

INSURANCE AGAINST THIRD PARTY RISKS

Third-party insurance is compulsory for all vehicle-owners as per the Motor Vehicles Act. It covers only your legal liability for the damage you may cause to a third party – bodily injury, death and damage to third party property – while using your vehicle. TP cover does not pay for repair of damage to your vehicle.

WHO ARE FIRST AND SECOND PARTIES?

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 insurance company and the insured are first and second parties, and any other who suffered death, injury or the person who claims damages against you is the third party.

WHO IS THIRD PARTY?

Motor Vehicle Act, 1988, under section 145(g) “third party” includes the Government. “Third party” include everyone (other than the contracting parties to the insurance policy), be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of insurance policy.

WHAT IS ‘ACT ONLY’ COVER?

Act only or Third-party policy covers only your legal liability for the damage caused to a third party like bodily injury, death and damage to third party property – while using your vehicle. Third party insurance does not cover damages to your own vehicle.

WHO ARE THE BENEFICIARIES?

Motor third-party insurance or the ‘act only’ cover, is a statutory requirement under the Motor Vehicles Act. It is referred to as a ‘third-party’ cover since the beneficiary of the policy is someone other than the two parties involved in the contract i.e. the insured and the insurance company. The policy covers the insured’s legal liability for death/disability of third party loss or damage to third party property. The victim can claim for compensation under ‘no fault liability’ or ‘fault liability’ of the Motor Vehicles Act 1988. However, unlimited compensation is available only for bodily injury or loss of life. In case of damage to a property, the insurer’s liability is limited to maximum Rs.7.5 lakh.

WHAT ARE THE LIMITS UP TO WHICH YOU CAN CLAIM UNDER THIRD-PARTY CAR INSURANCE?

It should be noted that car insurance is mandated by the law in India. Car owners who do not adhere to the rules and drive without a valid motor insurance policy can be penalised heavily.

Why Should You Buy Third-Party Car Insurance?

The Motor Vehicles Act, 1988, makes it mandatory for all vehicles to have a minimum level of insurance cover. This is referred to as the third-party liability insurance.

If you are on a tight budget and cannot afford to buy comprehensive car insurance protection for your vehicle, you should at least buy the minimum level of insurance required to stay on the safe side of the law. This liability insurance cover is offered by all motor insurance companies as a standalone policy. When your vehicle is protected by this cover, it is safeguarded from a set of eventualities that are pre-defined by the insurer.

According to the Motor Vehicles (Amendment) Bill 2016 that was approved by the Lok Sabha recently, driving without a valid motor insurance will attract a fine of Rs.2,000. This is an increase in the fine amount from the previous value by 100%.

Limits Of Compensation Under Third-Party Car Insurance:

The third-party liability insurance policy, also referred to as act-only policy or liability-only plan, offers the following coverage to the policyholder:

- **Compensation for third-party injuries in an accident** - Consider a scenario in which the owner of the insured car, say Mr.X, meets with an accident in which another person was injured. The person who has suffered injuries is referred to as the third party in insurance terminology. Third-party injuries following an accident are offered compensation from the insurance company of Mr.X. The third party can claim for the complete treatment and medical expenses.
- **Compensation for third-party partial disability in an accident** - Let us consider the same example again. In case a third party suffers partial disability in an accident involving the insured vehicle of Mr.X, the compensation provided by the insurance company of Mr.X will cover the medical expenses and hospitalisation for which the third-party files a claim.
- **Compensation for third-party permanent disability in an accident** - The liability-only insurance plan will offer compensation for permanent disability suffered by a third party in an accident. The hospitalisation charges and medical bills will be covered under the insurance.

- **Compensation for third-party death in an accident** - In case the third party succumbs to his/her injuries, the vehicle owner can be taken to court, The Motor Accident Claims Tribunal (MACT). The insurance provider is liable to pay compensation for death to the legal heir of the third party. Currently, there is no limit imposed on the death compensation, and the exact amount will be decided by the court.
- **Compensation for third-party property damage in an accident** - In the example above, if a third party suffers property damage following an accident with Mr.X's insured car, the insurance company will pay the compensation for the same. In the case of third-party property damage claims, an FIR has to be filed by the victim and a case has to be lodged in the Motor Accident Claims Tribunal. In this situation, the original bills from an authorised garage, the surveyor's report, and the motor vehicle inspection report should be furnished to assess the extent of loss. The maximum limit for third-party property damage compensation from the insurer is Rs.7.5 lakh. However, if the court decides that the payment should be above this limit, the remaining amount should be borne by the policyholder.

Claim Process:

Third-party claims are settled in a special court, the MACT, as these cases cannot be handled in a civil court. The case should be filed at the Claims Tribunal located closest to spot of the road accident or that closest to the residence of the victim. The court will hear both sides of the case, examine the evidence, and decide on the liability. The step-by-step process for third-party liability claims is based on the extent of insurance coverage each party has. Hence, the process is long-winded and can stretch for months to reach a conclusive judgement.

NECESSITY FOR INSURANCE AGAINST THIRD PARTY RISK-

It is necessary to have knowledge of Motor Vehicles Act passed in 1939 and amended in 1988. In the old days, many of the pedestrians who were knocked down by motor vehicles and who were killed or injured, did not get any compensation because the motorists did not have the resources to pay the compensation and were also not insured. In order to safeguard the interests of pedestrians, therefore, the Motor Vehicles Act, 1939, introduced compulsory insurance. The insurance of motor vehicles against damage is not made compulsory, but the insurance of third party liability arising out of the use of motor vehicles in public places is made compulsory. No motor vehicle can ply in a public place without such insurance.

