposes unconnected with any commercial enterprise. However the government has been given power to grant exemption for any vehicle owned by

- 1a) The Central government or a state government if the vehicle is used for Government purposes connected with any commercial enterprise;
- 2b) Any local authority;
- 3c) Any state transport undertaking

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 Act.

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

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

Section 152. Settlement between insurers and insured persons.

(1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Legal defence available to the Insurance Companies towards third party:

The Insurance Company cannot avoid the liability except on the grounds and not any other ground, which have been provided in Section 149(2). In recent time, Supreme Court while

dealing with the provisions of Motor Vehicle Act has held that even if the defence has been pleaded and proved by the Insurance Company, they are not absolve from liability to make payment to the third party but can receive such amount from the owner insured. The courts one after one have held that the burden of proving availability of defence is on Insurance Company and Insurance Company has not only to lead evidence as to breach of condition of policy or violation of provisions of Section 149(2) but has to prove also that such act happens with the connivance or knowledge of the owner. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defence is available.

Driving License:

Earlier not holding a valid driving license was a good defence to the Insurance Company to avoid liability. It was been held by the Supreme Court that the Insurance Company is not liable for claim if driver is not holding effective & valid driving licence. It has also been held that the learner's licence absolves the insurance Company from liability, but later Supreme Court in order to give purposeful meaning to the Act have made this defence very difficult. In *Sohan Lal Passi's v. P. Sesh Reddy*[4] it has been held for the first time by the Supreme Court that the breach of condition should be with the knowledge of the owner. If owner's knowledge with reference to fake driving licence held by driver is not proved by the Insurance Company, such defence, which was otherwise available, can not absolve insurer from the liability. Recently in a dynamic judgment in case of *Swaran Singh* [5], the Supreme Court has almost taken away the said right by holding;

- (i) Proving breach of condition or not holding driving licence or holding fake licence or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of owner.
- (ii) Learner's licence is a licence and will not absolve Insurance Company from liability.
- (iii) The breach of the conditions of the policy even within the scope of Section 149(2) should be material one which must have been effect cause of accident and thereby absolving requirement of driving licence to those accidents with standing vehicle, fire or murder during the course of use of vehicle.

This judgment has created a landmark history and is a message to the Government to remove such defence from the legislation as the victim has to be given compensation.

Nature and Extent of Insurer's Liability (section 147)

According to the provisions of this section the policy of insurance must be issued by an authorized insurer. It must be as per requirements as specified in subsection (2). It must insure against liability in respect of death or bodily injury or damage to property of a third party. "Third party" includes owner of the goods or his authorized representative carried in the vehicle and any passenger of a public service vehicle.

The policy of insurance must cover:

1) Liability under the Workmen's compensation Act, 1923 in respect of death or bodily injury to any such employee

- (a) engaged in driving the vehicle, or
- (b) the conductor or ticket examiner if it is a public service vehicle, or

2) Any contractual liability:

Section 147 has to be given wider, effective and practical meaning so that it may benefit various categories of persons entitling them to claim compensation from the insurer or the insured or both. Insurer's liability commences as soon as the contract of insurance comes into force. The liability remains in existence during the operation of the policy. If the existing policy is renewed the risk is covered from the moment the renewal of the policy comes into force. If the accident occurs before the renewal comes into existence, the insurer cannot be made liable. It is the primary duty of the vehicle owner to prove that his vehicle was insured with a particular company. If he fails to comply with it he will have to pay the entire amount of compensation in the case. In case where there is a dispute in respect of the vehicle having been insured by an assurance company, the tribunal must give its finding in the matter, it is its duty to do so. After a certificate of insurance is issued it does not lie in the mouth of the insurer to deny his liability. If the insurer has been a victim of fraud he can recover the amount from the insured by a separate action against him.

Oriental insurance Co. v. Inderjeet Kaur¹¹

If the insurer has issued a policy to cover the bus without receiving the premium therefore, he has to indemnify third parties in respect of the liability covered by the policy. He cannot avoid the liability arguing that he was entitled to avoid or cancel the contract.

Liability for injury to certain persons or class of persons (other than gratuitous passengers and pillion riders)

The policy under the Act covers only third party risks. Insurer is not liable for any harm suffered by a passenger traveling in a private car neither for hire nor for reward. Similar is the position of a pillion rider on a scooter.

K. Gopal Krishna v. Sankara Narayana

In this case Madras High Court observed that a scooter-owner is not bound to take out a third party risk policy to cover the claim of the pillion rider that is carried gratuitously. If he is injured, the insurance company would not be liable unless policy covering such risk is obtained by the scooter-owner. A private carrier registered as such with R.T.O. and also in insurance policy, cannot be used for carrying any passenger or goods for hire or reward. However if it is so used and the employees of a party hiring the private vehicle belonging to the insured are injured in an accident the insurance company will not be liable.

Insurer liability to Vehicle Owner

A contract of insurance is a personal contract between the insurer and the insured. It is for the purpose of indemnifying the insured for damage caused due to accident by the vehicle, to a third party. To make the insurer liable the policy of insurance must be in the name of the owner of the vehicle.¹² Owner of the vehicle as defined in Section 2(30) is a person in whose name the motor vehicle stands registered. A person in possession of a vehicle under a hire-purchase agreement or an agreement of lease or hypothecation is also covered by the definition, no matter he has exercised his option to purchase the vehicle or not.

Section 157(1) makes it clear that when the owner of a vehicle transfers the ownership of the vehicle, the policy of insurance and the certificate of insurance shall be deemed to have been

¹¹AIR1998 SC 588

¹²Raj Chopra v. Sangara Singh, 1985 ACJ 209 (P & H)

transferred in favour of the purchaser of the vehicle with effect from the date of its transfer. This deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

According to subsection (2) the transferee has to apply within 14 days from the date of transfer to the insurer for effecting necessary changes in the certificate and in the policy of insurance.

If the certificate of insurance and the policy are not transferred, the insurer could not be made liable even though the vehicle is transferred. It is to be remembered that “an insurance policy is a personal contract between the parties for indemnifying the insured in case of an accident covered under the policy. If the vehicle is transferred by an insured to another person, the insurance policy lapses upon the transfer. In such a case the benefit of the policy is not available to the transferee, without an express agreement with the insurance company. When the insurance policy lapses it would not be available to cover the liability of the purchaser of the vehicle.

S. Sudhakaan v. A.K. Francis¹³

There was an agreement for sale of a vehicle. The owner did not comply with the statutory provisions regarding transfer of a vehicle. He, however, allowed the vehicle to be used by the transferee. The owner had retained the insurance policy with him.

Held— The insurance company was not liable to indemnify the owner.

Liability in respect of damage to property [S.147(2)]

For damage to property of a third party under 1939 Act the limit of liability is Rs 6000 in all, irrespective of the class of the vehicle. Under 1988 Act the position as laid down by section 147 (2) in regard to liability is as under:

- (i) For death or personal injury to a third party, the liability of the insurer is the amount of liability incurred, i.e. for the whole amount of liability.
- (ii) For damage to property of a third party the liability of the insurer is limited to Rs. 6000 as was under the 1939 Act.

¹³AIR 1997 Ker 26

Liability of Insurer beyond the limits mentioned in the Act

Section 147 lays down the limits of liability of the insurer. However there is no bar for the insurer undertaking a higher liability i.e. liability for a greater amount than that mentioned in the Act. Thus the insured and the insurer can contract and can provide for a higher liability.

Summary:

In the above we have discussed about the Legal Aspects related to Third Party Risks, the necessity for Insurance against third party risks and its Exemptions.

CONCLUSION

In the past few decades, Indian Automobile industry has witnessed the launch of various cars by domestic as well as international manufacturers. The expansion in automobile sector has indirectly led to the growth in Car insurance segment of auto insurance industry. As per Indian law insuring your car is compulsory. There are number of auto insurance companies in India which offer various car insurance plans.

Many insurance firms even have tie-ups with car producers to make their coverage simple and trouble-free.

Most of us are very passionate about our cars and we love taking good care of it. Car insurance can be extremely useful in case any damage is caused to your car and the expenses incurred in repairs are high.

India with about 200 million middle class household shows a huge untapped potential for players in the insurance industry. Saturation of markets in many developed economies has made the Indian market even more attractive for global insurance majors. The insurance sector in India has come to a position of very high potential and competitiveness in the market. Indians, have always seen life insurance as a tax saving device, are now suddenly turning to the private sector that are providing them new products and variety for their choice.

Consumers remain the most important centre of the insurance sector. After the entry of the foreign players the industry is seeing a lot of competition and thus improvement of the customer service in the industry. Computerisation of operations and updating of technology

has become imperative in the current scenario. Foreign players are bringing in international best practices in service through use of latest technologies

The insurance agents still remain the main source through which insurance products are sold. The concept is very well established in the country like India but still the increasing use of other sources is imperative. At present the distribution channels that are available in the market are listed below.

- Direct selling
- Corporate agents
- Group selling
- Brokers and cooperative societies
- Bancassurance

Customers have tremendous choice from a large variety of products from pure term (risk) insurance to unit-linked investment products. Customers are offered unbundled products with a variety of benefits as riders from which they can choose. More customers are buying products and services based on their true needs and not just traditional moneyback policies, which is not considered very appropriate for long-term protection and savings. There is lots of saving and investment plans in the market. However, there are still some key new products yet to be introduced - e.g. health products.

The mass consumer is now exhibiting an increasing propensity for insurance products. A research conducted exhibited that the mass consumers are willing to dole out anything between Rs 3,500 and Rs 2,900 as premium each year. In the insurance the awareness level for life insurance is the highest in mass India, but the consumers are also aware about motor, accidents and cattle insurance. In a study conducted by MART the results showed that nearly one third said that they had purchased some kind of insurance with the maximum penetration skewed in favour of life insurance. The study also pointed out the private companies have huge task to play in creating awareness and credibility among the mass populace. The perceived benefits of buying a life policy range from security of income bulk return in future, daughter's marriage, children's education and good return on savings, in that order, the study adds.

Third party insurance concept under motor vehicle act protects the interest of a third party who becomes the victim of accident or injury caused by the fault of the insured. So any

liability arising on the insured by the third party is mitigated by the insurance company. Third party insurance is compulsory under the motor vehicles Act, 1988. As the third party insurance is mandatory so it cannot be overridden by any clause in the insurance policy.

It is the duty of insurers to satisfy the judgments and awards against persons insured in respect of third party risks. The insurance company is a 'State' within the meaning of article 12 of the Constitution. For this reason it cannot deny, discriminate or refuse third party insurance cover to State run vehicles because their actions are guided by Article 14 of the Constitution.¹⁴

The compulsory nature of third party insurance is justifiable as it makes the process more easy for the injured person to recover money from the insured. The defendant or wrongdoer cannot be exempted on the ground that he has become insolvent. If he owns a vehicle he is bound to pay to the injured directly or through his insurance company.

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