The liabilities which require compulsory insurance are as follows:

- (a) Any liability incurred by the insured in respect of death or bodily injury of any person including owner of the goods or his authorised representative carried in the carriage.
- (b) liability incurred in respect of damage to any property of a third party;

(c) liability incurred in respect of death or bodily injury of any passenger of a public service vehicle;

(d) liability arising under Workmen's Compensation Act, 1923 in respect of death or bodily injury of: (i) paid driver of the vehicle; (ii) conductor, or ticket examiner (Public service vehicles); (iii) workers, carried in a goods vehicle;

(e) Liability in respect of death or bodily injury of passengers who are carried for hire or reward or by reason of or in pursuance of contract of employment.

SECTION 146 OF MOTOR VEHICLE ACT, 1988 - NECESSITY FOR INSURANCE AGAINST THIRD PARTY RISK-

(1) 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 person, as the case may be, a policy of insurance complying with the requirement of this Chapter.

1 [Provided that in the 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 (6 of 1991)].

Explanation--A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely--

(a) the Central Government or a State Government, if the vehicle issued for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking.

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability person in its employment may incur to third parties.

Explanation--For the purposes of this sub-section," appropriate Government" means the Central Government or a State Government, as the case may be, and--

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the central Government and one or more State Government, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

Section contains a prohibition. – **S. 146** contains a prohibition. It debars an owner from using a vehicle till he has obtained a policy in accordance with the requirements of Chap. XI of the 1988 Act. It does not give a right to an owner who has failed to comply with the provisions of law to claim indemnification from the insurance company in respect of the injury or death caused by his negligence to a third party: *Ram Chander v. Naresh Kumar* (1999) 2 Acc. C.C. 586 (P&H)(D.B.).

151. DUTY TO GIVE INFORMATION AS TO INSURANCE--

(1) No person against whom a claim is made in respect of any liability referred to in clause (b) of section 147 shall on demand by or on behalf of the person making the claim refuse to state provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf passed with respect to any company or of a receiver or manager of the company's business undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on debtors, personal representative of the deceased debtors or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 150, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly

or indirectly to avoid the contract or to alter the rights of the parties there under upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supporting that there have or may have been transferred to him under Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Objects and Reasons. – Clause 151 prescribes that it is the duty of the insured to give information relating to the insurance on demand by or on behalf of the person making the claim for compensation.

LIMITATIONS ON THIRD-PARTY RIGHTS IN CASE OF THIRD-PARTY LIABILITY INSURANCES

Third party insurance is compulsory for all vehicle-owners as per the Motor Vehicles Act. For this reason, standalone third party insurance policies are often called ‘Act only’ insurance. Your third party insurance does not cover you and your motor vehicle. It covers your legal liability for the damage you may cause to a third party only - bodily injury, death and damage to third party property - while using your vehicle.

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 a third party insurance policy the first party is the insured and the second party is the insurance company. The third party here is any third person.

Under your third party insurance, a third party can file a claim for compensation for injury, death, property damage caused by your car. The case for claiming compensation under third party will be filed against you and your insurer.

While there is no limit on the liability covered for injury or death, the cover for third-party property (usually the third party’s car) damage is capped at Rs 7.5 lakh.

“In case damages exceed the upper limit, the balance has to be paid by the policyholder himself.”

If you are the third party hit by another’s car then you can claim damages from the other person. In case of injury you can claim medical expenses, compensation for physical disfigurement and

also for loss of earnings if you are unable to work after the accident. In case of death, the dependents of the deceased can claim compensation on the basis of the income lost.

Medical expenses can also be claimed for treatment of the injury that was the cause of death. For property damage, surveyor's report, original bills from an authorised garage and motor vehicle inspection report are required to quantify the loss. If you are successful in your compensation claim then you would be paid (up to the limits in the policy) by the other person's insurer under his/her third party insurance.

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* 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*, 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.

Insurer's 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. 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 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.

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.

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.

THIRD PARTY CLAIMS: Section 165 of the Motor Vehicles Act 1988, empowers the State Governments to set up Motor Accident Claims Tribunals (MACT) for adjudicating upon third party claims. When a tribunal has been set up for an area, no civil court has any jurisdiction to entertain any claim falling under the tribunal's jurisdiction. The aggrieved party has to move the tribunal within a period of six months from the date of accident. While making the award, the tribunal has to specify the amount payable by the insurer. The procedure for third party claims is briefly described as follows:

On receipt of notice of claim from the insured, or the third party or from the MACT, the matter is entrusted to an advocate.

Full information relating to the accident is obtained from the insured. The various documents are collected and these include

- ☐ Driving Licence
- ☐ Police report
- ☐ Details of driver's prosecution, if any
- ☐ Death certificate, coroner's (PM report) report, if any (fatal claims).
- ☐ Medical Certificate (bodily injury claims)
- ☐ Details of age, income and number of dependants etc.

A written statement is then filed on the facts of the case with the MACT by the advocate. Eventually, if the award is made by the MACT, the amount is paid to the third party against proper receipt.

Compromise Settlements: Where there is clear liability under the policy, claims are negotiated with the third party to accept a compromise settlement, which if accepted by the third party, is registered with the MACT and its consent obtained. The cheque is deposited with MACT for disbursement to the rightful beneficiaries.

Lok Adalats: Pending cases with the MACT where the liability under the policy is not in doubt are placed before the Lok Adalat or Lok Nyayalaya, for a voluntary and amicable settlement between the parties. A copy of decision in the prescribed memo and the cheque is deposited with MACT. Lok Adalat sessions are organized regularly by the insurance companies in liaison with the Legal Aid Board of each State and MACT to effect amicable settlement of third party claims.

**THESE NOTES ARE ONLY FOR REFERENCE. IT IS SUGGESTED TO GO
THROUGH THE CLASS NOTES AND BOOKS ALSO.**